During the past year (2022) transparency and the rule of law in Greece were severely undermined by the so called Greek wiretapping scandal (also called the "Greek Watergate" in the international press). The controversy started in August when the government acknowledged that the National Intelligence Service (EYP) had wiretapped an opposition leader's phone (an MEP, who later became the leader of the social democratic party).

Since August 2022, audits by the EU institutions and the Hellenic independent Authority for Communication Security and Privacy (ADAE), as well as investigative journalism, revealed a prolonged and *en masse* monitoring of the mobile phones of thousands of individuals, including politicians, members of the government and the military and journalists. Approximately 15,000 surveillance orders were issued by the National Intelligence Service, for national security purposes, in 2021 alone.

In addition, the use of illegal spyware (Predator), which allegedly infected the mobile phones of numerous individuals, was revealed. The revelations were followed by the resignations of the head of the NIS and the General Secretary of the Prime Minister. The prime minister, who right after the 2019 elections, placed the National Intelligence Service under his direct control, acknowledged that wiretapping a political opponent was "wrong", while the government's spokesperson later admitted that the National Intelligence Service might have undertaken actions "beyond the existing framework".

These revelations prove the lack of a robust institutional framework, capable of protecting individuals and safeguarding the inviolable right to free correspondence and communication, which is protected not only under the Constitution, but also under the ECHR. The surveillance orders in question lacked sufficient, documented reasoning. They were issued without independent judicial control, being solely subject to the approval of a special duty prosecutor, who is "integrated" in the National Intelligence Service's administrative structure. Finally, the affected individual was never to be informed of his/her surveillance.

The plenary of the Greek Bar Associations publicly intervened and demanded, from the outset, a thorough investigation of all the alleged illegal wiretapping cases and an immediate review and amendment of the current institutional framework, in conformance with the constitutional and ECHR legal requirements.

The Government's and the Parliament's response were inadequate. A Parliamentary enquiry ensued, but to no avail, namely because persons convened before it invoked confidentiality obligations (even though members of the parliamentary committee are themselves bound by secrecy).

In addition, new legislation was enacted, supposedly to enhance the protection of correspondence and communication secrecy. Nevertheless, as we underlined:

a. The role of special duty prosecutor, who is integrated into NIS, is maintained (albeit with the addition of a second supervising prosecutor);
b. the power to approve surveillance orders for reasons of national security is not assigned to a Judicial Council (which is an independent multi-member judicial body), as is the case with surveillance orders issued for the investigation of serious crimes;
c. the new provision pursuant to which the affected individual is potentially informed after a minimum three year period does not comply with the ECHR requirements, esp. if one takes into account that the relevant material is destroyed, as a rule, within six months after the expiry of the surveillance order;
d. it is in practice possible to the extend the surveillance orders indefinitely, by invoking reasons of national security;
e. the Parliament's President who, under the new law, will grant the permission for politicians' surveillance for reasons of national security, does not provide the same guarantees of independence as the *ex constitutione* independent Authority for Communication Security and Privacy;
f. the independent Authority's investigative and supervisory powers are not reinforced, as they should;

g. the much-publicized ban on spyware could prove ineffective, given that it depends on the discretionary power of the Head of the National Intelligence Service, who, pursuant to the new law, draws up a list of illegal/banned spyware.

Furthermore, despite the filing of criminal complaints, the ensuing judicial investigation, is unfortunately still pending, without any concrete results hitherto. The only effort to uphold transparency and the rule of law originated from the independent Authority for Communication Security and Privacy (ADAE), which audited telecom companies in respect of the recent allegations. Strikingly, it was faced with an adverse legal opinion of the Head Prosecutor of the Supreme Court, who erroneously concluded that under the new legislation, the independent Authority was striped of its investigative competence (granted under preexisting legislation), and indirectly threatened the Authority's members with criminal sanctions, should they choose to pursue their investigation.

Both the Bar Associations and legal scholars opposed the Head Prosecutor's legal opinion on multiple grounds:

i) It follows from the explicit constitutional enshrinement of the independent authority's role to ensure confidentiality and secrecy of communications that: a) no state authority can prevent the Authority from exercising its powers under existing legislation which sets out the main framework for its functioning, including the authority's power to audit telecommunications providers; (b) the common legislator cannot prohibit the Authority from exercising its constitutional power, nor can it limit essential competences that have already been conferred on it, c) no body is entitled to substitute the Authority in the exercise of its powers.

ii) No state body may exercise any form of *ex ante* control over it, the Authority being subject solely to *ex post* judicial review.

iii) The Prosecutor issued a formal opinion on questions raised by individuals, who are subject to an audit, regarding issues which might be adjudicated later, thus violating both the principle of judicial independence and the

right to judicial protection, and the specific legal regime regarding the exercise of his duties.

The overall assessment is that all branches of the State, (judicial, executive and legislative), lacked an appropriate institutional response and did *too little, too late*.
The Bar, in its role as the institutional guardian of human rights, democratic values and the rule of law, has raised the issue, both nationally and internationally.
At such a critical moment, an alliance in the name of democracy and the rule of law needs to be forged by the European legal community, in order to uphold our common values, which are at threat.
The rule of law does not tolerate arbitrariness, lack of transparency and opting out of democratic accountability.

Quis custodiet ipsos custodes?