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## Conseil des droits de l'homme

### Quarante-cinquième session

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Point 3 de l'ordre du jour

**Promotion et protection de tous les droits de l'homme,  
civils, politiques, économiques, sociaux et culturels,  
y compris le droit au développement**

## Communication de la Commission nationale des droits de l'homme de la Grèce\*

### Note du Secrétariat

Le secrétariat du Conseil des droits de l'homme a l'honneur de transmettre une communication soumise par la Commission des droits de l'homme de la Grèce\*\*, reproduite ci-après conformément à l'article 7 b) du Règlement intérieur figurant dans l'annexe de la résolution 5/1 du Conseil, qui dispose que la participation des institutions nationales des droits de l'homme s'exerce selon les modalités et les pratiques arrêtées par la Commission des droits de l'homme, notamment dans la résolution 2005/74, du 20 avril 2005.

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\* Institution nationale des droits de l'homme accréditée avec le statut « A » par l'Alliance globale des institutions nationales des droits de l'homme.

\*\* La communication est reproduite en annexe telle qu'elle a été reçue, dans la langue de l'original seulement.



## Annexe

### **Communication de la Commission nationale des droits de l'homme de la Grèce**

#### **Written Submission to the Interactive Dialogue of the United Nations Working Group on Arbitrary Detention**

##### **Introduction**

The Greek National Commission for Human Rights (GNCHR) as the National Institution on Human Rights Institution of Greece and the independent advisory body to the Greek State on matters pertaining to human rights protection accredited with an A status (full compliance with the Paris Principles) by the Sub-Committee of Accreditation of the Global Alliance of National Human Rights Institutions (GANHRI), has the mission to constantly monitor developments regarding human rights protection in Greece, to inform Greek public opinion about human rights-related issues and to provide guidelines to the Greek State towards the formulation of a modern, principled policy on human rights protection.

The GNCHR would like to thank the Working Group on Arbitrary Detention for visiting Greece and holding a meeting with its representatives. The GNCHR welcomes the Working Group's Report following its recent visit to Greece, and fully concurs that, whereas progress has been made, much remains to be done, mainly in practice.

Indeed, whereas the GNCHR has welcomed the ratification by Greece of the Optional Protocol to the Convention against Torture and the designation of the Greek Ombudsman as the national preventive mechanism, the introduction of alternatives to detention into legislation and other related measures, the GNCHR still shares many of the Working Group's concerns as regards the conditions of detention in the criminal justice system, in the context of migration as well as in the social care system vis-à-vis persons with psychosocial disabilities. In particular, the GNCHR would like to raise the following points:

##### **a. Criminal Justice**

Several problems in the criminal justice system remain in place. The GNCHR took note of the reform of the Greek Criminal Code (CC) and Greek Code of Criminal Procedure (CCP). Both Codes have been adopted by Greek Law no.4637/2019. Their implementation in practice has been monitored very closely. In fact, the GNCHR has scheduled a follow-up public hearing to take place in September.

Regarding more specific matters and bearing in mind that excessively long periods of pre-trial detention are detrimental for the individual, the GNCHR reiterates its recommendations, according to which pre-trial detention must be reserved to exceptional cases and should be combined with the reduced imposition of penalties involving deprivation of liberty. The competent State authorities should take the necessary steps to ensure that pre-trial detention is only used in practice as an exceptional measure, as necessary and proportionate and in compliance with the presumption of innocence and the right to liberty. Its use should only be acceptable as a measure of last resort, in very limited circumstances.

The GNCHR concurs with the Working Group's conclusion that conditions of detention, including overcrowding, at facilities related to the criminal justice system do not generally meet international standards, which may affect a detainee's ability to participate in criminal proceedings and to present an effective defence.

Indeed, the GNCHR recalls that the Greek prison system suffers for long from structural deficiencies. Overcrowding is the most important of them. The GNCHR recognises the significant efforts made by the State, over the past years, to address the overcrowding in prisons with the adoption of Law 4322/2015 and the reforms leading to the earlier release of prisoners after completing part of their imprisonment. Indeed, the situation has improved

since the total number of inmates has dropped by 20%. However, according to the most recent Council of Europe Annual Penal Statistics, it is still more than ten thousand, a critical threshold affecting the whole prison system in Greece.<sup>1</sup> Serious infrastructure and staffing problems have not been sufficiently dealt with. The GNCHR has addressed this issue in its Observations on the “Strategic plan for the prison system 2018-2020”, in which it has proposed the basic principles that must guide the solutions attempting to deal with the deficiencies in detention conditions and the overcrowding of prisons.

Apart from the material conditions of penitentiary facilities in Greece, which face challenges, the GNCHR reiterates that gender identity, as a specific characteristic of particular vulnerability, is often not respected by the competent authorities during detention. Indeed, according to the recordings of the Greek Transgendered Support Association (SYD), trans persons in detention or prison are often held with other persons based on their sex or in some cases they are even held in disciplinary isolation. This, inevitably, results to their additional stigmatisation, but mainly to sexual harassments, attacks and/or risk of rape. The GNCHR therefore reiterates the need for gender identity and gender diversity in general of detained persons to be respected.

The GNCHR also recalls that the Greek State should take appropriate measures to ensure fundamental legal safeguards and procedural guarantees, such as the right to legal assistance, including legal aid, as well as the right to interpretation, so that anyone who is arrested is informed in a language that he or she understands.

The Covid-19 pandemic brought about additional challenges to the situation in the penitentiary facilities. The GNCHR raised serious concerns about the effectiveness of the measures so far taken.<sup>2</sup> Organizations and detention monitoring bodies have already called for measures such as decongestion of prisons, the release of some detainees and quarantine measures for infected detainees. The GNCHR, taking into account the World Health Organization’s recommendations and the epidemiologists’ estimate regarding the high mortality risks of the population in prisons, called upon the competent State authorities to respect the rule of law and human rights standards and take immediate measures to improve current detention conditions (minimum sanitation conditions, medical care, personal protective equipment, etc.) and work towards the decongestion of penitentiary facilities.

## b. Migration

In the context of migration, the GNCHR shares the Working Group’s view that the new national legal framework on international protection is more restrictive in regard to the detention of applicants compared to previous legislation. By virtue of the last amendments to the legislative framework (Greek Laws 4636/2019 and 4686/2020), the detention measure was significantly strengthened, both in law and in practice and generalized, contrary to international standards and recommendations from international and national monitoring bodies. The GNCHR has already condemned the systematic and often arbitrary practice of administrative detention of asylum seekers and third-country nationals in return procedures, stressing the importance of using alternatives to detention. Detention should not constitute the rule rather the exception. In particular, with regard to applicants for international protection belonging to a vulnerable group, families with children and unaccompanied minors, the GNCHR advocates for the complete abolition of the detention measure which disproportionately affects their rights.

More particularly, the Working Group verified that the number of children in protective custody remains high and despite the increase of accommodation places for unaccompanied minors and the support offered to them by Greek officials, children are held for prolonged periods in conditions similar to those of criminal detention, which is contrary to the provisions of the European Convention for Human Rights and the Convention on the Rights of the Child. The GNCHR has repeatedly called the Greek State to abolish any

<sup>1</sup> Council of Europe, Annual Penal Statistics SPACE I – Prison Populations Survey 2015, updated on 25th April 2017, PC-CP (2016)6, 14.3.2017, p. 34. GNCHR, *Information relevant to the implementation of the Convention against Torture - Submission to the UN Committee against Torture in response to the List of Issues with regard to the Report of Greece*, p. 23 (June 2019).

<sup>2</sup> GNCHR, *Report on the need to protect human rights while taking action against the Covid-19 pandemic and recommendations to the Greek State* [in Greek] (June 2020).

administrative or de facto detention of migrant children for reasons related to their migratory status. In this regard, the GNCHR emphasized the immediate need to terminate the deprivation of liberty of unaccompanied minors kept under the “protective custody” regime and the implementation of alternatives in accordance with the best interests’ principle. Therefore, the GNCHR welcomes the prioritization of the matter by the Working Group and endorses its relevant recommendations (par. 110 c).

Moreover, the Working Group identified shortages in the provision of interpretation services and legal aid to detainees impeding the effective exercise of their right to asylum. The GNCHR attaches great importance to the full respect of procedural guarantees in all asylum procedures and has called upon the State to secure that asylum seekers in detention and third country nationals in return procedures enjoy a real, unhindered access to a lawyer, a possibility to challenge the legality of the detention order as well as effective access to health services, especially in times of Covid-19 outbreak.

**c. Social Care**

The GNCHR concurs that the Greek State should take additional measures in relation to the deprivation of liberty in the context of psychosocial disability and social care. It should indeed continue prioritising deinstitutionalization whenever possible, with due regard to groups with additional vulnerabilities such as minors. In this respect, the GNCHR stresses the need for a deinstitutionalization strategy to be adopted by the Greek State.

With regard to the living conditions in psychiatric establishments, the competent State authorities should take the necessary steps to ensure that a strategy is adopted to end systemic overcrowding in psychiatric units in Greece. In particular, persons who do not require in-patient psychiatric care should not be placed in such care institutions. Patients in any psychiatric establishment enjoy sufficient privacy, in particular in terms of the number of patients accommodated in each room. It is suggested that all psychiatric patients, including long-term and forensic patients, be offered a range of recreational activities, including outdoor exercise, suited to their needs. In the interest of including immobile or less mobile patients, at least some of these activities should be offered within wards accommodating them.

With regard to the application of safeguards against ill-treatment in psychiatric establishments, the competent State authorities should take the necessary steps to ensure that persons admitted to them are provided with full, clear and accurate information, in an appropriate range of languages, setting out the facility’s daily routine and patients’ rights, including information on legal assistance and effective and free of charge – for indigent patients – access to legal representation, review of placement (and the patients’ right to challenge this), consent to treatment and complaints procedures. Patients unable to understand this information should receive appropriate assistance. Moreover, involuntary placement procedures should offer guarantees of independence, impartiality and medical confidentiality, as well as of objective medical expertise. All injuries suffered by patients should be diligently recorded and the patients concerned should be examined by a doctor. Regarding long-term patients, the law should be amended so that the periodic review of their placement is explicitly required and that such a review is undertaken in practice. The significant monitoring gap concerning the private sector institutions should be remedied in such a way that appropriate external supervisory bodies are provided with the necessary resources to make frequent and unannounced visits to all places, including private clinics, where involuntary patients are hospitalised. As a general principle, all involuntary patients should benefit from facilitated contact with the outside world. Furthermore, the competent State authorities should communicate a clear message to staff of psychiatric establishments, that any behaviour of ill-treatment is unacceptable. Proper management should ensure that all staff members working in contact with patients are properly trained in verbal de-escalation skills and authorised control and restraint techniques.

In the closing, the GNCHR would like to express its support to the work of the Working Group on Arbitrary Detention as well as its readiness to continue contributing on the basis of its mandate to the improvement of detention conditions in Greece. The GNCHR remains vigilant when it comes to safeguarding the full enjoyment without discrimination of human rights in Greece and remains at your disposal for any further information.