

HELLENIC REPUBLIC
GREEK NATIONAL COMMISSION FOR HUMAN RIGHTS

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Decision regarding Detainees' Rights and Detention Conditions in Greek Prisons

A. Introduction

In September 2007, the NCHR decided to establish a working group on detainees' rights and detention conditions. The members of the working group presented their recommendations to the First Sub-Commission on 18/10/2007 and they held a meeting with representatives of the 'Initiative for Detainees' Rights on 5/3/2008. They also decided to give priority to questions of penal detention and address issues of administrative detention on a second round of deliberations. It needs to be noted that the estimates-observations of the NCHR are based on secondary sources. The NCHR holds the view that although the law of its establishment does not expressly grant it the right to access detention centres such a right derives from its competence to monitor the respect of the whole spectrum of human rights in Greece. For the past few years the Ministry of Justice has systematically denied access to prisons to authoritative institutions, such as the Ombudsman. The Ministry claims several reasons for this denial *inter alia*, the sufficient role of the prosecutors assigned to supervise correctional facilities and the Prison Inspection and Control Body, which is created by and operates within the framework of the Ministry of Justice.

B. International and domestic legal framework

A number of international instruments protect detainees' rights (such as the Universal Declaration for Human Rights, ECHR, ICCPR, UN Convention against Torture, and the European Convention for the Prevention of Torture). Furthermore, soft law instruments refer to the

said question, such as the 1977 UN Standard Minimum Rules for the Treatment of Prisoners, and the revised (in 2006) European Prison Rules by the CoE Committee of Ministers. As far as domestic law is concerned, articles 2, 5, 6, 7 and 25 of the Constitution, articles 137A, 137B, 137C and 137D of the Penal Code and article 172 of the Penal Procedure Code are relevant. The Correctional Code, currently in force, regulates the organization and operation of the correctional system as well as the rights and obligations of the detainees. It is quite liberal and perceives the detainee as subject of law. It declares that a detainee is deprived only of the right to liberty, whereas it does not set out a specific goal for the correctional procedure (article 4 paras 1-2). It has been drafted on the basis of a non-compulsory correctional treatment of detainees. It considers that the reintegration into society upon release goes through the improvement not of the detainee himself but rather of his living conditions within and outside prison. Law 1941/1991 introduced innovative non-institutional measures, such as probationary parole, community service, the Body of Social Aid Workers etc. Presidential decree 300/2003 established 'EPANODOS' -legal person of private law- which aims at the post-correctional care of former detainees. Presidential decree 195/2006 provides for the 'Organisation and Operation of Social Aid Workers services'. In 2007, 56 social aid workers were hired. They counsel and supervise convicted individuals whose sentence has been suspended and have been placed under parole (article 100^A PC), those whose penalty has been converted into community service (article 82 PC), and those who are subject to conditional release (articles 105 seq PC). Law 3387/2005 established the 'Security Studies Centre' which seeks for citizen's participation in combating local criminality and regulates the operation of Local Councils for the Prevention of Criminality.

C. Statistics

In Greece detainees number 10.113, whereas the capacity of the existing correctional facilities (24 prisons, 3 special prison hospital facilities, and 3

special correctional facilities for juveniles) is for 6.019 individuals. Within the total of 10.113 detainees there are: 371 minors, 46 held in a special facility for drug addicts, 257 mentally ill and detained in psychiatric hospitals, 48 asylum seekers or illegal immigrants held under administrative detention, 579 women, and 5.902 aliens' whereas 4.439 have been convicted for drug related offences. Correctional personnel numbers 4.260 persons. (2006 data).

D. Observations by International Organs and Organisations

a. European Committee for the Prevention of Torture (CPT)

On 8/2/2008, CPT released its Report regarding its visit in Greece (20-27/02/2007) along with the Greek government's reply. The Report contains substantiated accusations for incidents involving torture, inhuman treatment, threats against detainees' life in prisons and police stations and it ascertains multiple violations regarding detention conditions, ineffective investigations on allegations and/or reported incidents and punishing those responsible, cover ups of violent incidents by medical and correctional personnel, unacceptable conditions of medical treatment etc. It needs to be noted that in the 2005 Report the CPT had expressed serious concerns for the fact that it is compelled to repeat the same recommendations every time. The Report underlines the continuous inability of the Greek authorities to address structural deficiencies of detention facilities and the ineffective handling of ill-treatment reports. The Report also notes the lack of cooperation on the part of the former Ministry of Public Order officials, the lack of coordination and cooperation among the services visited by CPT and the obstruction of its mission due to the constant surveillance of its meetings by 'security escort'. In its recommendations the CPT repeats the need for the Greek authorities to make abundantly clear that any ill-treatment will not be tolerated and will entail serious sanctions for the perpetrators. It recommends specific measures for the reduction of overpopulation in Korydallos prison, the improvement of activities programmes and medical treatment provided,

the hiring of specialized medical and correctional personnel, the improvement of living conditions in isolation units. The CPT also considers the supervision of prisons by the aforementioned Body to be insufficient and recommends the involvement of other institutions, such as the Ombudsman. The Report concludes by reminding to the Greek authorities that CPT has the right to make a public statement, in accordance with article 10(2) of the Convention, if the former does not take all necessary measures to implement its recommendations.

b. UN Committee against Torture

The UN Committee against Torture examined the 4th periodic report of Greece in 2004. The main positive aspects of its concluding observations were the following: the sufficient -in general terms- legal framework, the new Correctional Code, the new immigration law, the new law concerning trafficking, the ratification of the ICC Statute, the establishment of Children's Ombudsman, the disclosure of the CPT Reports, the contribution of Greece to the UN Torture Victims Fund. The main negative points were the following: the gap between legislation and practice, the inexistence of specific information and evaluation regarding the implementation of the legislation, deportation procedures, low percentage in granting asylum status, insufficient training of correctional officers, unjustified and often extreme use of force by police officers especially towards aliens and vulnerable social groups, overpopulation in prisons and bad detention conditions, no access to detention facilities and prisons by independent supervisory organs, insufficient investigation of complaints regarding torture and ill-treatment, unwillingness of public prosecutors to initiate prosecution according to article 137PC, insufficient available remedies. The main recommendations of the Committee concerned: effective investigation of torture allegations and proper sanction, improvement of detention facilities, ratification of OPCAT.

c. Council of Europe Human Rights Commissioner

The CoE Human Rights Commissioner has visited Greece several times and has drafted two reports (in 2002 and in 2005). In his first report he put emphasis on the issues of overpopulation and bad detention conditions, reports for excessive use of force and the unacceptable detention conditions of aliens pending deportation. In his second report, the Commissioner underlined the fact that despite the reassurances he was given the construction of new prisons has been considerably delayed while the overpopulation has further increased. In his recommendations the Commissioner insisted on the completion of the construction programme.

d. European Court for Human Rights and Committee of Ministers

The European Court for Human Rights has convicted Greece several times for violations of article 3 or/and other rights of detainees by correctional or police officers. Moreover, the Committee of Ministers adopted ResDH(2005) regarding detention conditions in Greece on the basis of cases Dougoz & Peers, asking the Ministries of Public Order and Justice to intensify their efforts so as the detention conditions to comply with the prescriptions of the Convention and the ECHR judgments and to look into the question of ensuring the availability of effective domestic remedies.

E. Special Issues:

a. Drug addicted detainees

In Greece the penalization of drug use was introduced in 1919 and drug user was perceived as being a menace to society and prone to the commission of crimes. Law 3084/1954 expressed the view that the user is a patient and not a common criminal and introduced detention in special facility instead of penalty. Law 1729/1987 distinguished traffickers and users between those being addicted and not. For the former it provided for reduced penalties and special therapeutic treatment prior to serving time in detention centre.

A recent Law codified the whole legislation regarding drugs, whereas the UN Convention on Drugs was ratified. Drug trafficking by users has constituted in the past felony or misdemeanor. The therapeutic treatment of addicted criminals balances between the perception of the addiction as a disease of a moral rather than biological nature and a mixed treatment of the individual as victim and criminal. According to rough estimates 2/3 of the detainees, i.e. more than 7,000 are detained because of their drug use, thus converting prisons into a peculiar centre for addicts. Furthermore, the number of drug related deaths in prison has increased the past few years. In Greece physical and emotional rehabilitation is provided by KETHEA. It provides counselling in 7 correctional facilities whereas additional 7 are under way. According to the National Centre for Drug Related Information health services of all types in correctional facilities are basic despite the general principle according to which detainees must have access to the same health care as the rest of the society.

It is safe to argue that penal suppression has not been successful in controlling the drugs issue. On the contrary, it may be argued that on the one hand it contributes in its basic consequences (criminality, illegal rigs) and on the other the user's implication in the penal mechanism creates the conditions for the continuation and not the cessation of drug use. Therefore, our approach needs to be based on the direction of addicts' 'de-institutisation' and establishment of services of open pedagogical and therapeutic care for a successful rehabilitation via the reconstruction of their personality.

b. Aliens under deportation

A quite large percentage of alien detainees are under judicial deportation. Deportation in penal law constitutes subsequent penalty (article 74) or security measure imposed by the court, whereas as administrative measure is imposed by the Administration aiming at the protection of society. It is to be reminded that in 2001 the NCHR had dealt extensively

with the question of long-term detention of aliens under judicial or administrative deportation.

F. General concerns regarding detention and human rights

The compatibility of detention with the enjoyment of human rights has been examined by both constitutional and criminal law theorists. Those who have knowledge of prisons ‘from within’ due to their profession or their experiences agree that detention goes hand-in-hand with several rights violations even though correctional legislation has a different approach. Society likes to think that prisons protect it from those who threaten it. It perceives criminality as pathology of certain individuals and groups who endanger its socio-political status and thus they need to be put away. Public opinion is ready to accept that bad living conditions in prison are tolerable. This mentality affects, by extension, the political will towards the correctional system. “We” are the victims and we have the right to protect ourselves. In this atmosphere of consent towards reinforcing suppression any recommendation for reducing prisons’ population via measures that shrink the penal intervention itself seems rather difficult.

G. Recommendations to the Ministry of Justice

The NCHR as an advisory body to the State on human rights issues takes the initiative to formulate a series of proposals for the amelioration of the correctional system on both institutional and organizational level. Furthermore, the NCHR will examine the potential of cooperation with the ‘Parliamentary Commission for the Examination of the Greek Correctional System’ whose establishment constitutes a positive development.

Prior to any specialized recommendation, the NCHR underlines categorically the following:

- Granting to independent institutions supervisory and controlling role over prisons constitutes sine qua non for both the smooth operation of

correctional facilities in all levels and as a whole and the effectiveness and credibility of the said control. In particular, the Ombudsman should fulfill unhindered his mandate in correctional facilities. The NCHR repeats its request to be granted unconditional access to prisons in order to perform its role as supervisory institutional human rights organ.

- It is imperative for the Ministry to alter the way it perceives and corresponds to the repeated recommendations of CPT and other international organs and the recommendations of the NCHR itself, many of which had already been formulated in its 2001 and 2002 Reports on detention conditions. Furthermore, due to the nature of the questions posed to the Ministry by international organs, it is necessary to cooperate with other ministries in order for its replies to be comprehensive and lucid. International institutions must not be perceived as ‘opponents’ and their findings as suspicious. Greece will not resolve any of the problems if it does not recognize their proper dimensions. If CPT makes use of public statement, Greece will be internationally disgraced since she will be put on the same footing with Turkey and Russia, both States known for their bad record in human rights issues.

Furthermore, the NCHR would like draw the Ministry’s attention to the following issues:

On the level of prevention:

1. It is necessary to develop a new and comprehensive correctional policy on the basis of substantiated scientific study emphasizing on prevention. Towards that direction the NCHR repeats its recommendation for the immediate ratification of OPCAT, whose major aim is the prevention of torture and ill-treatment in all detention facilities via the establishment of national prevention mechanisms.

2. Detainees' allegations concerning torture and ill-treatment must be fully and effectively investigated and the perpetrators must be punished. Impunity must decisively be dealt with.
3. In order for the said investigation to be more effective the adoption of the UN 'Istanbul Protocol' is recommended. All medical personnel and those involved in the investigations need to be trained in the use of the Protocol.

Anticriminal policy:

4. NCHR recommends the limitation to the extent possible of the use of deprivation of liberty penalties. Imprisonment should be imposed only in cases of serious crimes and recidivists. Remand trial should be applied exceptionally. Furthermore, a re-evaluation of the penalties in force is required, at least for certain categories of crimes. The NCHR asks the State to take all necessary measures for the implementation of the existing legislation regarding alternative measures and penalties, whose use would contribute to the reduction of correctional population.
5. The construction of new prisons -and the improvement of the existing ones- is necessary and welcome, but it needs to be combined with substantive measures for the reduction of the population. International experience has demonstrated that the construction of new prisons by itself does not resolve the overpopulation problem, which is interwoven with detention conditions, but rather postpones its manifestation. The new prisons should be built near, as far as possible, urban areas, which is beneficial for the detainees and harmless for the society. The establishment of further women sections in prisons in order to facilitate their communication with their families is also recommended

Detention conditions in correctional facilities:

6. The fact that several provisions of the Correctional Code remain inoperative due to lack of infrastructure, human resources and proper administrative organization constitutes a major problem. The NCHR

underlines the necessity of creating all the conditions –inside and outside prison- for the full implementation of the Correctional Code. The institutions of community service and services of social aid workers need to be strengthened.

7. The NCHR recommends the cautious but without prejudice implementation of all those beneficial for the detainees measures ***provided by the legislation. Leaves*** need to be granted when all conditions are met, whereas applications rejected need to be fully reasoned based on the special characteristics of each applicant. When courts examine applications for ***conditional release*** the applicant must be present at the hearing in order for the principle of equality of arms to be ensured given that the public prosecutor is always present. Moreover, since the various programmes (such as training, employment while in prison) are not sufficient for all detainees, the selection of the participants needs to be fully transparent. All kinds of detainees' communication (leaves, visiting rights, correspondence etc) must be fully respected and facilitated.
8. The same spirit needs to characterize detainees' transfer. Their applications need to be examined promptly, transparently and the decisions to be reasoned. While being transferred the conditions need to be such that will safeguard detainees' dignity.
9. The NCHR emphasizes once more the need for further and continuous training of correctional personnel. In particular, prisons' administrative personnel should be trained in organizing programmes, whereas surveys on the spot so as to locate the needs to be addressed should take place before setting up programmes (employment schemes etc). Any initiative or/and intervention regarding prisons should take place in cooperation and coordination with professionals and services of the field.
10. Hospital of Korydallos 'Saint Paul' and the psychiatric hospital for detainees must come under the competence of the Ministry of Health. All correctional facilities which are located away from urban areas

need to be staffed with medical personnel so as to provide primary medical care and address emergency cases. Measures need to be taken so as to facilitate detainees' access to state hospitals. As far as psychiatric care is concerned, regular visits by psychiatrists need to take place in prisons.

Regarding post-correctional care:

11. The organization, staffing and effective operation of 'EPANODOS' need to be substantially supported. Furthermore, any obstacles to social and professional reintegration of released detainees (such as granting anew driver's license to rehabilitated individuals) need to be lifted.

Regarding special categories of detainees:

12. As far as minors are concerned, including those having committed drug offences, deprivation of liberty should be the last resort and only for violent crimes or crimes committed κατ' επάγγελμα, ή κατ' εξακολούθηση, ή καθ' υποτροπή, and not for common misdemeanors occasionally committed.
13. The NCHR recommends the expansion of KETHEA's programmes to more prisons, and the exploration of the possibility of involving rehabilitated detainees in those programmes. Moreover, the physical separation of drug addicted detainees and mental patients from the general population in prisons is imperative.
14. The requirement of additional conditions for granting ***conditional release and leaves in the case of detainees convicted for drug related offences***—larger periods of time served **in prison** (Law 2943/2001), needs to be re-examined.
15. Long-term detention of convicted individuals in police stations pending judicial deportation is unacceptable and calls for legislative regulation of the ***maximum duration of pending deportation***.