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## **Pre-Trial Detention in Greece: the Achilles heel of the prison system<sup>1</sup>**

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## KEY WORDS

Change in Crime profile/ Prison Overcrowding/ ECtHR/ Modernization of judiciary

### 1. International and Human Rights Framework

Greece is member of the United Nations since 1945, the Council of Europe (CoE) since 1949, the European Union (EU) since 1981, and the Economic and Monetary Union of the European Union since 2001. It is also member of other European and international organisations, such as IMF and the World Bank since 1945, NATO since 1952, OECD since 1961, the WEU/Western European Union since 1992/1995, the ESA/European Space Agency since 2005, the WHO/World Health Organization since 1948, the WTrO/World Trade Organization since 1995.

Greece is member of World Bank Group Agencies as well; in particular of the International Bank for Reconstruction and Development (IBRD-1944) since 1945, the International Finance Corporation (IFC-1956) since 1957, the International Development Association (IDA-1960<sup>2</sup>) since 1962, the International Centre for the Settlement of Investment Disputes (ICSID-1966) since 1969, the Schengen Conventions since November 1992, the Multilateral Investment Guarantee Agency (MIGA-1988) since 1993.

It is also member of several international or regional (e.g. BSEC/Black Sea Economic Cooperation Organisation, 1992) organizations for economic cooperation and development.

Furthermore, Greece participates or is a member in following international organizations:

Australia Group, BIS, CERN, EAPC, EBRD, EIB, ESA, FAO, IAEA, ICAO, ICC, ICCt, ICRM, IEA, IFAD, IFRC, IHO, ILO, IMO, IMSO, Interpol, IOC, IOM, IPU, ISO, ITSO, ITU, ITUC, , MINURSO, NAM (guest), NEA, NSG, OAS (observer), OIF, OPCW, OSCE, PCA, SECI, UNCTAD, UNESCO, UNHCR, UNIDO, UNIFIL, UNMIS, UNOMIG, UNWTO, UPU, WCO, WFTU, WIPO, WMO, WToO and Zangger Committee (*CIA World Factbook* 2009).

As far as concerns international human rights treaties and conventions, Greece is a contracting party, among others, to the

- The Universal Declaration of Human Rights/UDHR (A/RES/217) (1948);
- UN Convention on the Prevention and Punishment of the Crime of Genocide (1948), Decree 3091/1954;
- International Convention on the Elimination of All Forms of Racial Discrimination (UN, 1966), Decree 494/1970;

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<sup>2</sup> The year in brackets refers to the foundation of the organization, while the second, outside the brackets, to the date of Greece's membership.

- International Covenant on Economic, Social and Cultural Rights (UN, 1976), Law 1532/1985;
- **International Covenant on Civil and Political Rights/ICCPR** (UN, 1966) and its two Optional Protocols (1966, 1989), Law 2462/1997;<sup>3</sup>
- UN Convention on the Elimination of All Forms of Discrimination against Women (1979), Law 1342/1983 and its Optional Protocol (1999), Law 2952/2001.
- **the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** (1984), Law 1782/1988;
- **UN Convention on the Rights of the Child** (1989), along with the Amendment to article 43(2) (1995), Law 2101/1992 and the Optional Protocols on the involvement of children in armed conflict (2000), Law 3080/2002, as well as the sale of children, child prostitution and child pornography (2000), Law 3625/2007;
- International Convention for the Protection of All Persons from Enforced Disappearance (adopted 2006, not yet in force), signature 01.10.2008 (United Nations Treaty collection); and
- **the European Convention on Human Rights/ECHR** (1950/1953). It was ratified by Law 2329/1953, and re-ratified on 19<sup>th</sup> September 1974 with its 1<sup>st</sup> Protocol by the Decree 53/1974 (Gov. Gazette A/256/1974) because of its previous denouncing (5/13-2-1970) during the dictatorship (1967-74). Protocols 2, 3 and 5 (1963) were ratified by the Decree 215/1974 (Gov. Gazette A/365/1974), the 6<sup>th</sup> (1983) concerning the abolition of death penalty by Law 2610/1998, the 7<sup>th</sup> (1984) by Law 1705/1987 and the 8<sup>th</sup> (1985) by Law 1841/1989. The following amendments of the Convention carried out by the 11<sup>th</sup> and 14<sup>th</sup> Protocol, which reformed the control system of the Convention, have also been ratified and put into force by Laws 2400/1996 and 3344/2005; and finally, the 13<sup>th</sup> Protocol for the abolition of death penalties in all circumstances by Law 3289/2004. Greece has neither signed nor ratified Protocol 4 - civil imprisonment, free movement, expulsion.
- Greece has also ratified the **European Convention for the Prevention of Torture** (1987) with the issue of Law 1949/1991, and its Protocols I and II (04.11.1993) by which the Convention has been amended, with the Common Decree of the Ministers of Foreign Affairs and Justice MD 28-//1994 (66206) on 15.4.1994 (Gov. Gazette A/66/1994);
- The Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (1981) by Law 2068/1992; the Convention on Human Rights and Biomedicine (1997) by Law 2619/1998; the Additional Protocol to the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, on the Prohibition of Cloning Human Beings (1998) by Ministerial Decree/MD

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<sup>3</sup> Greece objected with regard to the declarations made by Turkey upon ratification (11 October 2004).

F0546/1/AS.732/M. 4898 (Gov. Gazette A/244/1998); the European Convention on the Exercise of Children's Rights (1996), by Law 2502/1997; and finally

- Greece signed on 18.10.1961, yet ratified later on 06.06.1984 (expressing its reservation about Arts 5,6) by Law 1426/1984 the European Social Charter (1961), the 1988 Charter's additional protocol by Law 2595/1998, the amending protocol of 1991 by Law 2422/1996, the collective complaint's protocol of 1995 by Law 2595/1998 and the 1996 Protocol of the Charter's amendment by Law 2422/1996 and signed on 03.05.1996 the revised Charter.

These treaties are incorporated into Greece's domestic legal order by the issuing of Laws and Decrees as already referred to above. Greece made no reservations with regard to (*pre-trial*) *detention* when signing up to the treaty and its protocols. Fundamental human rights are directly enforceable through the domestic courts. Moreover, the citizens have a right of complaint to an international judicial body a) if they have previously used up all legal means offered by the national law, and b) if a state or if the Greek state has violated some of their rights included in the articles of the European Convention on Human Rights and its Protocols. The recourse to litigation refers to a state and not to a person.

## **2. Outline of the National criminal procedural law on detention**

### ***2.1. General legal background***

During the last 20 years criminal procedure in Greece has undergone significant changes due to various legislative and case-law developments, which have resulted in the modification of several of its characteristics (Dellidou 2007: 101; Bahtiyar 2009: 437). Criminal proceedings are divided into the pre-trial and the trial stage. They begin with an act of prosecution and finish with a decision of a court or a judicial council, as a result of the *legality principle*, whereby neither the police nor the public prosecutor is entitled by law to reach an out of court settlement, composition etc. refraining from prosecuting a case (Spinellis & Spinellis 1999: 29).

The main principle on which the proceedings are based at both phases is the search for the "substantive truth" and what is more, *ex officio*. Those responsible for carrying out the investigation have the authority and the obligation to do everything to help the verification of truth and to use all appropriate legal means for this purpose, both incriminating and in favour of the accused (Art. 239[1,2] Greek Penal Procedure Code/GPPC).

The pre-trial procedures are written, non-public and non-adversarial (alias: inquisitorial) (Arts 33, 34, 241 GPPC), (Anagnostopoulos & Magliveras 2000: 135; Bahtiyar 2009: 437). However, the pre-trial phase has also some accusatorial (adversarial)<sup>4</sup> characteristics, since the parties – i.e. the accused and often also the

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<sup>4</sup> It has been suggested, however, to be drawn a distinction between the two. Under this approach the *adversary* process is said to denote only a method of finding facts and deciding legal problems, and is characterized by two sides shaping issues before a relatively neutral judge. The *accusatorial* system, on the other hand, is a more encompassing concept, which includes the adversary method as its constituent

civil claimant - have certain rights and may influence the proceedings by submitting applications, handing over evidence, lodging appeals to the judicial council against the decisions of the investigating judge or the public prosecutor etc. (Spinellis & Spinellis 1999: 19).

Offences are prosecuted exclusively by the public prosecutor. The public prosecutor is obliged to prosecute a case as soon as it is referred to him/her, provided that the case is based on law, it is not too vaguely reported or is obviously not based on facts (Legality principle, Arts 43, 46 GPPC). Before the investigation, the prosecutor *can* make a *preparatory examination* to find whether exists any reason for prosecution (Art. 31[1a] GPPC). Preparatory examination is necessary for felonies and serious misdemeanours judged by the three-member misdemeanours court (Art. 43[1b] GPPC). It finishes either with the ordering of preliminary investigation or the direct call of the accused before the court, but only for misdemeanours (Art. 244 [sections b,c]).

Therefore, the prosecutor

a) Can *call the accused/suspect directly before the court*. “The direct call before court” is a common way of prosecution for petty offenses as well as misdemeanours, when a preliminary investigation is not necessary (Art. 244 GPPC) and there are adequate indications against the suspect. According to Art. 244 [sections a, b] GPPC, preliminary investigation is unnecessary for: a) less serious misdemeanours; b) misdemeanours for which the offenders have been arrested “in the act” (Art. 417 GPPC); c) all other misdemeanours, for which a preliminary *inquiry* (cf. investigation) (Arts 31[2], 240, 241 GPPC) has already been carried out.

b) S/he can *order a preliminary investigation*; which is a summary investigation and can be carried out by an (general or special) investigating officer (Arts 33, 34 GPPC). This option is usually followed in cases involving felonies or serious misdemeanours, and occasionally less serious ones, as well as misdemeanours where the accused is “caught in the act” (Art. 244, 49 GPPC).

The preliminary investigation finishes with:

i) a direct call before court; ii) a motion by the prosecutor to the judicial council of first instance, if – according to his/her opinion – there is not enough evidence to refer the case to court; iii) the issue of a justified order by the first instance prosecutor having the agreement of the prosecutor of appeals to shelve the case, if there is insufficient evidence. This applies to less serious misdemeanours punishable by a prison sentence of at least three months or less, a fine, or both – a prison sentence and a fine (e.g. assault: Art. 308 Greek Penal Code/GPC; slander, defamation and insult: Arts 361, 361a, 362 GPC) that are judged by the one-member court of misdemeanours/Court of First Instance (Art. 114 GPC); iv) the ordering of a main investigation, if during the preliminary investigation a felony is suspected to have been committed (Art. 245 GPPC).

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element (<http://law.jrank.org/pages/470/Adversary-System-An-archetype-Anglo-American-process.html>>Adversary System - An Archetype Of Anglo-American Process.html).

The maximum time defined by law that the *preparatory examination* can last is eight months (4 + 4 months, Art. 31[3] GPPC) and *preliminary* investigation ten months (6 + 4 months, Art. 243[4] GPPC). For both extensions (4 months) the approval of the prosecutor of the Court of Appeal is required. The carrying-out of *preparatory* and *preliminary* investigation does not mean that the suspects are held in custody.

c) Finally, the prosecutor can *order a main investigation*, which is carried out by an investigating judge (Art. 246[3a] GPPC). The main investigation applies to felonies and to misdemeanours, when the prosecutor believes that release on bail could be imposed on the accused (Art. 282 GPPC). For felonies, the main investigation always ends with a decision of the Judicial Council either of misdemeanours or of appeals (of first and second instance respectively) (Art. 308 GPPC). The prosecutor files a motion to the judicial council either to acquit without trial (permanently or temporarily) or to refer the case to trial or to decide not to impeach the suspect (Arts 309-311 GPPC). For misdemeanours the main investigation can also finish with a direct call before the court ordered by the prosecutor with the agreement of the investigating judge.

The main investigation must finish within 12 months after the investigating judge received the file and the additional investigation within three months after the expiration of the main investigation; both can be extended for six and two months respectively, apart from the courts of first instance in Athens, Piraeus and Thessaloniki for which the extension can last twelve and six months respectively (Art. 248[4] GPPC).

The pre-trial phase is deemed to end when the “intermediate stage”, namely the proceedings before the judicial councils, finishes. After that, and in particular when the accused is served with a summons, the trial stage begins (Spinellis & Spinellis 1999: 19).

Rights that are relevant to (pre-trial) detention are provided by the Greek Constitution (1975-amended in 1986, 2001 and 2008). According to Art. 6[1] “No person shall be arrested or imprisoned without a reasoned judicial warrant, which must be submitted at the moment of arrest or detention pending trial, except when caught in the act of committing a crime”.

The phases of pre-trial deprivation of liberty which are distinguished by the criminal procedural law system are:

– *Arrest* can be followed by *police custody* (Arts 275-277 GPPC). After arrest with a warrant, as well as in case that the offender is caught in the very act, if s/he cannot be brought immediately before the prosecutor for questioning and/or to the court for trial, the person(s) remain in *police custody*, in a holding cell.

*Custody /Detention pending trial* takes place when the investigating judge orders with the agreement of the public prosecutor the detention of the accused or in case of disagreement the judicial council decides, whether there is a serious reason to hold the accused in detention in order to ensure his/her presence at trial (Arts 282[3], 283, 284 GPPC). Detention is ordered only to suspects for a felony supported by one or more special prerequisites. It is also ordered when the offender is caught in the very act and s/he is going to be sent soon (within 24 hours) to trial.

*Remand in custody, remand in detention* have the same meaning as pre-trial detention, but also when a convicted offender is serving his/her prison sentence imposed by the first instance court, and is waiting the decision of the appellate court (see also CoE Recommendation Rec(2006)13, Section 1).

The detention pending trial has been reformed by Law 1128/1981, following the guidelines of Recommendation Nr. R (80)11 of the Council of Europe (Courakis 1986). The law introduced as *alternative* the “restrictive terms” (restrictions, alias *release on bail*) and changed detention to optional, depending on certain prerequisites and as the last resort (Spinellis & Spinellis, 1999: 10). Later Laws 2207/1994 and 2408/1996 guarantee the protection of personal freedom by controlling the deprivation of liberty during the preliminary proceedings. After 1996 detention pending trial has been limited to felonies, while remand on bail could be imposed on the accused of a misdemeanour punished with imprisonment for over three months (see also Spinellis & Spinellis, 1999, op.cit.).

The prerequisites foreseen by the law (Art. 282[3] GPPC) for detention (untried prisoners and prisoners without final sentence), whereby fulfilment of just one of them is enough for its enforcement, are: the person is accused of a felony *and* doesn't have either any known residence in the country, or has made “preparations to facilitate his absconding”, which means s/he tried to escape, or has been a fugitive in the past, or has been declared guilty for escape from prison or for violation of restrictions regarding his/her place of residence; or, finally, by setting him/her free and taking into account special events of his/her earlier life or special characteristics of the crime at hand (s/he is accused to have committed), it is possible that s/he may commit a new crime(s). In summary, if the defendant is a flight risk or a danger to the community.

This assessment results after reasoning based on events concerning the previous life of the accused or the special circumstances under which the offense for which s/he is charged has been committed. Only the severity of crime is not sufficient reason for ordering remand (see Margaritis 1997: 533). In exceptional circumstances, detention can be imposed under the same conditions, to those accused of reckless manslaughters (multiple accidental manslaughters), e.g. labour-, shipwrecks-, car accidents, or building's collapse etc. (Art. 282[3 section b] GPPC).

Recently (17.12.2009) a new Law 3811/2009 was issued by the parliament, soon after the Ministry of Justice announced consideration of measures in order to decrease the number of pre-trial detainees. According to it, detention is to be imposed only to felonies, as before, yet punished with *life sentence* or *confinement up to twenty years*, unless the arrested has a criminal record of irrevocable sentences for similar felonies (Art. 24[1 section a], Law 3811/2009; cf. Art. 282[3] GPPC).

The mentioned prerequisites (e.g. no residence, escape etc.) retain, however the assessment about the danger of escape is now based on the criminal record of irrevocable sentences of the accused and not on the accused life or special characteristics of his/her offence(s). The latter are *also* taken into consideration, whenever the suspect is accused of a crime punished with *life sentence* or *confinement up to twenty years*. Since felonies are serious crimes punishable with imprisonment

from 5-20 years (Art. 18 GPC) or life sentence, is not clear what the law implied “with confinement up to 20 years”. The additional clause-addendum to the Explanatory report of the Law 3811/2009 clarified that detention was to be imposed only for felonies punished with confinement of *over ten years* (25.11.2009: 3).

Summing up, the detention of the accused would be possible even if s/he is accused of a felony punished with less than ten years (and over five), when s/he has a criminal record of irrevocable sentences; detention is *also* possible even if the accused has no criminal record of irrevocable sentences, but has committed a felony for which imprisonment over ten years is imposed, *and* the special characteristics of his/her offence(s), imply that if set free s/he would very likely commit new crimes.

At any rate, the law now foresees that detention is to be imposed if the release on bail *is not enough* to guarantee that the defendant will be present during the pre-trial investigation or at trial, but also to prevent him/her from committing new offence(s); this must be *justified* in detail (Art. 296 GPPC). The purpose of the amendment is to demand an exhausting reasoning by the investigation-judges, when they impose pre-trial detention instead of (restrictions) release on bail.

In the case of reckless manslaughters the new Law (Art. 24[1 section c], 3811/2009) demands a detailed justification too of why release on bail is not adequate and whether the accused if set free, may commit new crime(s). Previously there was no special reference to the assessment of the escape’s danger of the suspect (cf. 282[3 section b] GPPC).

Law 3315 (“On Completing the Provisions on Juvenile Courts and the Treatment of Minor Offenders”), as amended, introduced already in 1955 (Art. 2) the temporary detention of minors up to 15 y.o. in training schools (semi-closed juvenile institutions) and of over 15 y.o. in special departments of juvenile prisons. A new law in 2003 set the age for pre-trial detention of minors over 13 y.o.,<sup>5</sup> if they are accused of felonies punished with *at least ten years* imprisonment as before (Laws 1941/1991, Art. 10[1]; 2408/1996, Art. 2[11c]; 3189/03, Art. 4[4] amended Art. 282[5] of GPPC). Art. 96[3] of the Constitution excludes juvenile courts from the jury system and the public hearing, as well as from other provisions of the GPPC.

According to Criminal Law (Arts 18, 54), any offense punishable either with imprisonment from over 10 days to five years, or a fine<sup>6</sup> or confinement to a juvenile correctional institution is a misdemeanour. Since minors can only be sentenced to a juvenile correctional institution, every crime, except for petty offences, committed by a minor is a misdemeanour. Consequently, pre-trial detention of minors cannot exceed

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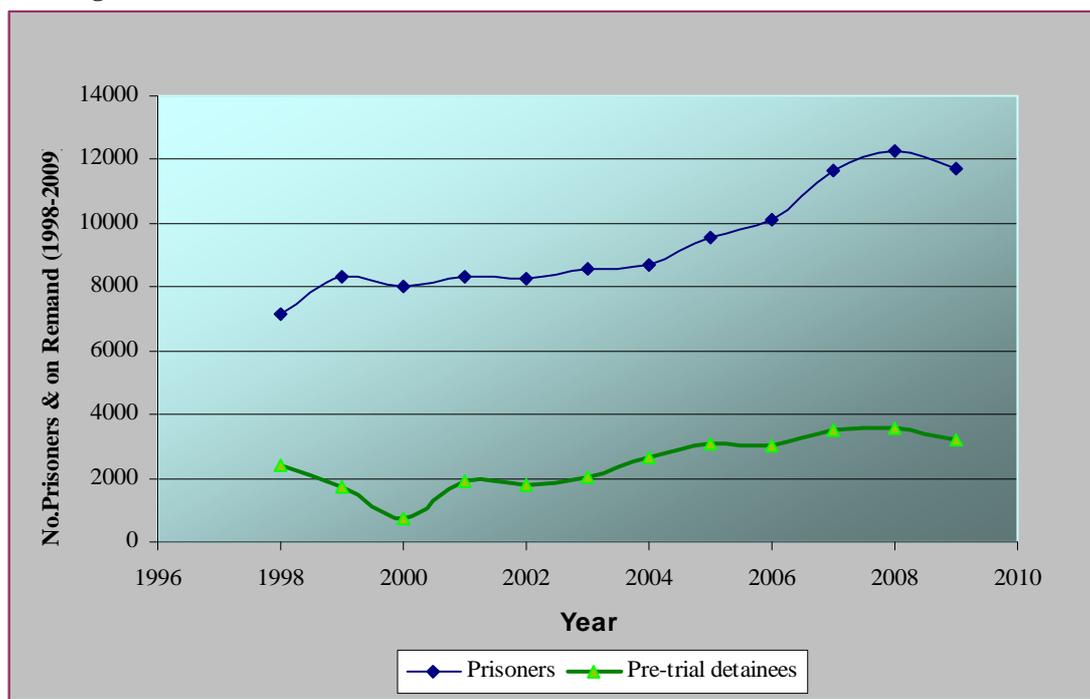
<sup>5</sup> The age of full adult criminal responsibility is 18 years (Arts 121, 126 GPC, Law 3189/2003 Government’s Gazette A/243/21.10.2003). Up to that age the court applies either educational or therapeutic measures (Arts 122, 123 GPC); it decides whether the crime warrants a prison sentence to be served in a training school, only if the adolescent is aged 13–18 and after undergoing educational and psychological examination (Arts 121, 126, 127 GPC). Young adults aged 18–21 will usually be sentenced under “mitigated punishment” and any prison sentence is usually served at a “juvenile reformatory” (Art. 133 GPC).

<sup>6</sup> The misdemeanours which can incur a fine are specifically referred to in GPC.

six months and in exceptional cases can be prolonged three more months (Art. 6[4 section a] Constitution) (Pitsela 2004: 357-9; Bahtiyar 2009: 456).

After 1998 the number of detainees on remand corresponds to 24-30 percent of the prisoners' population and the foreigners to 40-46 percent, with some exceptions as in 2006 where the proportion of foreigners rose to 58.4 of the prison population (Space I 2006: 3, Table 1). The nationality of the pre-trial detainees is not separately registered by the ministry of justice proportion of foreigners pre-trial There is no special information about the proportion of foreigners to remand prisoners; from various ministerial and media sources, foreigners seem to represent the 14-20 percent of the pre-trial detainees, without those been under administrative detention. In September 2006, 24 percent of foreign nationals in the prisons of the country were awaiting their trial, corresponding to 14 percent of the total (foreign and national) population of pre-trial detainees (CoE, SPACE I 2006.3). From *Figure 1* we see that the trend of pre-trial/on remand detainees follow the trend of the prisoners' population.

**Figure 1: No. of Prisoners & Pre-trial detainees/On remand (1998-2009)**



Source: Table VII27 *Justice Statistics, Prison Statistics* (1998-2005); *Ministry of Justice* (2006-2009).

## Pre-trial detainees and total prison population indicatively

**November 2009:** pre-trial detainees / remand prisoners 3,218 (27.4%) of the 11,736 total prison population of whom 51.8% (6,078) were foreigners (Ministry of Justice 2009; see also newspaper *Eleftherotypia* 2009).<sup>7</sup>

104 prisoners (28,6 pre-trial /remand) per 100,000 of national population.

**November 2008:** Pre-trial detainees / remand prisoners 3,518, corresponding to 28.6% of the 12,300 total prison population of whom 44% (5,400) were foreigners.

109 prisoners (31,2 pre-trial /remand) per 100,000 of national population (based on an estimated national population of 11.25 million in November 2008, from *Eurostat/ Marcu* 2009, Table 1). Source: Ministry of Justice 2009; World Prison Brief 2009.

**30 June 2007:** pre-trial detainees / remand prisoners 3,068 (28.6%) of the 10,370 total prison population of whom 4,695 (45.2%) were foreigners. Source: Walmsley 2008; Ministry of Justice 2009.

92 prisoners (27 pre-trial /remand) per 100,000 of national population.

**1999:** 2554 (35%) / 7280; **2000:** 2217 (29%) / 7625; **2001:** 2296 (27.6%) / 8295; **2002:** 1954 (23%) / 8507

## 2.2. Minimum standards

### 2.2.1. Length of pre-trial detention

About the length of pre-trial detention, the Constitution orders in Art. 6:

“[2] A person who is arrested in the act of committing a crime or on a warrant shall be brought before the competent examining court within twenty-four hours (24h) of his/her arrest at the latest; should the arrest be made outside the seat of the examining court, within the shortest time required to transfer him thereto. The examining court must, within three (3) days from the day the person was brought before it, either release the detainee or issue a warrant of imprisonment. This time-limit shall be extended by two (2) days upon application of the person brought before the court or in case of *force majeure* confirmed by decision of the authorized judicial council.

[3] Should either of these time-limits elapse before any action has taken place, any warden or other officer, civil or military servant, responsible for the detention of the arrested person must release him/her immediately. Violators shall be punished for

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<sup>7</sup> *Eleftherotypia*, 11 November 2009, “Refrain of prisoners from mess as a reaction to the prison conditions, the politics of furloughs, and use of alternative forms of punishment”, by Vana Fotopoulou (<http://www.enet.gr/?i=news.el.ellada&id=100751>).

illegal detention and shall be liable to restore any damage caused to the sufferer and to pay him a monetary compensation for pain and suffering, as specified by law.

[4] The maximum duration of detention pending trial shall be specified by law (see Art. 287 GPPC, clarification by EL);<sup>8</sup> such detention may not exceed a period of one year in the case of felonies or six months in the case of misdemeanours. In entirely exceptional cases, the maximum durations may be extended by six or three months respectively, by decision of the competent judicial council. The excess of the maximum duration of detention pending trial, by successively applying this measure for separate acts referring to the same case, is prohibited.”

Between the arrest of a person “in the act” and a decision about taking this person in police custody doesn’t elapse any time, unless the person is arrested far away from a prosecution service, and therefore s/he has to be brought within 24 hours to the prosecutor, otherwise in a timely manner; while those arrested on a warrant of the investigating judge have to be brought to him/her within 24 hours after the issuing of the warrant (Art. 6, Constitution).

In June 2009 the European Court of Human Rights (ECtHR) convicted Greece for violation of Art. 3 of the ECHR (ECtHR 04.06.2009, *Siasios and Others v. Greece*) because the detention centre (Katerini Police Station) was not an appropriate place for detention of the length imposed on the detainees, noting previous findings of the national Ombudsman about long detention of the arrested in police stations’ cells (Ombudsman 2007a), and in the same year two more times, for similar reasons, among others (violation of Art. 5[3] ECHR; 02.07.2009, *Vafiadis v. Greece*; 29.10.2009, *Shuvaev v. Greece*; see also 27.07.2006, *Kaja v. Greece*).

No reliable research data are available for the average length of pre-trial detention; a research is now carried out and we expect its findings.<sup>9</sup> However, according to the European Commission’s data, the average length of pre-trial detention in Greece for 2002 was 365 days (ECComm 2006, Table 3.2: 10). Other estimates, based on the data of National Statistical Service, reduce the average length to six-seven months (NSSG 1998-2005: Table VII27;<sup>10</sup> Bahtiyar 2009: 453-5). This length does not include the time spent awaiting the determination of an appeal or the “awaiting confirmation of the sentence” stage, which is delivered alongside with the verdict.

According to a recent information from the Korydallos prison administration (the biggest prison in Greece which is located in the Piraeus region, and with 75 percent of its population being now pre-trial detainees), the average length of pre-trial detention ranges from six to twelve months; the waiting time for trial depends on the place of the court where the cases are pending. In big cities the case takes ten to twelve months, while in small cities it takes six to eight months until to be brought to the court of first instance.

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<sup>8</sup> As amended by Law 2408/1996, Art. 2[12] and Law 3727/2008, Art. 19[1].

<sup>9</sup> The study is carried out by Dr. Panajotis Papaioannou, Lawyer, and member of the research staff of the Centre for Penal and Criminological Research of the Law School of Athens University.

<sup>10</sup> Table VII27: Changes on the number of prisoners awaiting trial: 1998 – 2001, 2002-2005.

For time spent on remand awaiting determination of an appeal, the results of a newly published research (2009) with selected data between 01.07.2000-30.06.2002 and a sample of 145 (13.7%) released persons (Total number of releases during the time period: 1,053) from Korydallos prison for men, having served *a prison sentence over five years for a felony* show that a) 22 percent (n=32) have been released before their case being brought to the appellate court, because their appeal is appointed at a later point than they have been granted probation (ratio 2 released: 10 not released of the total number of the sample); b) 88 percent (113) have been released after the decision of the appellate court, being on average 22,5 months (less than two years) in prison; c) 12 per cent (17) have been released after fully served their time; and d) 11 percent (16) are released because of their acquittal by the appellate court, remaining on average 3,5 years in prison (Koulouris & Spyrou 2009: Tables 2-7, 229-31).

In December 2008, with the article 19[1] of the issued Law 3727 (ch. 3), detention can be prolonged for six more months after the completion of the 12 months, only in *exceptional cases* and for felonies punished with life sentence or confinement up (over ten) to 20 years (287[2, section b] GPPC; cf. Law 3811/2009, Art. 24[2]). In November 2009, the maximum time of detention for reckless manslaughters was reduced from nine to six months (op.cit).

### **2.2.2. Between arrest, police custody and remand**

The decision about sending a person in police custody, after any initial apprehension by a law enforcement officer, can be taken by the *police officer* for the suspects/offenders caught in the very act (for misdemeanours and felonies) and arrested outside the prosecutor's jurisdiction (territory over which authority is exercised). The police officer has to bring the suspect to the prosecutor without unnecessary delay and within the shortest possible transfer time (Art. 279 GPPC).

Apart from the special cases mentioned above, the decision is taken by the *public prosecutor* for those caught in the act committing *misdemeanours*, unless the prosecutor deems that the "summary" investigation procedure is not necessary (Art. 417[section b] GPPC). The public prosecutor must send the case to trial within 24 hours; otherwise, if this is not possible, s/he sends the case to the *investigating judge* who must decide within 24 hours about either the detention or the release of the accused (Arts 279[1], 417, 418[1,2,3] GPPC). The time limit cannot be extended even after the application of the accused. The detention of the accused is carried out according to the general terms of the article 283 GPPC. If an arrest warrant is issued, neither a judicial means can be exercised against it nor the temporary release of the suspect is permitted (Art. 419 [section b] GPPC). The whole procedure is carried out only for serious misdemeanours, e.g. multiple accidental manslaughters, tried by the three-member court (Art. 282[3 section b] GPPC) following the amendments introduced by Law 3346/2005 (Art. 11).

The similar proceedings are followed for those being caught in the act committing a *felony* or are arrested with a *warrant*. An arrest warrant can be issued only for offences for which pre-trial detention is to be ordered (Art. 276[2], 282[3] GPPC), meaning that an arrest warrant is issued by the investigating judge having the

agreement of the prosecutor, only when a felony (or multiple reckless manslaughters) is suspected. In the event of a disagreement, the judicial council decides (Art. 276[2 section b] GPPC).

In these cases the prosecutor sends the arrested immediately to the *investigating judge*. The investigating judge has within three days after the presentation of the arrested either to release him/her or to free him/her on bail or to issue a warrant for his/her detention (Arts 279[1 section b], 282[1,2,3] GPPC, Art. 6[3] Constitution). The accused/suspect can ask a deadline of 48 hours for his/her pleading (Art. 102[1] GPPC), which *can be* prolonged after the request of the suspect (Art. 102[2] GPPC) or in case of force majeure confirmed by a decision of the authorised judicial council (Art. 6[2] Constitution). During that time, only those arrested on a warrant may be kept in police custody.

As previously analysed, the decision to hold a person on remand is taken by the *investigating judge* having the agreement of the public prosecutor, and in case of disagreement, the judicial council decides. The investigating judge, and not the council *itself*, issues the remand according to the decision of the council. Only the public prosecutor of second instance has the possibility to lodge an appeal against a decision of the council within one month of its issue (Art. 479[2] GPPC), while the accused can exercise a recourse against the remand warrant in five days (Art. 285[1 section b] GPPC) from its enforcement.

### **2.2.3. Grounds for pre-trial detention, level of suspicion and rights of the defendant**

For the Greek Law the foundation of pre-trial detention is to ensure that the defendant will be present during the pre-trial investigation or at trial, meaning to prevent interference with the course of justice, and will submit him/herself to the execution of the court decision (Art. 296 GPPC; also CoE/CoM, Recommendation 2006(13), Principle 7). In general, Greek law tries to prevent collusion or suppression of evidence, and to temper public opinion in cases of serious crimes (Tsourelis 1982: 219; Bahtiyar 2009: 447-8). Although the latter ground is not based on law, it corresponds to social and legal morals and is generally accepted; yet, it is carefully and moderately used (more in Anagnostopoulos 1983). With the recently issued Law 3811/2009, the avoidance of the commitment of new offence was added and put in the first place, implying eventually the prevention of posing the accused a serious threat to public order.

A person cannot be taken in pre-trial detention when s/he is suspected of an offence for which imprisonment is not provided as a penalty. Similarly, even if imprisonment is provided as a penalty, pre-trial detention cannot be imposed on the accused of a misdemeanour.

The minimum level of suspicion required for police custody, respectively remand, is either the person to have been caught in the very act or the enforcing of an arrest warrant due to “serious indications of guilt” (serious evidence from the preparatory or the preliminary investigation points to the crime commitment) (Art. 282[1] GPPC).

For juveniles, only when the over 13 y.o. minor is suspect for a felony punished with *at least ten years* imprisonment (Art. 282[5] of GPPC). No other considerations have to be taken into account when police custody is being ordered. However, in practice, overcrowding in police stations, detention departments and prisons also counts for not imposing custody or remand the law enforcement authorities, and primarily the police. In addition, after the enforcement of detention and at the time when the detainee applies for release, apart from the conditions of law (Art. 286[1,2] GPPC) are taken into consideration the general family situation, the employment and the health of the accused, as well as some other relevant conditions, e.g. pregnancy stage (cf. Art. 556 [sections a,d]; 557[2] GPPC).

The person in respect of whom remand is being sought appears in person before the judge/court that is authorised for taking this decision (detention). Otherwise, if s/he doesn't appear and the investigating judge considers that the facts alleged do establish *Probable Cause* (reasonable grounds for holding a belief) that the suspect committed the crime, then the investigation can be regarded as finished with the issue of an arrest or a bench warrant ("warrant of forcible presentation": warrant issued by a judge or court ordering the forcible presentation of the offender, Arts 270, 272, 276 GPPC).

In summary, the defendant has certain rights at the pre-trial stage included in the Constitution and the Penal Procedure Law, as already noticed. To the previous rights have to be added those deriving from International and European conventions ratified and integrated into the national law (cf. Art. 28[1] Constitution). The most important is the right to be heard (Art. 20 Constitution; also 287[5] GCPP) and the "presumption of innocence" (UDHR, Art. 11[1]; ICCPR, Art. 14[2]; ECHR, Art. 6[2]; EU-Treaty, Charter of Fundamental Rights of the Union, Art. II-108), which until now applies to the whole penal procedure and which, unfortunately, is frequently disregarded by the private mass media, especially television, in certain reported cases (Androulakis 2000: 27-30). Moreover, the accused/suspect has:

- the right to remain silent, deny the charges, and submit a written defence statement (Arts 104, 273 GPPC);
- the right to be informed and receive copies of all the evidence in the case file, and to ask for sufficient time (no less than 48 hours) to prepare his/her defence (Arts 101, 102 GPPC);
- the right to be informed by the investigating judge or other investigating officials of the charges brought against him/her and his/her rights before being called to answer the charges (Arts 101, 273 GPPC);
- the right to appoint a defence counsel (no more than two) from the very beginning of the police or judicial investigation (or to receive legal aid if s/he is indigent) and to communicate with his legal counsel at any stage of the investigation (Arts 96, 100, 273[2] GPPC);<sup>11</sup>

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<sup>11</sup> Although the law provides for persons in detention to have access to a lawyer from the very beginning of the investigation, the practice is, unfortunately, sometimes different. The CPT, during its 2005 visit, registered a number of allegations according to which the access to a lawyer had been delayed for up to three days (CPT/Inf (2006) 41).

- the right to present evidence in his/her defence and to request the examination of witnesses, experts etc. (Arts 104, 273, 274 GPPC);
- the right to be present at all investigation acts apart from witnesses examination (Art. 225[1] GPPC), to be supported by his/her counsel during cross examination with witness(es) or other defendant(s), to put questions to them, and to submit comments on the collected evidence (Arts 97, 99, 101 GPPC);
- the right to be informed in a language s/he understands (the right to an interpreter, Art. 233 GPPC);
- the right to appeal against the decisions of courts and judicial councils (Arts 285[1], 286[2], 287[1 section a, 5], 291[1 section a], 322[1] GPPC) (see also Bahtiyar 2009: 450, and more in Tsourelis, 1982; Magliveras & Anagnostopoulos 2000: 153-4; Spinellis 2008: 477-8); and
- the privilege against self-incrimination (Art. 227[3] Greek Correctional Code/GCC; ICCPR, Art. 14[3g], Law 2462/1997; cf. ECHR, Art. 6; see also AP 1/2004; 2683/2008).

#### **2.2.4. Protection against unlawful or unreasonably long deprivation of liberty**

Police custody and/or remand are subject to regular review.<sup>12</sup> The GPPC foresees two forms of (automatic) *detention-term control*. The first one is the control of *continuing* or not the pre-trial detention up to one year, namely six more months (Art. 287[1]), and the second one is the control of *extension* or not of the one year to the maximum term of 18 months (Art. 287[2]).

In the first control form (Art. 287[1,3] GPPC), if the detention has lasted six months, the judicial council of misdemeanours (first instance) has to decide with explicit arguments whether the accused shall be released or detained for an additional period up to six months. The previous applies to the case when the inquiry has not yet been completed. The whole proceeding is to be carried out within exclusive dates before expiring the detention term (five to ten days). When the detention expires during the trial, then the council of appeals decides on its continuing or not.

The judicial council in order to decide has to examine all the prerequisites for detention from the beginning; however, the judicial councils in the majority of the cases are restricted to repeating the prerequisites of the law in order to justify their decision, without explaining sufficiently the reasons for that. If the detention is not extended within 30 days after its expiration (of three or six months, Art. 287[1] GPPC), the legitimacy of the detention warrant ceases and the public prosecutor orders the release of the detainee (Art. 287[3] GPPC).

The second form of control, that of *extension*, is different from the first, since it refers to exceptional conditions being under the auspices of the Constitution (Art. 6[4]). A decision justifying in detail the reasons for extension is required by the judicial council. The council has to take into account the whole evidences and real events on

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<sup>12</sup> For police custody, see above 2.1 sections a and b.

which the “completely exceptional circumstances” are grounded, so that the extension could be considered as necessary.

As previously for the continuing, the accused enjoys the right to be heard by the judicial council about the extension (287[5] GPPC; Law 3346/2005, Art. 12). The judicial council’s decision to prolong or extend pre-trial detention can be appealed only before the Supreme Court by the defendant and the prosecutor (Arts 287[1,4,5], 285[5], cf. 287[2] GPPC) (Bahtiyar 2009: 452-3).

Law 3346/2005 (Art. 12) amended Article 287[1a, section b] of the GPPC introducing the *right of the accused to be heard* by the judicial council, when it is going to decide about the continuing or the extension of his/her pre-trial detention (see also 287[5] GPPC). Previously the accused had the right to submit a petition to the council; this practice was not corresponding to the Art. 5 ECHR, since it didn’t safeguard the *principle of equality of arms* (principe de l’egalité). As a result of this practice Greece was convicted by the ECtHR, not once but three times (13.07.1995, *Kampanis v. Greece*; 23.09.2004, *Kotsaridis c. Grèce*; 02.11.2006, *Serifis c. Grèce*).

Another issue arises when someone is accused of two or more reckless manslaughters committed concurrently or crimes that are interrelated, e.g. car accidents, fraud and embezzlement (Judicial Council of Appeals/Thessaloniki 1045/2001). In this case the term starts from the initial detention of the accused. The detention may be served at the same time for all crimes with the longest period controlling (Art. 288[1] GPPC).

The review does take place automatically with the prosecution service starting the procedure and the judicial council deciding. Moreover, in the control of *continuation*, if the detention has not been prolonged within 30 days after the expiry of the three or six months of the detention-term (Art. 282[1] GPPC), the prosecutor orders the release of the detainee, even when the detention has been decided by a judicial council (Art. 287[3] GPPC; see also Art. 285[1] GPPC).

Apart from the automatic control, the suspect/defendant him/herself can initiate proceedings for release. In particular, the *detainee* can apply for the revocation or the replacement of the detention (or the remand on bail/restrictive conditions). The application is to be submitted to the investigating judge up to the end of the inquiry, e.g. up to the time s/he forwards the file to the prosecutor (Art. 286 GPPC). Yet, it can be applied later, in fact at any time, but not by the accused of drug laws violation, who can submit his request only after two months of the detention enforcement. If his/her request is rejected, s/he can apply again after one month from the previous refusal (Law 1729/1987, Art. 21; Law 3459/2006, Art. 42[2 section b]). At the end of 2009 the previous regulation was fully replaced (Law 3811/2009, Art. 25[4]), with a vague notification according to which “the decision for pre-trial detention or its continuation should take in any case into account the indices showing that the accused is addicted to drugs”. The time spent in detoxification centre is calculated as part of the detention time or the imposed sentence (Law 3459/2006, Art. 32[1 section e]).

Although the law refers to the “detainee” who can apply for the revocation, in another article the GPPC explains that in order to be accepted the application for revocation or replacement, the *previous* enforcement of detention is not necessary (Art. 291[3] GPPC). This is justified, according to several jurists and case law, by the “spirit of

Law's (1128/1981) clemency", which introduced significant reforms to the pre-trial detention (Lafazanos 1982: 456; Papadamakis 2004: 305, 309; cf. Androulakis 1994: 282-6; 1981: 819-20; Foussas 1981; Statheas 1981: 105).

The detention or the release on bail can be also removed *ex officio* by the investigating judge or after the suggestion of the prosecutor (Art. 286[1 section a] GPPC), or the application of the investigating judge to the judicial council. Additionally, the investigating judge can replace the detention with restrictions and the restrictions with remand (Art. 298 GPPC), justifying in detail his/her order and after the written response of the prosecutor (Art. 286[1] GPPC). S/he can likewise replace the imposed restrictions with others.

The detainee can lodge an appeal against the decision of the investigating judge who denied his/her application for revocation or replacement to the judicial council, within five days after the announcement of the rejection (Art. 286[2 section b] GPPC). The rejection of detention's revocation causes no precedent, thus it can be filed again by the accused as many times as s/he wishes.

The second, and perhaps the primary, procedural alternative which offers the law to the accused is that s/he may challenge the *lawfulness of the warrant* of pre-trial detention to the judicial council, which decides definitely on the issue (Art. 285[1] GPPC). Filing an appeal does not have a suspending effect and after its lodging the investigating judge can continue the inquiry until the judicial council meets its decision (Art. 285[2,5] GPPC).

In particular, the accused can appeal against the decision of the investigating judge who orders his/her detention, asking for its replacement with release on bail (and respectively the raise of the imposed restrictions) to the judicial council of first instance within five days from the (announcement of) detention order (Art. 285[1] GPPC).<sup>13</sup> The appeal can be exercised by the accused himself, his/her representative and his/her defence attorney (cf. Art. 465[2] GPPC). It is submitted to the secretary of the court of first instance or to the directorate of the detention centre/prison (Art. 474[1] GPPC). Nevertheless, if the detention is based on a warrant of the judicial council itself, no legal remedy is provided (Art. 285[3] GPPC).

Summing up, the judicial council of first instance decides to the cases of the review against the detention warrant and the warrant imposing restrictions (Art. 285[1a] GPPC). The investigating judge and the judicial council of appeals decides to the appeals for revocation or replacement of either the detention or the release on bail (Art. 291[2] GPPC). The judicial council of first instance (misdemeanours) decides only when the prosecutor or the defendant applies against the order of the investigating judge for the replacement of the release on bail with detention or remand (Arts 286[3 section a]; 298 GPPC). The review can be applied only once (Art. 285 GPPC), while the appeal for revocation or replacement as many times as the defendant wishes (Art. 286 GPPC).

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<sup>13</sup> Disagreement exists over the starting point of the five days' period; according to one view which is prevailing and also expressed by the jurisprudence (case law) it starts the day on which the accused comes in detention centre/prison, while according to the other, the five days' limit starts a day after the enforcement of the arrest warrant.

Criteria which are taken into account for the review are: the progress of the investigation and the existing of special or general preventive reasons. Several specialists note that the overuse of pre-trial detention does not correspond to its role, which is to ensure the defendant's appearance at trial, and not to operate as a means of "pre-sentencing" (i.e. making the accused serve some of his/her anticipated sentence). This is what the bar associations during the very last years often refer to in their information magazines, flyers, and press releases (i.e. *The Lawyer's Tribune* 8(77) 2009: 10; Papadamakis 2004: 305; also US Department of State 2008: 1d, 2009: 1d), and that pre-sentencing contradicts the presumption of innocence<sup>14</sup> (see Androulakis 1974; 1994: 184-98; Zesiadis 1989: 100-23; Alexiadis 1990; Bakas 1995: 85-6, Androulakis 2000: 30-4; Mylonas 2001: 707).

Criticism on long sentences and remand time, the overcrowding in prisons and detention centres along with the prisoners' unrests in November 2008, resulted in the issuing of measures and legal amendments (December 2008) already referred to above. The *upper* level of pretrial detention was reduced from 18 to 12 months for felonies to which a prison sentence of five to ten years is foreseen. For felonies, for which either longer imprisonment (over ten years) or sentenced to life is foreseen, the upper level of pretrial detention didn't change, since it can be prolonged for six more months as before. However, it was emphasized that the prolongation refers only to *absolutely exceptional cases* and to the above mentioned crimes (Law 3727/2008, Art. 19[1]; Art. 287[2] GPPC).

The time of pre-trial detention runs from the first day of detention, irrespective of the simultaneous or successive pronouncements of the charges against the defendant.

A new detention for another crime during the same period cannot be ordered, unless the particular crime could not be prosecuted but during the last three months before the expiry of the previous detention term or before the release of the accused. In such a case the new detention cannot last over a year and cannot be extended for any reason (Art. 288[2 sections b, c] GPPC).

Whether the pre-trial detention status is retained until the determination of an appeal against conviction<sup>15</sup> generally depends on the time spent in prison/detention centre and the length of the serving sentence. A formal prerequisite is also the appeal to have been legally and in time applied. The appeal and the rest judicial means (i.e. reversal) suspend the remand "if the law does not order differently" (Art. 471[1] GPPC). Nevertheless, in the case of arrest and remand with an order of the judicial council (when disagreement exists between prosecutor and investigating judge), the appeal against the decision has no suspending result (Art. 471[1 section b] GPPC), even if an arrest or detention warrant has not been issued (Art. 315[3] GPPC). This occurs in few cases, where the court regards itself as "non competent" and by sending the case to the authorised court operates like a judicial council and can order the arrest and detention of the defendant accordingly (Art. 120[2], cf. Art. 315[3] GPPC).

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<sup>14</sup> The presumption of innocence places the legal burden on the prosecution to prove all elements of the offence - generally beyond a reasonable doubt: *in dubio pro reo* - and to disprove all the defence arguments.

<sup>15</sup> Conviction and sentencing takes place at the time of the delivery of the verdict.

According to Art.7[4] of the Constitution “The conditions under which the State, following a judicial decision, shall compensate persons for unjust or illegal conviction detained pending trial, or otherwise deprived of their personal liberty, shall be provided by law” (Art. 26, Law 2915/2001).

Articles 533-545 GPPC set the conditions for recompense (in particular, Arts 533[1], 536[1] according to Law 2915/2001, Art. 26). The right for compensation refers not only to the convicted but also to the pre-trial detainees (Art. 533[2] GPPC). Although compensation has been regulated since 1931 (Law 4915/1931 “About compensation by the state of the unjustly convicted”), it was hardly used (Courakis 1998). Articles 535[1] and 536 GPPC foresaw that “The State has no obligation to compensate a person who (...) has been detained on remand if, whether intentionally or by *gross negligence* (emphasis, by E.L), s/he was responsible for his/her own detention”. Courts were allowed to decide *proprio motu* about compensation for unlawful detention without a hearing and detailed reasoning on the basis of an application by the detainee or the convict (Margaritis 2001; Courakis 2005; Bahtiyar 2007: 454).

Convictions of Greece by the European Court of Human Rights motivated the reform of the relevant Code’s articles (esp. Arts 533, 536[1]). In particular, the Decisions of the European Court on 29.05.1997 about the cases *Georgiadis v. Greece, Tsirlis and Kouloumpas v. Greece*,<sup>16</sup> as well as the Decisions on the cases *Sinnesael v. Greece* (01.07.1998), *Goutsos v. Greece* (03.03.1999)<sup>17</sup> and *Karakasis v. Greece* (17.10.2000).

Following the European Court’s judgments, Greece adopted constitutional and statutory reforms. As regards the absence of reasoning in judicial decisions, Article 93[3] of the Constitution was amended in April 2001 to explicitly require that judicial decisions are to be supported by *detailed* reasoning, and to authorise the law to determine sanctions in case of ignoring or disrespecting this rule.

As regards the fairness of the proceedings, new Law (2915/2001) amended Articles 535 and 536 of the Code of Penal Procedure: the new provisions no longer exclude the possibility of compensation in cases of detention due to the detainee’s “gross negligence” and obligate criminal courts to give reasons for their decisions after having heard the persons concerned and the public prosecutor. In particular, Art. 26 of the Law 2915/2001 adapted the Articles 533-545 of the GPPC to the Article 5[5] of the ECHR, Art. 14[6] of the ICCPR and the Art. 7[4] of the Greek Constitution, by striking out negligence and adding the hearing of the applicant and the prosecutor (Arts 535, 536[1] GPPC).

However, there are different interpretations of law (Art. 537[1] GPPC) by the courts concerning the irrevocable decision as prerequisite for an application for compensation and concerning the starting point of the ten-day limit for submitting

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<sup>16</sup> See also CoE/CoM, *Resolution ResDH(2004)82*, which concerns both cases, and in particular, the judgments of the ECtHR about unlawful detention and unfair compensation by the Greek state, in December 2004.

<sup>17</sup> *Interim Resolutions DH(99)130* and *DH(99)558* to the cases, adopted on 19.02.1999 and on 08.10.1999 at the 659<sup>th</sup> and the 680<sup>th</sup> meeting of the Ministers’ Deputies respectively, followed by the final *Resolution ResDH(2004)83* in 2004.

applications after the pronouncement of the verdict (Judicial Council of Appeals/Patras 403/2004).

### 2.2.5. Information, legal representation and support

If the person is caught in the act, after s/he is brought to the police station for booking (identification, fingerprints etc.) must sign the arrest report, wherein the time of the arrest is also registered (cf. Papadakis 2000: 1-3). From this moment s/he has also the right to inform his family and his/her counsel.

At times police officers during their patrol carry out identity-checks (ECtHR 20.12.2004, *Makaratzis v. Greece*); they can also bring some persons for identification to the police station and after the identification they must let them free. If not, then the arrested have the right to be informed of the charge or charges. In this case, the charge must be announced to the arrested who must also sign the official report of the arrest. After that s/he has the right to make a telephone call to his/her family and his/her legal counsel.

Occasionally, the ombudsman reports on the issue (2003; 2007b; 2008b: 10-2; 2008a: 46-8, 269) that the arrested either according to the expedite procedure of the crimes in the act, or brought to the police department after a stop-and-frisk type of search or when a pedestrian who, upon seeing police officers patrolling the streets in an area known for narcotics trafficking, or public disorder etc. flees from the officers, stay much longer than justified at the police without being charged; thus, they don't have the rights of the accused and they cannot call their attorneys (Papadakis 2000; Ombudsman 2008a: 46-7). The ombudsman asserted in his last published annual report that the number of complaints from citizens about violations of personal freedoms in the course of taking citizens to detention centres for arbitrary identity checks was high (2008a: 46-8). The ombudsman noted an increase in the number of complaints that police conducted investigations without soliciting testimony from the complainants (2003: 2-3, 10; see also Fytrakis 2004: 392-3; cf. EL.AS 2005).

In arrests with a warrant of the investigating judge or an order of the judicial council of first instance or of appeals, the arrested is informed about the reasons of the arrest and the charges against him/her *at the time* of his/her arrest. S/he has the right to remain silent or deny the charges, deny signing any kind of declaration or giving his/her fingertips until the presence of his/her counsel. The warrant contains the article(s) of the Criminal Law by which the person is charged, stamped by the authorised court and signed by the investigating judge and the secretary of the court, otherwise it is invalid (Art. 276[2] GPPC). The investigating judge issues the warrant only in cases to which detention is permitted, taking into account the view of the prosecutor; in disagreement, the arrest is ordered by the judicial council (Art. 276[3] GPPC).

If the accused has no counsel at the *ordinary/main investigation* (usually concerning a felony and a [serious] misdemeanour tried by a three-member court), the investigating judge is obliged to appoint one *ex officio* (Art. 100[3] GPPC). It is suggested that, this right should be also explicitly recognized to the accused in the *summary investigation*

for the sake of the good administration of justice (EU-Treaty establishing a Constitution for Europe 2004, II, Arts 101, 107, 108[2]). In Greek law and practice, the *accused* has always the possibility during the “summary investigation” to ask for an attorney or to call his/her attorney. The representation of offenders caught in the act of committing misdemeanours or at the presence of a police officer by a defence counsel on trial is specifically referred to Art. 423[1 section a] GPPC. Law 3160/2003 (Art. 2[1]) introduced the *obligatory* presentation of an attorney during the *preparatory examination* as well; as already referred to, this is the first phase in which is examined whether the case justifies an investigation or not (Art. 31[1a] GPPC). It must be taken into account that the questioning of the suspect without the support of a legal counsel cannot form part of the case file (Art. 31[2 section 3]).

The law (3160/2003) granted additional rights of the accused to the quasi *suspect*, which were complemented two years later with another law (3346/2005, Art. 5): the right to silence, the right to be informed about the offence that the preparatory investigation refers to, to receive copies of the charge and all the evidence in the case file, to ask for sufficient time (48 hours) for his/her preparation, to present evidence in his/her defence and to request the examination of witnesses, experts etc., as well as the privilege against self-incrimination. All correspond to the right to a *fair trial* according to Art. 20[1] of the Constitution and the Art. 6[1 section a] of ECHR.

In “crimes caught in the act” the short time-period limits the defendant’s ability to present an adequate defence. Therefore s/he may request a delay to prepare it, and the court is obliged to grant it, but no more than three days (Art. 423[1] GCP).

In conclusion, during the pre-trial phase in felonies and serious misdemeanours to which pre-trial detention can be imposed, the defendants *must* be legally represented. In case that s/he is not already represented by private counsel and is unable to afford one, the court appoints an attorney. S/he is a private defence attorney paid by the state (Arts 100[3], 340[1 section b], 376, 423[1 section a] GPPC. In less serious misdemeanours by the request of the defendant the court *must nominate* a counsel; it is also usual for the court to nominate a defence counsel even without the request of the defendant.

In trial phase, although the law provided for decades the appointment of a counsel cost-free for cases in civil courts (legal aid -“privilege of indigence” Civil Procedure Code, Art. 194), in criminal courts this wasn’t the case. The court appointed an attorney free of charge and the Athens Bar Association provided legal assistance for special categories of offenders in economic need as aliens, minors, Roma or drug addicts. Bar Associations in other cities of the country provided sporadically legal aid. Such aid was also and is still offered for specific cases by the National Refugee Council, the Marangopoulos Foundation for Human Rights, the Office of Legal Aid of the Law Faculty of the University of Athens in co-operation with the Athens Bar Association etc. (Spinellis & Spinellis 1999: 31-2). Since 2004 the law (3226) provides *full* legal aid (see also European Commission/EJN 2005, 2007).

Thus, entitled to legal aid:

- Is anyone (any national) who can show that payment of his legal costs is liable to deprive him and his family of the means necessary for their maintenance;

- Are corporate bodies which are in the public interest or non-profit-making and groups of persons which have the right to take part in court proceedings, if it is shown that payment of the costs of the proceedings would make it impossible or difficult for them to accomplish their aims;
- Are partnerships or associations if the partnership or association cannot pay the costs of proceedings and its members cannot do so without depriving themselves and their families of the means necessary for their maintenance;
- Are citizens of an EU member state and third country nationals on low income, as well as stateless persons, if they have their legal or usual residence in the EU (Art. 1[1]). Since 2007, minors are also entitled to legal aid if they are victims of sexual crimes, trafficking, exploitation or victims of crimes against their personal freedom (Art. 1[3] as amended by Law 3625/2007, Art. 6[1,2]).

In pre-trial phase, the appointment of defence counsel is carried out by the investigating judge or the court from a list which is drawn up every month by the bar association of the city or the district for criminal-, civil- as well as commercial law cases and acknowledged to the court (Law 3226/2004, Art. 3[1 section a], as amended by Law 3625/2007, Art. 6[2]).

The law also foresees the assignment of an attorney during the court trial for defendants, who do not have the financial means to appoint a lawyer themselves, charged with felonies, misdemeanours of the authority of the three-member court and for all courts of appeal (Art. 7[2]). In addition, they are appointed in criminal proceedings for civil claims of torture victims, as well as for violation of human dignity and several other crime groups, if they are felonies or misdemeanours under the authority of the three-member court for which imprisonment of at least six months is foreseen (Art. 7[3]).

Cases tried before one-member misdemeanours' court are excluded from legal aid, both at the pre-trial and the trial stage (Dellidou 2007: 118-9), but if the defendant asks for a counsel, the court must appoint one.

Legal aid is granted by the judge or the president of the district court in which the case is to be adjudicated or is pending (Law 3226/2004, Arts 3[1 section a], 6[1], 8[1]). For minors, not only the court but also the prosecutor, the investigating judge or the judicial council can appoint a counsel, if it is regarded as necessary (Art. 3[5] as amended by Law 3625/2007, Art. 6[3]). In issues irrelevant to a trial, legal aid is granted by the one-member district court of the applicant's residence (Art. 8[1] refers to civil cases). The Law (3226/2004) foresees also the advisory aid that may be provided in criminal cases by the duty prosecutors and the supervisory prosecutors of the prison establishments, or in civil cases by the presiding duty judge of the authorised district court (Law 3226/2004, Art. 5).

The suspects/defendants who do not know (or do not know quite well) the Greek language have a right to an interpreter when they are brought to the prosecutor, the investigating judge or to the judicial council, during the trial and whenever is needed (Arts 227[2], 233 GPPC). The interpreter is appointed from a list drawn up each year

by the judicial council of first instance. The same applies for deaf and mute people (Arts 227[2], 233 GPPC).

However, several foreign defendants complain that documents are not systematically translated, but their content is roughly presented and explained to them. Besides, they complain that they are asked to sign documents without being fully informed about their content and about the quality of the services offered to them. In particular, they say that it is not always clear to them about what they are accused of, what is discussed during the trial in all details and what exactly means the verdict (Papadakis 2000: 5-6).

The law doesn't mention anything in the section about mentally ill *defendants*, though the same can occur if they are in need; in general, they are regarded as incompetent ("non-imputable") or of limited competence and they are institutionalized after the agreement of the investigating judge, the prosecutor and the experts, for no more than six months for observation. During this period, pre-trial detention is suspended and the time under observation is accounted in the final sentence in case of conviction (Arts 200 GPPC, 87[3] GPC).

### **3. Remand, treatment and rights of pre-trial detainees in practice**

#### ***3.1. Length of pre-trial detention***

Legislative initiatives to shorten the pre-trial detention time and prevent abuses during the last decade caused the reaction of law enforcement agencies which, when they considered that the accused *should be* detained, they preferred to increase the charges against him/her or the seriousness of crimes committed in order to protect society and have more time for their investigation. Although international research in the area shows that this is a common technique of all crime control agencies (see mainly Levine et al. 1980: 136-7; Lambropoulou 1999: 77-8), in order to back their decisions, such practices may undermine the will of law and have side-effects for the accused and the prison system.

Another important development is the mentioned reduction in December 2008 of the *upper* level of pretrial detention from 18 to 12 months for felonies to which a prison sentence of five to 20 years, better, over ten years is foreseen (Law 3727/2008, Art. 19[1]; Art. 287[2] GPPC).

The above amendment was an effort of the Ministry of Justice to deal with the pressure exercised by the prisoners' unrest during that period and the general criticism for overcrowding (see Athenian Press in November-December 2008;<sup>18</sup> also AI-GR 2008).

Arrested are kept in police cells for few days, while detainees in houses of detention and/or prisons, when they are awaiting their trial or the decision of the appellate court.

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<sup>18</sup> I.e. *ELEFTHEROYPIA* 3, 4, 5, 6, 8, 9, 11, 19/11/2008, 02/12/2008; *KATHIMERINI* 4, 5, 7, 9, 11, 12, 13, 15, 16, 19, 20, 21, 22, 27, 28/11/2008; *Ta NEA* 3, 4, 11, 12, 14, 24/11/2008; see also 14.11.2008, <http://www.in.gr/news/article.asp?lngEntityID=957902&lngDtrID=244>.

Until recently, pre-trial detainees did not accommodate separately from sentenced prisoners, although the Correctional Laws always foresaw special prison-types or departments in the existing establishments (Art. 15[1] GCC). The only exception was the minors who are housed in separate facilities (Law 3189/03, Art. 4[4]; Art. 282[5] GPPC; Art. 96[3] Constitution). In June 2008, the convicted women were transferred from the Central Women's Prison of Korydallos Prison Complex to the new women's prison in Eleonas/Theva, while the female detainees remained in the old facility.

In recent years, the male detainees of Korydallos are regularly transferred to other prisons after their conviction, apart from those who attend therapeutic or educational programmes. These remain in the prison until they have completed their course. By that way the prison population of Korydallos (2,150 persons) nowadays consists of approximately 75 percent pre-trial detainees and the facility for the first time after decades corresponds to its official defined use as "judicial" prison.

### *3.2. Protection and care*

Especially vulnerable groups of pre-trial detainees are kept separated in order to be protected. In particular,

- homosexuals and transsexuals are kept in special units or in different prisons (e.g. a section of Corfu prison, and segregation units in some other prisons); the same applies for those accused of sex offences (e.g. special units in Tripolis and Grevena prisons), and of offences against children;
- those who are HIV positive are kept in Prisoners' Hospital of Korydallos prison for men. Sick women, convicted or on remand are generally sent to Prison Hospital of Korydallos, where a few rooms are reserved for them.<sup>19</sup>
- Former policemen or other former law enforcement officials are usually kept in small units of the prison facilities with a small number of prisoners who also need protection for various reasons, mainly because of their professional and/or social status, such as priests, lawyers, judges, (see also Art. 144[13], PD 141/1991 about their transfer], military personnel, and white collar criminals.

No other special measures are carried out to prevent pre-trial detainees from being assaulted by other prisoners.

- "Suicidal" prisoners are usually put to accommodate in small units of the prison too, without having contacts with the majority of other prisoners. Psychiatric treatment by the psychiatrists and surveillance by the prison staff and their fellow mates are the common prevention measures used for them. Psychological support is also offered by approx. 30 specialists working in the 32- currently 33 prison facilities, who belong to the permanent prison personnel. Their work overload is more than obvious.

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<sup>19</sup> One woman, who has been recently found (November 2009) HIV positive, is kept separated in Korydallos Women's Prison for detainees.

There are also special groups who are held in special facilities and who are subject to special conditions. Terrorists and “dangerous” criminals are held in special units of prisons and single cells. A recently issued Law 3772/2009 (Art. 20[1]) introduced prison establishments of type C, which can be created either in separate or in the existing facilities after a Decision of the Ministry of Justice. These establishments would be for prisoners serving life sentences or long sentences over ten years and are considered to be especially dangerous for the smooth life in prison; they are not going to have any contact with the prisoners of other types (A and B) of facilities. In type A are housed pre-trial detainees, prisoners on remand, persons convicted for economic crimes and those serving a prison sentence up to five years; in type B prisoners who do not fit in A and C type (cf. Art. 19[2] GCC).

The “dangerousness”, however, is not specified in the text of the respective law. Lately, in the new prison of Grevena (northern Greece) a part of it was changed from type A to C after a Minister’s Decision (MD 103//2009; see also MD 982//2009).<sup>20</sup> Before the Decree, units for dangerous criminals of common criminal law were operating (de facto) in some prisons, while after the arrests of 17N group were established extra cells for them in a separate area of Korydallos prison. In September 2009 three youngsters 20-21 years of age were arrested as suspects in terrorist activities; two of them have been detained in a juvenile prison together with the other juveniles and the older one who is considered to be the most involved, was sent to a closed prison for adults serving long sentences (Malandrino).

### **3.3. Accommodation**

No difference exists between pre-trial detainees and convicted prisoners in the amount of space that the law requires for each person to have in his/her living accommodation. The Prison Law foresees the accommodation of one prisoner per cell, and only in extraordinary cases, such as prison overcrowding and for a certain period, two in a cell or up to six in a ward/ dormitory (Art. 21[1,2] GCC). It foresees 35-40 m<sup>3</sup> for individual cells and six m<sup>2</sup> for each person in a dormitory (Art. 21[2,4] GCC). At present, due to congestion, three to four persons are accommodated in single cells and 12-16 in the dormitories. Only a very small proportion of detainees and convicted persons are accommodated alone in individual cells. These are “dangerous” criminals, usually involved in organized crime activities, being fugitives etc., and convicted terrorists, as well as vulnerable people either being in danger of attack or running a risk to harm themselves, and inmates who cause problems in the discipline of the institution. The only exception is mothers with children, who are put in individual cells (Art. 21[2 section d] GCC) in a separate area. In each prison establishment two to three single cells are reserved for solitary confinement.

The policy in Greece’s prison system for pre-trial detainees is to be accommodated in individual cells wherever possible. However this has not been done in the last two decades. The law underlines that each person has *the right* for an own cell (Art. 21[2 section b] GCC; MD 58819/2003, Art. 31[7]) that can be fulfilled whenever it is

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<sup>20</sup> MD 103920, Gov. Gazette B’ 1544 2009; MD 98257, Gov. Gazette B’ 1525 2009.

necessary for the good of the prisoner and it is possible by the conditions prevailing in the establishment (Art. 21[2 section c] GCC; MD 58819/2003, Art. 10[6,9]).

Pre-trial detainees who share accommodation aren't regularly assessed in order to ensure that they are suitable to associate with each other. However, the chief guards during their office hours examine regularly prisoners' requests to be moved to another cell or ward from which they have been put, for "sharing (or not) a room with someone else". In general, the personnel take into account the particularities of detainees or categories of them (Arts 107[2], 108 [section b], 113[4-7] GCC; MD 58819/2003, Arts 32[2,8], 53[7,12-14], 54[3 sections b,d,e], 56[3,6], 59[2]).

Whenever a pre-trial detainee is to be placed in solitary confinement/isolation punishment, a physician or any other member of the health staff, *if available*, is asked to check *beforehand* that he/she is fit to sustain such punishment. Since physicians are not *any time* available, but once or twice a week depending on their specialty, such control is carried out by any available member of the health staff. The Correctional Code (alias Prison Law) also foresees that in case of solitary confinement, a physician has to check the health of the person *every day* (Arts 69[1a] GCC, 21 [3]) which is also impossible in practice for the same reason, and it is carried out by the medical staff as well as the initial medical screening on admission (CPT/Inf (2008) 4, par. V). The decision for solitary confinement rests with the prison board<sup>21</sup> which is supposed to take into account the situation of the detainee or the prisoner. There are no complaints about maltreatment in solitary confinement which, as far as I know, is rarely used (CPT/Inf (2002) 32 par. 110; cf. CPT/Inf (2002) 31 paras 108-111; ECtHR 19.04.2001, *Peers v. Greece*). The Disciplinary Board operates in all correctional institutions and is concerned with the disciplinary proceedings in cases of disorder and riots and the following of prison rules (Art. 70[1] GCC).

The CPT's delegation during its 4<sup>th</sup> periodic visit to Greece (27.08-09.09.2005)<sup>22</sup> noted among others, overcrowding and an "impoverished regime" for prisoners, as well as inadequate health care services (CPT/Inf (2006) 41). The CPT recognized that overpopulation may be an impediment to the development of adequate measures to address prison problems (violence, dearth of staff etc., CPT/Inf (2006) 41, paras. 83, 123, 125), however, it encouraged prison services to confront expanding defeatist feelings (CPT/Inf (2006) 41, par. 75). The ombudsman for human rights (section of the National Ombudsman's bureau) stated likewise in May 2007 (pp. 49-50) that the increasing overcrowding was creating poor prison conditions, discipline and serious health-care problems in the institutions (see also NCHR 2008b, paras II.12, 16).

As already mentioned in this study, in recent years the majority of pre-trial detainees have been concentrated to Korydallos Prison Complex, the female detainees remained in the old Women's Prison in Korydallos while convicted women are transferred from

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<sup>21</sup> To the board participate the prison director, the senior social worker of the prison and the senior special scientist (psychologist, teacher, sociologist, jurist, agriculturist), and the chief warden of the correctional officers, the latter without voting rights (Art. 10[1] GCC).

<sup>22</sup> The Report of its last periodic visit, from 17 to 29 September 2009, has not yet been published. The CPT has carried out since 1993 five periodic and three ad hoc visits in Greece. The Greek Governments have agreed until now to the publication of all the Committee's reports and their own responses, as well as their follow-ups.

the Central Women's Prison of Korydallos to the new facility in Eleonas/Theva. A protection of vulnerable convicts seems somewhat to work, and the operating detoxification programmes in prisons have been multiplied (cf. CPT/Inf (2006) 41, par. 115). Moreover, there are some signs of progress concerning the health-care (cf. CPT/Inf (2006) 41, par. 75; cf. also CPT/Inf (2002) 31, par. 97) with the integration of prison health service to the national health system.

The Committee in order to evaluate progress made since 2005 and in particular to assess developments in relation to the prison's health-care service, paid a targeted visit to Korydallos Prison Complex<sup>23</sup> (the biggest in the country with 2,043 prisoners and an official capacity of 640 places, CPT/Inf (2008) 3, par. 49) in February 2007 (20-27.02.07). Korydallos Prison remains a regular concern of the CPT. The delegation also noticed that there had been no fundamental improvements since its 2005 periodic visit. It recommended again that Greek authorities take concrete steps to reduce the overcrowding in Korydallos Men's Prison and to improve the material conditions in the facilities (CPT/Inf (2008) 3, par. 45).

Apart from border guard stations, CPT visited police stations in which the vast majority of the population has been under administrative detention, due to overcrowding in detention centres for foreigners. CPT urged that the Greek authorities take immediate steps to stop holding persons, in particular immigration detainees, for prolonged periods in ordinary law enforcement detention facilities and bring them in centres specifically designed for such use (CPT/Inf (2008) 3, Appendix I: 33). The Committee reiterated its recommendation that the Greek authorities review the existing arrangements concerning access to a doctor and the provision of health care for persons held in police stations (CPT/Inf (2008) 3 par. 40).

Finally, the CPT recommended the Greek authorities give due consideration to the possibility for an independent body, such as the operating Ombudsman's Office, to carry out prison visits, taking into account the remarks made by the Committee in its previous reports (CPT/Inf (2008) 3, par. 57).

The supervision of prison operation rests with the public prosecutor of the court in the area of which each institution is located. This supervision usually keeps to formal visits due to its overload of duties and the prison overpopulation (Art. 572 GPPC; Arts 85, 86 GCC).

According the Constitution (Art. 103[9]), prisons as public services run also under the responsibility of the Independent Agency, the national Ombudsman. In May 2007 the ombudsman for human rights formally complained that since 2004 the Ministry of Justice has denied his representatives access to prisons (cf. Wener 1983). This rather expressed the inconvenience of confronting serious problems, which arise mainly from overcrowding and being the side effect of the short term planning; it expresses by no means acceptance or covering of any kind of violation of prisoners' rights. The Minister of Justice of the new government (October 2009) gave the green light for the

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<sup>23</sup> One more ad hoc visit took place in October/November 1999, which also served for the review of measures taken to implement the CPT's recommendations for the prison and to carry out a visit to the Institution for Male Juvenile Offenders in Avlona, which was opened in August 1998. Korydallos Prison Complex remains a regular concern of the CPT.

ombudsman's visits (cf. CPT/Inf (2009) 20, par. 17). In addition, he allowed the traditional form of social control which is exercised by the Bar Associations, local charitable, communal, social organisations, human rights groups and NGOs. Nevertheless, international human rights observers reported previous years fewer problems receiving permission for visits than did local human rights groups, and the International Committee of the Red Cross had a regular programme for prison visits (US Dpt. of State 2008: 5, 1c).

Moreover, in 2002 the Inspectors Controllers Body of Prisons (or: Monitoring and Control Body, SEEKK–Law 3090) was created, which is composed of a retired judge and public servants (Law 3090/2002, Art. 3[3]). It has the special task of making regular and unannounced visits for controlling prisons' conditions, order and transparency in the operation of the institutions (Art. 3[2]). However, until 2009 nothing has been published and no information about its activities has been provided, even in the General Inspector's of Public Administration annual reports, where the activities of all control bodies of public administration are registered in summary. In April 2009, a special reference was made on a few MPs websites about the report submitted to the Parliament's Permanent Committee on Institutions and Transparency by the Head of the Body (19.03.2009) referring to illegal markets (cell phones) in prisons and the reply of the Minister of Justice to an MP's question concerning the issue (LAOS 2009). The new government have already taken some steps to start operating the mechanism of Controllers' Body of prisons.

In September 2008 after seventeen months, the CPT carried out another *ad hoc* visit to Greece (23-29.09.2008) in order to examine the treatment of persons detained by law enforcement agencies. Particular attention was paid to the situation of irregular migrants detained under Aliens legislation (*administrative detention*), who are held in either police/border guard stations or in special holding facilities under the responsibility of the Ministry of Interior (CPT/Inf (2009) 20; 2009: 30, 71; see also the Response of the Greek Government, CPT/Inf (2009)21). Its report refers almost *exclusively* to illegal migrants (see also CPT 2009).<sup>24</sup>

CPT recommended the Greek government to establish a system of frequent visits to detention facilities (police custody) by an independent authority (CPT/Inf (2009) 20, par. 16; AI-GR 2009), due to “the problem of ill-treatment by law enforcement officials”<sup>25</sup> (police). Although the characterisation “problem” was completely denied by the government (CPT/Inf (2009) 21, point 17), agreed such control to be carried out by the Ombudsman's office. CPT also recommended the establishment of an independent police complaints mechanism (CPT/Inf (2009) 20, paras 16, 17, 52). In the Government's response it is underlined that the Directorate of Internal Affairs is an independent Service of the Police supervised by the prosecutor of appeals, having such duties. In addition, the disciplinary investigation of complaints are being carried out by the Sub-Directorates of Administrative Investigations, specialized for this

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<sup>24</sup> The present study does not refer to illegal immigrants held in administrative detention; there have been many reports describing the very poor conditions of the centres in which they are detained.

<sup>25</sup> The CPT in its previous report of the *ad hoc* visit had also recommended the Greek authorities give due consideration to the possibility for an independent body, such as the Ombudsman, to carry out *prison* visits (CPT/Inf (2008) 3, par. 57).

purpose, which at administrative level are completely independent of the accused officers (CPT/Inf (2009) 21, points 17). Recently (December 2009), the new Minister for the citizen's protection (previously: Public Order and/or Interior) announced the creation of a complaints' service, and in February 2010 staffing took place.

The undocumented population in Greece was estimated in 2006 to number between 200,000 and 400,000 persons and the number of asylum seekers was put at the end of 2008, 38,061. In 2005, the Greek government issued 40,649 expulsion decisions and removed 21,219 persons from the territory (Global Detention Project 2009). Between 1993 and 2008, the number of immigrants quadrupled. The total number of migrant apprehensions rose from approximately 40,000 in 2005 to 146,337 in 2008. The dedicated immigration detention sites in 2007 were 9, with an estimated capacity of 2,500 persons (Global Detention Project 2009).

### ***3.4. Information and support***

As far as concerns the information with which pre-trial detainees are provided about the regulations of the institution, the methods of making complaints, how to seek assistance on health, social or other issues coming up during detainment, according to Prison Law (Art. 24 GCC), the prisoner/detainee after entering the prison meets the prison director (warden) and the social service, and is examined by the medical staff.

The *Internal Regulation of General Detention Establishments Type A and B* (MD 58819/2003) foresees the admission-procedure in prison facilities without distinguishing between pre-trial detainees and convicted. The person entering the prison meets the social service and the chief of the security staff (correctional officer), as happens in practice, and declares if there is any reason to be protected, if s/he has any problem with other prisoners, or whether s/he is associated with some of them (MD 58819/2003, Art. 10[6]). Both, social service and the chief of the security staff, and occasionally the director (Art. 24 GCC), inform the newcomers about the prison regulation. They are examined by the medical doctors, whenever they are available, usually once or twice weekly. Only recently in Korydallos prison the detainees entering the prison also meet a physician, employed on a daily basis after big efforts of the prison directorate temporarily to offer his services due to the danger of Virus H1N1. The employment of the doctor is made possible by transferring the profit from the selling of cigarettes in prison kiosks to the payment of doctor; the profit is used for repairs, the painting of the prison etc.

Teachers working in prisons and scientific personnel are willing to inform the inmates when they are asked. Furthermore, the public prosecutors supervising the prisons inform regularly those applied during their legal consultation hours operating in all prisons (Law 3226/2004, Art. 5).

From time to time information material (pamphlets) with the rights and duties of prisoners, as well as the institution's regulation and other practical advises in various languages is being delivered. Since last year such pamphlets have started being delivered in the juveniles' prison of Avlona.

As usual, the most efficient knowledge and experience transfer takes place from the older to the newcomers.

### ***3.5. Humane treatment***

The international obligation that all persons under any form of detention shall be treated in a humane manner (ICCPR, Art. 10, Part III) and with respect for the inherent dignity of the human person is expressly codified in the Prison Law (2776/1999, Arts 2, 3, 4)/GCC and the Constitution (Art. 7[2]).

Pre-trial detainees like the convicted ones access sanitary installations and have a bath or shower on a daily basis. All prisoners, irrespective of their legal status wear their own clothes (Art. 33[1,4] GCC).

They enjoy certain rights deriving from Prison Law in order to maintain their contacts with the free society and the bonds with their family (Art. 51[2] GCC). They are permitted to have contacts with their family and relatives up to the fourth grade (Art. 52[1] GCC). They have also the right to be visited *at least twice* per week. The maximum number of visits is regulated by the prison board. Usually, those accused or convicted for misdemeanours cannot be visited more than three times weekly, while those for felonies once per week for at least thirty minutes and limitless visits from their defence attorneys (Art. 52[1] GCC; MD 58819/2003, Art. 21[1,2]). Visits from other persons need the permission of the prison board, which informs the Minister of Justice; within three days the Minister grants or rejects the application (Art. 52[2] GCC). This procedure is usually preferred for visits, that according to the board, are considered to exercise an undesirable influence on the prisoner/detainee, such as when the visitor is either involved in the detainee's (and prisoner's) criminal case or is a former prisoner. There are no available data about what percentage of pre-trial detainees are denied regular visits from family members on the grounds that such visits would interfere with the administration of justice. However, it is regarded to happen rarely.

Foreign prisoners are allowed to contact with diplomatic and consulate representatives of their country of origin, as well as with other persons and organisations that could help the arrangement of problems relating to their prison accommodation (MD 58819/2003, Art. 21[13]).

All prisoners, irrespective of their legal status, can make unlimited phone calls paying themselves from the phone boxes of the institution, unless the prison board set restrictions because of certain violations by them (Art. 53 GCC). Nevertheless, prison life and overpopulation sets by itself boundaries to which the prisoners adjust. The use of mobiles is forbidden, but some are skilful enough to possess one.

They can also send and receive letters without limit (Art. 53); censorship is forbidden by the Constitution (Art. 19; also Art. 53[4] GCC), though permitted for reasons of investigating serious crimes or for reasons of national security (art. 3, Law 2225/1994). The letters are electronically controlled and opened with the presence of the prisoner/detainee (MD 58819/2003, Art. 23[5]). The prisoners can always appeal

for violation of their rights to the court responsible for their sentence enforcement, namely the court of the larger area where prison is located (Law 2225/1994, Arts 3,4,5; Art. 53[7] GCC). The same applies for the furloughs, disciplinary sanctions, and restrictions of vocational and educational training. However, the pre-trial detainees can be granted a furlough only in extraordinary cases and unforeseen events affecting them, such as death, funeral and serious health problems of a close family member (Art. 57[2] GCC).

In general, pre-trial detainees are not preferred for work in prison, but the biggest number of pre-trial detainees in the country is concentrated now in Korydallos prison. In Korydallos the vast majority of working inmates are pre-trial detainees or on remand. The proportion of working to non working persons in prison facilities of the country tend to be 1 (person working):2 (not working), while in Korydallos the quota is 1:3.

Work in prison is provided exclusively on a voluntary basis. The Greek Constitution prohibits forced or compulsory labour of any kind (Art. 22[4]; cf. ECHR 1950/53, Art. 4[3a]). The main emphasis of the country's correctional policy is motivating prisoners to participate in work activities and educational programmes by providing incentives, the possibility for earlier release being the most important, offered also to the persons awaiting trial.

As CPT's delegation also wrote, the overcrowding and the few programmes running in prisons offering purposeful activities to the majority of prisoners are mitigated to some extent by reasonable out of cell time (CPT/Inf (2006) 41, par. 93). They are allowed to move freely and associate with other prisoners within the detention wing and courtyard until 8.30-9 pm. Additional out of cell time is allocated for holidays and during heat waves (MD 58819/2003, Art. 8).

### **3.6. Health-care**

All prisoners, convicted and pretrial detainees, are formally entitled to health care services equivalent to those offered to the general population. Yet, significant problems arise from the very low staffing levels of medical personnel (CPT/Inf (2008) 4 par. I,IV). Concerning the dearth, the CPT expressed its concerns, especially in Korydallos Men's Prison (CPT/Inf (2006) 41, par. 75). Physicians (medical doctors), nurses and pharmacists do not show any special interest in working in prison facilities, their number fluctuating, while the ministry suffering this situation tries to cover the needs mostly with part-time personnel (CPT/Inf (2008) 3 par. 52; CPT/Inf (2009) 20 paras. 19, 23, 49, 54; see also Lambropoulou 2008: 399-400). The monthly reimbursement per doctor should not exceed 420 euro gross and 380 net (contract, part-time and medical regulations), which means that they formally should not examine and look after of more than 25-28 prisoners *per month*; and that because their contract payment per patient is 25 euro for the first visit and 15 euro for the second, third etc. of the same person. In practice, they usually examine approximately 13 persons per day, therefore they exceed their limit in two or three visiting days instead of a month; they are not paid for the rest.

The Government and the Ministry of Justice in particular, in their efforts to confront drastically the problem, announced in June 2009 the integration of the therapeutic institutions of the Ministry of Justice (Psychiatric Hospital for prisoners in Korydallos, Prisoners' Hospital of Korydallos, and three Detoxification centers for drug and alcohol abusers (Art. 19[1] GCC) in the national health system (ESY-Law 3772/2009, Art. 13). Thus, the prisoners can make full use of the national health system services and the medical staff offer their services for 24 hours a day in whatever public Hospital or Clinique is needed. As far as it is known, the Decrees for the operation of Prisoners' hospital under the NHS have not yet been issued.

In several prisons are running "sensitization and mobilization" groups (counselling, phase A of detoxification programme) for drug addicts by KE.THE.A (Therapy Centre for Dependent Individuals), operating since 1988 and by "Over 18"-Unit since 1994. KETHEA is running its programmes in 14 prison establishments of the country (three in Korydallos Prison Complex). Similarly, the "Over 18"-Unit of the Psychiatric Hospital of Attica is also running its programmes (counselling) in Judicial Prison and the Psychiatric Hospital for Prisoners in Korydallos and in Women's detention centre in Korydallos. All programmes are operating irrespective of the legal status of prisoners.

Since 2006 KETHEA has started also offering psychiatric and physical support (phase B) for detoxification in Women's prison of Korydallos and reintegration support (phase C) for released persons in its Athens centre facility (KETHEA 2007: 28; see also Art. 56[3], Presidential Decree/PD 148/10.8.2007, Gov. Gazette 191 vol. A'). These services along with the old ones constituting in counselling and sensitization, belong to the first *complete* programme for detoxification in prisons carried out after a long hesitation (KETHEA 2007: 27-30).

Furthermore, since 2008 in men's prison of Korydallos, a prison unit free of drugs is operating (counselling and psychiatric support). For the participation there is no prerequisite (legal or physical), which is usually set by the law and each programme (i.e. length of prison sentence, served sentence, minimum age etc., Law 3459/2006, Art. 31[10]; see also the Common Decree of the Ministers of Justice and Health MD 792//2007B-1777).

According to the Ministry of Justice, even the sensitization programmes do not specially affect prisoners. Nevertheless, according to information from staff, in Korydallos Prison Complex the two operating programmes of KETHEA in Korydallos and Thiva (Women's prison) and of "Over 18"-Unit have waiting lists for at least two months, while few years ago the waiting lists were longer.

### **3.7. Complaints**

Pre-trial detainees have the right and they use it to make complaints with regard to their pre-trial detention. Breaches of pre-trial detention rights cannot be raised during the trial though, only in a separate recourse to litigation.

The Law doesn't make any distinction between convicted and detainees. Irrespective of their legal status all prisoners have the same rights before the prison board and the public prosecutor. The enforcement of prison sentences, the protection of prisoners' rights and the supervision of prison operation rests with the public prosecutor of the court in the area of which each institution is located (Arts 85, 86[1,2] GCC; MD 58819/2003, Art. 7). The public prosecutor is also responsible for the complaints and the appeals against disciplinary sanctions imposed on prisoners, as well as other duties assigned to him/her by the Prison Law and other laws (Art. 572 GPPC). Two full-time prosecutors are assigned for the four largest prisons of the country [Athens/Piraeus, Thessaloniki, Larissa and Patras], in which over one third of the total prison population serve their terms (Art. 572[3] GPPC). Both are accountable to the Public Prosecutor of the Supreme Court and the Minister of Justice.

As described, the law provides that persons in detention have the right to contact a close relative or another third party, to have access to a lawyer and a doctor. CPT in its reports of the 2005 and 2007 visits to country's institutions writes that the government did not always respect these rights in practice. It refers mainly to illegal immigrants held in police- and border guard stations until to be moved to the detention centres: administrative detention (CPT/Inf (2008) 3 paras. 38-40, 42; also 2009: 30, 71 CPT/Inf (2008) 4, par. (7)).

Many detainees *complained* to the CPT's delegation during its 2008 visit (23-29.09.2008) in holding facilities for irregular migrants, border guard and police stations, that they were not allowed to contact their lawyer from the outset of detention and similar complaints were received with respect to the right to inform a close relative or another third party of their situation (CPT/Inf (2008) 3, par 20). Further, detained persons met by the delegation *complained* that they were not informed about their rights in a language they could understand (op. cit). Thus, CPT called upon the authorities to take "immediate steps" to ensure the satisfaction of these rights for all persons deprived of their liberty (CPT/Inf (2009) 20, par. 20), because no noticeable developments have occurred since the previous CPT visit to Greece (2007). Moreover, the delegation noted that the access to a doctor and the provision of health care for persons held by law enforcement agencies was still not fully effective in practice and asked the authorities to review the existing arrangements (CPT/Inf (2009) 20, par. 23; CPT/Inf (2008) 3 paras. 38-40, 42).

In their last response, the Greek Authorities expressed their "disappointment", since the Committee's Report refers to "allegations" and "interviews", which even if the process of their testimony is not questioned, they still remain single distinct events out of thousands of illegal migrants managed by the country and without any official complaint to the authorities (CPT/Inf (2009) 21, point 10).

The response submits further data about the availability of doctors and information leaflets (CPT/Inf (2009) 21, points 11, 13, 20, 23), although it recognises the heavy difficulties which the ministry has due to the large number of detainees (illegal migrants).

### ***3.8. International instruments and decisions***

Law and practice are affected by conventions and treaties concerning organized crime and terrorism, in particular the investigation techniques, surveillance, accommodation of the suspects, testimonies, composition of the court (jury system).

According to Prison Law, persons sentenced to imprisonment for over 10 years and life are kept separated from the rest without having any contact with them (Art. 11[4] GCC). This, however, does not mean that they are undergoing stricter treatment-conditions than the other groups of prisoners. The higher security measures are under the control of the authorised prosecutor. This applies for the prisoners and detainees that are regarded dangerous, mostly because they escaped in the past and arrested for organized crime or terror activities.

The Prison Law makes a special reference to pre-trial detainees. According to it (Art. 15[2] GCC), the living conditions of pre-trial detainees approach as much as possible the conditions of the free life. They are not subject to any other restriction than those are considered to be necessary for the smooth carrying out of the inquiry. Nevertheless, the regular life and security in the facilities can justify restrictions on living conditions, which however are to be defined by the prosecutor who supervises the prison (Art. 7[4] GCC). The previous can affect pre-trial detainees, although there is no special reference to them.

In addition, the *Internal Regulation of Detention Establishments* (MD 58819/2003, Arts 33[1,4,5], 35[2a]) foresees the support of pre-trial detainees, in particular to prepare their defence in court with legal advice, as well as with the providing of a defence counsel if they don't have one and they are indigent (also Law 3226/2004, Art. 5).

The Greek Prison Law and the Internal Regulation(s) of the prison institutions are generally based on the UN Standard Minimum Rules for the Treatment of Prisoners, the European Standard Minimum Rules for the Treatment of Prisoners drawn up by the Council of Europe in 1973, the Recommendation No. R (87)3 of the Committee of Ministers of CoE on the European Prison Rules in 1987 and the updated European Prison Rules in 2006 (Recommendation Rec. (2006)2), on special Recommendations of CoE about the pre-trial detention (No. R(80)11), the furloughs (No. R(82)16), the detention and treatment of dangerous offenders (No. R(82)17), the detention of foreign prisoners (No. R(84)12) etc. There are also inspired by the legislation and good practices of some European countries, e.g. The Netherlands, Finland and England.

The Ministry of Justice, as well as the governments and most political parties regard the Greek prison legislation progressive and human orientated, which is indeed. Nevertheless, its humane orientation is called into question by overcrowding, inadequate employment of specialised personnel, insufficient (re-)training of security staff and, generally, the outdated prison management, generating retreatism or cynicism among personnel.

According to my opinion the most important developments are: a) the tremendous overcrowding and the float of foreigners in prisons and police stations; b) the prison

construction boom after 2000; c) the weakness of the justice system for a short- and long-run management of its overload and consequently the length of detention-time; d) that longer prison sentences (up to three years, Art. 82[1, 2] GPC; up to five, Law 3811/2009, Art. 26[1]; Law 3772/2009, Art. 14[2]) are convertible to fines and the decrease of the served time for parole, in spite the severity of crimes (*conditional release*, see Lambropoulou 2008: 393-4); e) the poor health-care services; f) the inability of the experts for a successful intervention strategy; g) the active involvement of NGOs in prisoners claims and unrests; h) the spectacular escapes from prisons, displaying the shortcomings of prison administration; i) the decrease of detention time with an enhancement for release on bail issued lately; and j) the special detention status under which the members of the 17N and ELA (political terrorist groups) are serving their sentences, attracting no special interest by the CPT during its visits, the local or international NGOs (e.g. AI-GR, Archive 2005-2010, 2006; AI 2007: 124-6; 2009) and the Media, with the sole exception of NCHR, contrary to the administrative detention of illegal immigrants (NCHR 2005: 135; 2008a: 211; Koulouris 2004: 413-4, footnote 4).<sup>26</sup>

Positive is a) the recent division of women detainees from the convicted in two different facilities, b) the permanent control by the CPT, c) the operation of full detoxification programmes for drug and alcohol abusers, as well as the expand of the counselling to more prisons than before, d) the operation of probation officers, and e) the reintroduction of the *right* of the accused to be heard by the judicial council, when it is going to decide about the continuing or the extension of his/her pre-trial detention.

#### **4. Alternatives for pre-trial detention**

Alternatives for pre-trial detention are the obligation of the suspect to report every day to the police station, the prohibition to stay in or to leave certain places, to travel outside the country, to meet or associate with certain persons, and the payment of bail; they are summarised under the term “restrictive conditions”, i.e. remand/release on bail (Arts 282[1,2], 286 GPPC).

There are no statistics available regarding the number and percentages of cases in which the alternative measures are applied to suspected offenders. Yet, we can say that with regard to suspicion and severity of crime, offences allowed alternatives are *often* public order offences, escort service and prostitution related offenses; *very often* traffic offences unless resulting in dead or severely injured persons, then *less frequently*; however, when someone is accused of reckless manslaughters that are interrelated, with two or more victims, as in car accidents, then *sometimes*. Release on bail is *sometimes* provided for assault and battery, manslaughter, theft and embezzlement, fraud, forgery, counterfeiting, money laundering, weapons and guns offences, while murder and terrorism offences are *rarely* allowed alternatives. For drug offences are some differentiations. Those arrested with a charge for minor

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<sup>26</sup> See the findings of NCHR on the side-effects of the confinement in special cells on persons or groups.

misdemeanours of the drug legislation, i.e. drug use and possession of small quantities of drugs, crime in relation to drug use such as theft, alternatives are *often* imposed, while those arrested with a charge for a felony of drug laws *sometimes-rarely*.

A person cannot be subjected to alternatives when he/she is suspected of an offence for which imprisonment is not provided as a penalty. Alternatives may be ordered when the accused is suspect for a misdemeanour punished with imprisonment for over three months or a felony for which is not considered necessary the pre-trial detention (Art. 282[1], in relation to 282[3] as amended by Law 3811/2009, Art. 24 [1]; 296 GPPC).

Alternatives are also used for the replacement of pre-trial detention, when during the main investigation it comes out that the reason for which the detention or the restrictions have been ordered does not exist any more. The Minimum standards and the general legal background described above for pre-trial detention also apply with alternatives. Practical and legal considerations might be taken into account for using alternatives. If the accused is convicted by the first instance court to prison sentence and has lodged an appeal, which has not a suspending effect on the serving of sentence, s/he by him/herself or by the prosecutor can apply to the suspension of imprisonment until the appellate court issues its decision. The suspension can be ordered if the accused is not especially dangerous or recidivist or an escape suspect and a sound fear does not exist that s/he is going to commit new crimes, and if the imprisonment up to the decision of the appellate court would result in excessive and irreparable damage for the convicted and his/her family (Art. 497[7] GPPC).

To my knowledge, no other developments *exclusively* concerning alternatives to pre-trial detention, e.g. release on bail, are important, apart from relaxing detention rules and increasing the control of the investigating authorities presented in the beginning of the analysis. The use of alternatives for pre-trial detainees accused of drug law violations could prove an interesting case for the monitoring of *alternatives*.

Whether pre-trial detention or solely release on bail will be imposed on drug addicts is unclear, since until now addicts are rarely sent to detention only for their addiction, namely without another charge (cf. Law 3459/2006, Art. 29[1,3]). The law foresees that in replacement of detention with bail, one term can be the participation of the accused in a therapeutic programme, if s/he has been accepted in such a programme (Law 3459/2006, Art. 42[2d]).

## **5. Recompense and final sentence**

One more point about detention, which has to be discussed in the present paper is whether the time spent in pre-trial detention is taken into account in the final sentence.

The time of pre-trial detention runs from the first day of detention, irrespective of the simultaneous or successive pronouncements of the charges against the defendant (Art. 288[1] GPPC) (cf. ECtHR 03.07.1995, *Kampanis v. Greece*). In case of conviction of the accused with imprisonment, the term of pre-trial detention as well as the time between the arrest and the order of pre-trial detention shall be deduced from the final sentence (Art. 87 GPC and Art. 371[4] GPPC) (Spinellis & Spinellis 1999: 23; Bahtiyar 2009: 454; van Kalmthout et al. 2009: 87). This means that deduction is not

restricted to the period spent in pre-trial detention but also includes the time spent in arrest or police custody. The deduction rate is that one day of pre-trial detention is equal to one day of imprisonment. Difficulties arise about the deduction in cases of life sentences.

## 6. Conclusions

Long remand-time is not a case of legal but of practical and operational issues. Justice and law enforcement system in Greece require technical, infrastructural and managerial improvements, e.g. time management of judicial proceedings, full implementation of the existing instruments, court's support, appropriate delegation of authority; undistorted/unblocked lines of communication (see Loveday 1999; Freitas Dias & Vaughn 2006). High rates of pre-trial detention also relate to changes in the profile of crime and the incompetence of law enforcement agencies to face them efficiently.

Successive changes in legislation are not effective in the long run. High rates of pre-trial detention also relate to changes in the profile of crime, the rise in serious criminality, and the increased representation of foreigners, whose criminal record cannot be easily or quickly controlled. This is demonstrated by the haphazard mismanagement of an already difficult situation and, occasionally, by the violation of human rights by the law enforcement agencies (cf. Ombudsman 2008b: 11-2). Anyway, the incapacity of the agencies to deal with the state of affairs adequately is related to the incompetence or the low interest of the authorised ministries – mainly of justice and public order (now euphemistically renamed “citizens’ protection”) – and the government to correspond with the aggravated conditions all these years.

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