

*HELLENIC REPUBLIC*

**GREEK NATIONAL COMMISSION FOR HUMAN RIGHTS**

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On March 31, 2015 the Greek National Commission for Human Rights (hereinafter GNCHR), was asked by the OHCHR to contribute its input regarding “the causes and human rights implications of over-incarceration and overcrowding, and ways to remedy such situations, including alternatives to detention and other good practices or experiences”.

With the present letter the GNCHR would like to stress the followings:

1. GNCHR is an independent advisory body to the State specialised in human rights issues. It has been established and is functioning in accordance with the UN Paris Principles. Pursuant to its mandate, GNCHR has dealt repeatedly with the issues concerning the rights of the persons deprived of their liberty, detentions conditions at prisons and detention facilities for third country nationals and the necessary reforms of the penal system and has addressed specific recommendations to the competent authorities<sup>1</sup>. GNCHR *inter alia* has expressed its deep concern regarding the rise of the number of detainees and overcrowded prisons and detention facilities.

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<sup>1</sup> GNCHR, “Recommendations regarding Conditions of Detention in Greece”, Annual Report 2001; GNCHR, “Detention conditions in Greece”, Annual Report 2002; GNCHR, “Recommendations for the protection of the rights of mentally disabled persons subject to criminal security measures”, Annual Report 2003; GNCHR, “Report of the GNCHR Special Committee after its Visit to Korydallos Central Prison”, Annual Report 2004; GNCHR, “Decision regarding the Prevention of Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment via the Optional Protocol to the Relevant United Nations Convention, Annual Report 2004; GNCHR, “Observations/Recommendations for the Protection of the Rights of Mentally Ill Persons Hospitalised in Three Hotels in the Centre of Athens”, Annual Report 2004; GNCHR, “Decision regarding Detainees’ Rights and Detention Conditions in Greek Prisons”, Annual Report 2007; GNCHR, “Criminal Record of Juveniles and Young Adults”, Annual Report 2009; GNCHR, “Comments on the bill of the Ministry of Justice titled: “Reform of the Forensic Service, the therapeutic treatment of drug users and other provisions”, Annual Report 2009; GNCHR, “Detention Conditions in Police Stations and Detention Facilities for Aliens”, Annual Report 2010; GNCHR, “Comments on the bill of the Ministry of Justice titled: “Improvement of the criminal justice system”, Annual Report 2010; GNCHR, “Findings of the in situ visit undertaken by the GNCHR and the Greek Ombudsman in detention facilities for aliens in the Evros Region”, Annual Report 2011; GNCHR, Observations on the Draft of the Second Periodic Report of the Hellenic Republic for the International Covenant on Civil and Political Rights (ICCPR), Annual Report 2013; GNCHR, “Oral Statement on the

2. Over-incarceration and overcrowding in prisons and other detention facilities is a long-lasting and permanent problem which has a direct negative effect on the detention conditions of prisoners, persons under pre-trial detention and third country nationals under administrative detention<sup>2</sup>. According to the official data, as mentioned at the latest report of the European Committee for the Prevention of Torture of the Council of Europe (hereinafter CPT), in February 2013 the overall capacity of the prison system stood at 10,286 places, while there were a total of 12,759 prisoners. Moreover, some correctional facilities were operating up to 300% over their official capacity, as the distribution of prisoners varies across the country (e.g. at the time of the 2013 CPT visit, Korydallos Men's Prison was accommodating more than 2,300 prisoners for an official capacity of 840)<sup>3</sup>. Furthermore, a total of 6.283 third country nationals were under administrative detention in view of removal or asylum procedure in November 2014<sup>4</sup>. The European Court of Human Rights has also repeatedly found a violation of art. 3 of the European Convention of Human Rights, due to the overcrowded conditions prevailing in Greek prisons and other detention facilities<sup>5</sup>.
3. GNCHR has stressed that the construction of new prisons -and the improvement of the existing ones-, even if it is necessary and welcomed, by itself does not resolve the overpopulation problem, but rather postpones its manifestation. Over-incarceration and overcrowding is also a problem related with the overall approach on penal and correctional policy. For example, GNCHR has underlined that the provisions of the Penal Code and Correctional Code that could reduce the total number of the population in prisons remain inactive due to structural, administrative and financial shortcomings. Moreover, the relevant legislative initiatives concerning the reduction

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Report of the UN Working Group on Arbitrary Detention (1.9.2014)", Annual Report 2014 (to be published).

<sup>2</sup> GNCHR, "Observations on the Draft of the Second Periodic Report of the Hellenic Republic for the International Covenant on Civil and Political Rights (ICCPR)", Annual Report 2013, p.98; GNCHR, "Findings of the in situ visit undertaken by the GNCHR and the Greek Ombudsman in detention facilities for aliens in the Evros Region", Annual Report 2011.

<sup>3</sup> Committee for the Prevention of Torture, Report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 4 to 16 April 2013, 16 October 2014, CPT/Inf (2014) 26, available at: <http://www.refworld.org/docid/543f7ba54.html>, § 94.

<sup>4</sup> Greek Ombudsman, Annual Report 2014, p. 149.

<sup>5</sup> see for example regarding prison facilities, *Papakonstantinou v. Greece*, application no 50765/11, 13.11.2014; *Nikolaos Athanasiou and others v. Greece*, application no 36546/10, 23.10.2014; *BOUROS and others v. Greece*, application nos 51653/12, 50753/11, 25032/12, 66616/12 et 67930/12, 12.3.2015 and regarding detention centres for third country nationals *Mahammad and others v. Greece*, No 48352/12, 15.01.2015; *Al. K. v. Greece*, No 63542/11, 11.12.2014; *Mohamad v. Greece*, No 70586/11, 11.12.2014.

of the number of detainees were taken in *ad hoc* basis and they were not intergraded in a holistic and comprehensive approach of the institution of criminal justice as well as a new stance vis-a-vis correctional policy<sup>6</sup>. Last but not least, the practice of generalised, indiscriminate and prolonged (in some case indefinite) administrative detention imposed to “*all immigrants who do not fall under the status of international protection*”, according to the 2012 Greek Action Plan on Asylum and Migration Management<sup>7</sup>, had a crucial impact on the total number of persons detained the previous years<sup>8</sup>.

4. GNCHR has underlined that over-incarceration and overpopulation of correctional facilities or other places of detention directly results in inadequate detention conditions in violation of international standards. Inadequate infrastructure, overpopulation and the prolonged detention lead to serious repercussions on the health and the quality of detainees’ life. At the same time, overcrowding has negative impact on the correctional system as such (e.g. overcrowding hampers the implementation of correctional programs, creates incidence of violence, facilitates escape from custody and incises recidivism)<sup>9</sup>.
5. GNCHR has systematically addressed recommendations to the authorities in order to face over-incarceration and overcrowding. GNCHR has long advocated that measures of immediate action should go together with actions on the field of prevention, anticriminal policy and post-correctional care. GNCHR *inter alia* has recommended that:
  - A comprehensive reform of the penal law is needed. Such a reform should be based on two pillars. The first one should be decriminalization of minor offences. The

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<sup>6</sup> GNCHR, “Comments on the bill of the Ministry of Justice titled: “Improvement of the criminal justice system”, Annual Report 2009, p. 58.

<sup>7</sup> Council of Europe, Committee of Ministers, DH-DD (2013) 711revE, 29.10.2013, [https://wcd.coe.int/ViewDoc.jsp?Ref=DH-DD\(2013\)711&Language=lanFrench&Ver=rev&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=DH-DD(2013)711&Language=lanFrench&Ver=rev&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864), p. 53.

<sup>8</sup> GNCHR, “Observations on the Draft of the Second Periodic Report of the Hellenic Republic for the International Covenant on Civil and Political Rights (ICCPR)”, Annual Report 2013, p.93; GNCHR, “Findings of the in situ visit undertaken by the GNCHR and the Greek Ombudsman in detention facilities for aliens in the Evros Region”, p. 88. Annual Report 2011; GNCHR, “Observations of the NCHR on the Draft of the Greek Report to the Committee against Torture of the United Nations concerning the implementation of the Convention against Torture and other cruel, inhuman or degrading treatment or punishment”, p. 45, Annual Report 2010; GNCHR, “Detention Conditions in Police Stations and Detention Facilities for Aliens”, p. 92, Annual Report 2010.

<sup>9</sup> GNCHR, “Observations on the Draft of the Second Periodic Report of the Hellenic Republic for the International Covenant on Civil and Political Rights (ICCPR)”, Annual Report 2013, p. 94 and 98.

second one should be the mitigation of penalties and the limitation of the number of felonies, particularly regarding drug offences<sup>10</sup>.

- The use of deprivation of liberty penalties should be limited to the extent possible. Imprisonment should be imposed only in cases of serious crimes and recidivists. Remand trial should be applied exceptionally. Furthermore, a re-evaluation of the penalties in force is required, at least for certain categories of crimes. All necessary measures for the implementation of the existing legislation regarding alternative measures and penalties should be taken<sup>11</sup>.

- Deprivation of liberty for minor offenders, including those having committed drug offences, should be the last resort and only for violent crimes or crimes committed on a professional basis or repeatedly, and not for common misdemeanours occasionally committed.

- The decision on the detention of a migrant or asylum seeker should be made in exceptional cases and only as an *ultimum refugium* after having taken into consideration all possible alternative measures, as the relevant legislation provides (Law 3907/2011 and PD 113/2013)<sup>12</sup>. Special care should be offered to vulnerable groups, asylum seekers, unaccompanied minors etc<sup>13</sup>.

6. Greek Authorities have tried to address the problem by drafting successive legislations aiming to reduce the number of inmates (Law 3346/2005, 3727/2008, 3772/2009, 3904/2010, 4043/2012, 4195/2013, 4274/2014 (11)). GNCHR has welcomed the fact that some of its recommendations have been adopted by the Greek authorities, such as the conversion of sentences for certain categories of offences into monetary sanctions or into community service<sup>14</sup>. Nonetheless, GNCHR has stressed that without a more holistic approach of the problem, the *ad hoc* application of conditional release of detainees, would only contribute to the temporary decongestion of the correctional facilities, but under no circumstances would it be able to address overpopulation in a sustainable way. GNCHR concerns are confirmed by the official numbers. For example, contrary to the initial estimations -according to which until

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<sup>10</sup> GNHCR, "Comments on the bill of the Ministry of Justice titled: Improvement of the criminal justice system", p. 158, Annual Report 2010.

<sup>11</sup> GNCHR, "Decision regarding Detainees' Rights and Detention Conditions in Greek Prisons", Annual Report 2007, p. 237.

<sup>12</sup> GNCHR, "Observations on the Draft of the Second Periodic Report of the Hellenic Republic for the International Covenant on Civil and Political Rights (ICCPR)", Annual Report 2013, p. 94.

<sup>13</sup> GNCHR, "Findings of the in situ visit undertaken by the GNCHR and the Greek Ombudsman in detention facilities for aliens in the Evros Region", p. 49, Annual Report 2011.

<sup>14</sup> see for example L. 3727/2008, L. 3772/2009, L. 3904/2010.

mid 2009, 3.500 inmates would have been released- no more than 1.000 inmates had been released on the basis of Law 3727/2008<sup>15</sup>. Respectively, according to the official data, in the period of the first four months of the implementation of Law 3904/2010, 762 prisoners have been released and the general prison population has been reduced to 11874 in May 2011, from 12497 in mid-December 2010<sup>16</sup>. However, as mentioned above the general prison population in February 2013 was 12759 prisoners. Moreover, Law 4205/2013, which introduced the possibility of conditional release, accompanied with house arrest and electronic surveillance, is still under a pilot procedure. For the time being and according to PD 62 (OJ A 105/29.04.2014) the measure will be applied to a limited number of 250 inmates.

7. There have been some new developments which should be underlined:

Firstly, the UN Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) has been ratified in 2014 (Law 4228/2014) and the Greek Ombudsman has been designated as the national preventive mechanism, according to art. 3 and 17 of the OPCAT. The ratification of the OPCAT was one of the recommendations of GNCHR since 2008. At the first report issued by the Greek Ombudsman, under the capacity of the national prevention mechanism, in March 2015, the Ombudsman underlines that “it is a pressing priority the functioning of the correctional system to be reviewed under the light of a holistic reconsideration of the penal system and the interaction among legislature (i.e penalty system), judiciary (sentences) and correctional system (detention conditions)”<sup>17</sup>.

Secondly, in February 2015, the competent authorities have announced that they review the policy on immigration detention. In particular, the new guidelines provide that all persons belonging to vulnerable groups (families, children, unaccompanied minors, pregnant women, victims of torture etc) and asylum seekers will be immediately released, that persons held for 6 months will be also released and that alternative to detentions will be examined and implemented<sup>18</sup>. These statements were

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<sup>15</sup> GNCHR, Comments on the bill of the Ministry of Justice titled: Improvement of the criminal justice system”, Annual Report 2010, p. 148.

<sup>16</sup> Council of Europe, CPT/Inf (2012) 2, Response of the Government of Greece to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Greece from 20 to 27 January 2011, 10 January 2012, p. 76.

<sup>17</sup> Greek Ombudsman, Annual Report 2014, pp. 155-159.

<sup>18</sup>[http://www.astynomia.gr/index.php?option=ozo\\_content&lang=%27..%27%20&perform=view&id=50720&Itemid=1458&lang.](http://www.astynomia.gr/index.php?option=ozo_content&lang=%27..%27%20&perform=view&id=50720&Itemid=1458&lang.)

welcomed by the OHCHR<sup>19</sup> and the UNHCR Office in Greece<sup>20</sup> and can significantly reduce the number of persons under administrative detention.

Lastly, Law 4322/2015 “Reform of penal provisions, abolish of high-security prison and other provisions”, voted by the Parliament in 20.4.2015, modifies some provisions of penal and correctional law and provides “urgent measures” in order to face overcrowding. The Explanatory Note acknowledges that the problems of the correctional system (*inter alia* overcrowding) “cannot be tackled effectively with an ad hoc and partial intervention” and in particular the Law aims to mitigate significantly unfavourable factors of the correctional system, as the basis of a more structural intervention planned for the near future”.

Inter alia, Law 4322/2015 provides for:

- A lenient penal approach for juveniles. The age limit of penal responsibility for minors is determined at the age of 15 instead of the age of 13. Detention can be imposed to minors, only in case that the committed crime is punishable by a life-sentence. The non registration in the criminal record of the juvenile, decisions involving reformatory measures (this amendment adopts the 2009 recommendation of the GNHCR regarding Juveniles’ Criminal Record<sup>21</sup>).
- Clemency measures for certain vulnerable groups (i.e. very elderly, disable or drug addicted persons etc.) as conditionally release under house arrest, under house arrest and electronic surveillance or the possibility of a beneficial sentence calculation (*‘ευεργετικός υπολογισμός ποινής’*).
- A significant reduction of the maximum detention period for third country nationals under deportation decided by a Court Decision (*‘δικαστική απέλαση’*). According to Law 4322/2015, this period cannot exceed one month or three months if the person in question hampers his/her removal.
- Exceptional measures for the decongestion of the prison facilities such as conditionally release under the term of revocation in case of a new offence committed by intent, within a five years period, punishable with a more of two years sentence

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<sup>19</sup> OHCHR, Regional Office for Europe, UN Human Rights Office welcomes Greece’s envisaged changes in migration policy, 18.02.2015, <http://www.unric.org/en/latest-un-buzz/29649-un-human-rights-office-welcomes-greecesenvisaged-changes-in-migration-policy>.

<sup>20</sup> UNHCR- Office in Greece, UNHCR welcomes the envisaged changes in the administrative detention of third country nationals, 19 February 2015, <http://www.unhcr.gr/nea/artikel/24dcef5d13ebd29a1559fc4d7339ad10/unhcr-welcomes-the-envisaged-changes.html>.

<sup>21</sup> see GNCHR, “Criminal Record of Juveniles and Young Adults”, Annual Report 2009.

and the possibility to commute unexecuted sentences (no longer of five years) into monetary sanctions.

Athens, 28th April 2015.