



# **ARISA: Assessing the Risk of Isolation of Suspects and Accused**

## **COUNTRY REPORT ON THE FACTORS AFFECTING THE SOCIAL STATUS OF SUSPECTS AND ACCUSED**

### **GREECE**



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# 1. Legal status of suspects and accused

## 1.1. Introduction to the Greek criminal procedure

In Greece, the Greek Criminal Procedure Code<sup>1</sup> is the main statute governing the procedure carried out before Criminal Courts. Numerous provisions of the Greek Constitution<sup>2</sup> -which include directly applicable procedural law- as well as provisions of the European Convention of Human Rights and its Protocols, and those of the International Covenant on Civil and Political Rights complement the provisions of the Criminal Procedure Code. The aforementioned international statutes have an eminent position within the Greek legal system since pursuant to Article 28(1) of the Greek Constitution they prevail over any conflicting provisions of national law after their enactment. As a member of the European Union, Greece has ratified the EU-Treaties as well as the EU Charter on Fundamental Rights and Freedoms.

According to statistical data of the Hellenic Police, the majority of crimes perpetrated in Greece are robberies and burglaries (36,959 cases in the first semester of 2017 and 37,454 cases in the first semester of 2016):<sup>3</sup>

Types of Crimes	2 0 1 7 (1 <sup>st</sup> Semester)			2 0 1 6 (1 <sup>st</sup> Semester)		
	Crimes Committed	Perpetrators		Crimes Committed	Perpetrators	
		Greek Nationals	Foreigners		Greek Nationals	Foreigners
Homicides	42	110	52	46	83	43
Fraud	1670	473	64	1919	519	101
Antiquities Theft	42	59	10	36	64	7
Rape	68	50	46	70	40	39
Extortion	78	65	21	79	53	27
Begging	1652	881	786	1502	684	846
Animal Theft	219	28	12	307	47	7
Counterfeit cash	4442	1155	89	3573	708	82
Contrabands	1014	427	628	684	375	448
Violation of Law on Drugs	5961	6106	1986	5091	5602	1296
Violation of Law on Possession of Arms	2115	1691	420	2414	1965	347

<sup>1</sup> Greece, Presidential Decree 258/1986 “Code of Criminal Procedure” (Κώδικας Ποινικής Δικονομίας), as amended (O.G. 121 A/26-07/08-08-1986).

<sup>2</sup> The text of the Greek Constitution is available in English at: [www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf](http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf), last accessed on 05-02-2018.

<sup>3</sup> Hellenic Police, Statistical Date on Crime Rates for the first semester of 2017, available in Greek at: [www.astynomia.gr/index.php?option=ozo\\_content&perform=view&id=74523&Itemid=73&lang=](http://www.astynomia.gr/index.php?option=ozo_content&perform=view&id=74523&Itemid=73&lang=), last accessed on 05-02-2018.

Violation of Law on Intellectual Property	74	56	23	135	106	29
Forgery	901	178	841	1148	274	944
Sexual exploitation	69	82	107	115	64	101
<b>Robberies</b>	–	<b>36959</b>	5456	2110	<b>37454</b>	4993
<b>Burglaries</b>						1996

According to statistical data of the Ministry of Justice,<sup>4</sup> the First Instance Prosecuting Offices of Greece (61 Offices in a total of 63) for the first semester of 2017 reported a total of 61,990 Court Decisions on conviction, 38,387 Court Decisions on acquittal. In 2016, there were 49,222 Court Decisions on conviction and 36,388 on acquittal:

Type of Criminal Court	Cases of 2017 discussed/where a decision was published		
	Convictions	Acquittals	Other***
Single-Member Court of Misdemeanors	36,726	25,879	13,418
Single-Member Court of Misdemeanors for Fast-Track Procedure	6,661	1,650	1,895
Three-Member Court of Misdemeanors	16,113	10,248	6,906
Three-Member Court of Misdemeanors for Fast-Track Procedure	901	196	1,532
Single-Member Court of Minors	1,516	393	667
Three-Member Court of Minors	73	21	65
<b>Total</b>	<b>61,990</b>	<b>38,387</b>	<b>24,483</b>

Type of Criminal Court	Cases of 2016 discussed/where a decision was published		
	Convictions	Acquittals	Other***
Single-Member Court of Misdemeanors	33,065	24,450	7,692

<sup>4</sup> Statistical Data of the Greek Courts is available at: [www.ministryofjustice.gr/site/el/ΟΡΓΑΝΩΣΗΔΙΚΑΙΟΣΥΝΗΣ/ΣτατιστικάΣτοιχείαΔικαιοσύνης/Στατιστικάστοιχείαανάβαθμότηταδοσίαν.aspx](http://www.ministryofjustice.gr/site/el/ΟΡΓΑΝΩΣΗΔΙΚΑΙΟΣΥΝΗΣ/ΣτατιστικάΣτοιχείαΔικαιοσύνης/Στατιστικάστοιχείαανάβαθμότηταδοσίαν.aspx), last accessed on 05-02-2018.

Single-Member Court of Misdemeanors for Fast-Track Procedure	5,238	1,188	1,784
Three-Member Court of Misdemeanors	8,591	9,844	7,532
Three-Member Court of Misdemeanors for Fast-Track Procedure	516	162	1,115
Single-Member Court of Minors	1,779	738	451
Three-Member Court of Minors	33	6	51
<b>Total</b>	<b>49,222</b>	<b>36,388</b>	<b>18,625</b>

\*\*\*Such as decisions terminating criminal proceedings, on lack of jurisdiction, etc.

There is no official data on the average duration of criminal proceedings in Greece. According to practitioners, the duration is still quite excessive. For example, before the Single-Member Court of Misdemeanours of Athens crimes perpetrated in 2016 received a trial date in January 2018 and for the end of the year. Greece has been condemned by the ECtHR for the excessive duration of criminal proceedings and issued pilot judgments in two cases:<sup>5</sup> *Michelioudakis v. Greece*<sup>6</sup> and *Glykantzi v. Greece*<sup>7</sup> (Judgements of 3 April 2012 and 30 October 2012 respectively). The court found the following structural problems:

- case of *Michelioudakis*: deficiencies in the justice system at the root of excessive length of proceedings. Since 2007 the Court had delivered more than 40 judgments finding violations of Article 6 § 1 on account of the length of proceedings before the criminal courts. More than 250 Greek cases concerning the length of judicial proceedings, 50 of which concerning the criminal courts, were pending before the Court.
- case of *Glykantzi*: deficiencies in the Greek legal system at the root of excessive length of proceedings in the civil courts. From 1999 to 2009 the Court delivered about 30 judgments against Greece finding excessive the duration of judicial proceedings, including of a civil nature, and often adding that there had been no effective remedy in that connection. Over 250 applications against Greece concerning, at least in part, the duration of judicial proceedings, including 70 that specifically concerned civil cases, were pending before the Court.

In the case of *Michelioudakis*, the Court requested from Greece to institute, within one year from the date on which the judgment became final, a domestic remedy in respect of length of proceedings before the criminal courts. The Court would freeze its examination of similar pending cases for one year.

Following these two pilot judgments, the Greek authorities introduced a compensatory remedy, under Law 4239/2014,<sup>8</sup> with the aim of providing appropriate and sufficient redress in cases where criminal

<sup>5</sup> ECtHR, Press Unit, Factsheet-Pilot Judgments, November 2017, p. 10, available at: [www.echr.coe.int/Documents/FS\\_Pilot\\_judgments\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Pilot_judgments_ENG.pdf), last accessed on 05-02-2018.

<sup>6</sup> ECtHR, *Michelioudakis v. Greece*, App. 54447/10, Judgment 3-4-2012.

<sup>7</sup> ECtHR, *Glykantzi v. Greece*, App. 40150/09, Judgment 30-10-2012.

<sup>8</sup> Greece, Law 4239/2014 on Just satisfaction for exceeding the reasonable time of trial at the civil courts, the criminal courts and the Court of Auditors and other provisions (*Δίκαιη ικανοποίηση λόγω υπέρβασης της εύλογης διάρκειας της δίκης, στα πολιτικά και ποινικά δικαστήρια και στο Ελεγκτικό Συνέδριο και άλλες διατάξεις.*) (O.G. 43 A/20-02-2014).

and civil proceedings, or proceedings before the Audit Court, exceeded a reasonable time. In a judgment of 9 October 2014 (*Χγνος v. Greece*, App. No. 30226/09), the Court found that the new remedy could be regarded as effective and accessible. It concluded in particular that the applicant's complaint about the allegedly excessive length of two sets of proceedings he had brought before the Audit Court was to be rejected, as the application was out of time in respect of the first set and he had not exhausted domestic remedies as regards the second.

It should be noted that the Greek Criminal Procedure Code does include a fast-track procedure (*διαδικασία αυτοφώρου εγκλήματος*) for certain crimes (Articles 417-426 of the Criminal Procedure Code). This fast-track procedure is applied to misdemeanours where the perpetrator has been caught while committing the crime or "red-handed". Police have a special authority to arrest the perpetrator, without a warrant, up to 48 hours after being caught in the act of committing a crime. In such a case the accused will be detained at the police station for 24 to 48 hours and will then be taken straight to court, where he/she will be tried under the fast-track procedure.

Finally, there are three trial stages for criminal cases in Greece. The First Instance (*Πρωτόδικη*),<sup>9</sup> the Appeals Phase<sup>10</sup> (*Έφεση*) and the Review Phase<sup>11</sup> (*Αναίρεση*) before the Supreme Court (*Άρειος Πάγος* – *Άρειος Πάγος*). The same procedure also applies to Decisions of the Judicial Council of Misdemeanours or Appeals (*Βουλεύματα*).<sup>12</sup>

## ***1.2. Initiation of criminal proceedings and the status of the suspect/accused***

Criminal proceedings (*ποινική δίωξη*) in Greece are initiated by the First Instance Court Prosecutor following a *notitia criminis* (i.e. after being notified of the crime).<sup>13</sup> The Prosecutor can either initiate an investigation into the perpetration of a crime *ex officio* (*αυτεπάγγελτα*) or following a criminal complaint (*έγκληση-μήνυση*).<sup>14</sup> In some cases, the filing of a criminal complaint by the victim (*έγκληση*) is a necessary pre-condition for the Prosecutor to initiate criminal proceedings<sup>15</sup> (these are offences not of general public interest such as offences committed in families, defamation, non-serious bodily harm etc.).

Criminal Proceedings are initiated in three ways according to Article 43 para. 1 by the Prosecutor who a) introduces the case directly to Court for a public hearing (*απευθείας παραπομπή*), b) orders the execution of a preliminary inquiry (*προανάκριση*) or c) orders the execution of a main inquiry/investigation (*κύρια ανάκριση*). In the case of felonies, the prosecutor is obliged to carry out a preliminary examination (*προκαταρκτική εξέταση*) before initiating criminal proceedings (Article 243 para. 2 of the Criminal Procedure Code). A preliminary examination can be carried in the case of misdemeanours at the discretion of the prosecutor. The importance of the preliminary examination relies on the fact that its execution does not initiate criminal proceedings and therefore, the prosecutor may either file the case or reject the criminal complaint if there are insufficient indications

<sup>9</sup> The First Instance stage is also known as the Main Procedure (*Κύρια Διαδικασία*), and is governed by Article 339 and onwards of the Greek Criminal Procedure Code.

<sup>10</sup> Articles 486 and onwards of the Greek Criminal Procedure Code govern the appeals against Criminal Court Decisions.

<sup>11</sup> Articles 504 and onwards of the Greek Criminal Procedure Code govern the application for the review of a Criminal Court Decision.

<sup>12</sup> Article 477 of the Greek Criminal Procedure Code states that the accused and the prosecutor may file an appeal against a Council Decision. Articles 478-479 contain the conditions for the filing such a complaint. Article 483 of the Greek Criminal Procedure Code states that only the Prosecutor may file a petition for the review of a Council Decision.

<sup>13</sup> Article 37 of Greek Criminal Procedure Code.

<sup>14</sup> See S. Alexiadis, *Reporting a crime (Η κατάγγελλία του εγκλήματος)*, 1972, p. 17.

<sup>15</sup> Article 46 of the Greek Criminal Procedure Code.

which do not require the initiation of criminal proceedings (Articles 43 para. 3 and 47 para. 2 of the Criminal Procedure Code).

The term “suspect” (*ύποπτος*) is not defined under Greek law however, it was introduced as a term into the Greek Criminal Procedure Code following the adoption of Law 4236/2014<sup>16</sup> which implemented Directive 2010/64/EU and in relation to the rights afforded to suspects and accused (Article 99A of the Criminal Procedure Code). Practice shows that the suspect is a potential accused. Circular No. 1/2009 of the Supreme Court Prosecuting Office<sup>17</sup> recognises that during the preliminary examination we only have suspects yet they are afforded the same rights as those of the accused. In fact, it recognises that the only difference between a preliminary examination (*προκαταρκτική εξέταση*) and a preliminary inquiry (*προανάκριση*) is that during the first we only have suspects. The status of the suspect depends on the duration of the preliminary examination and therefore, is maintained pending either the filing of the complaint (*αρχαιοθέτηση*) by the prosecutor because there were insufficient indications or the initiation of criminal proceedings, where the suspect gains the status of the accused (Articles 43 para. 3 and 47 para. 2 of the Criminal Procedure Code).

It should be noted that the suspect does not have to be notified of the finalisation of the preliminary examination, neither does the civil claimant.<sup>18</sup>

On the other hand, the legal status of the accused is defined under Greek Law. According to Article 72 of the Greek Criminal Procedure Code, the accused (*κατηγορούμενος*) is the person a) against whom the prosecutor has initiated criminal proceedings, i.e. prosecution (*ποινική δίωξη*) and b) who is considered the perpetrator of a criminal act at any stage of the criminal investigation (*ανάκριση*).

Thus, the Greek Criminal Procedure Code recognizes two instances under which a person becomes the accused. In the first case, it is when the Prosecutor issues an order recognizing him/her as the potential perpetrator of a specific criminal act. In the second case, the person is charged with the potential perpetration of the criminal act when he/she is summoned to testify in their defense (*plea - απολογία*) before the inquiry officers (*ανακριτές*).

The perpetration of a criminal act is attributed to an individual at any stage of the criminal inquiry when there are sufficient indications (*επαρκείς ενδείξεις*) of their guilt or participation thereof, as per the wording of Article 43 para. 1 of the Greek Criminal Procedure Code. It should be noted, that the inquiry officer in practice usually invites a person they consider a suspect to testify as a witness instead. This means that the testimony is not regarded as a plea (*απολογία*) and therefore, the person is not afforded the status of the accused (nor suspect). In such cases, if this person later on acquires the status of the accused, their witness testimony should not be taken into account in any following procedures but should instead remain in the case file.<sup>19</sup> The accused then is invited to provide a new testimony – their plea – which instead will be taken into account. The violation of the above principle,

<sup>16</sup> Greece, Law 4236/2014 on the Implementation of Directives 2010/64/EU of the EU Parliament and Council of 20 October 2010 regarding the right to interpretation and translation during the criminal procedure (L 280) and 2012/13/EU of the EU Parliament and Council of 22 May 2012 regarding the right to be informed during criminal proceedings (*Για την ενσωμάτωση των Οδηγιών 2010/64/ΕΕ του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου της 20ής Οκτωβρίου 2010 σχετικά με το δικαίωμα σε διερμηνεία και μετάφραση κατά την ποινική διαδικασία (L 280) και 2012/13/ΕΕ του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου της 22ας Μαΐου 2012 σχετικά με το δικαίωμα ενημέρωσης στο πλαίσιο ποινικών διαδικασιών (L 142) και άλλες διατάξεις.*) (O.G. 33 A/11-2-2014).

<sup>17</sup> Supreme Court Prosecuting Office, Circular 1/2009, (*Εισαγγελία Αρείου Πάγου, Αρ. Εγκυκλίου 1/2009*), p. 4-5, available in Greek at: <http://www.eisap.gr/sites/default/files/circulars/1-2009.pdf>, last accessed on 05-02-2018.

<sup>18</sup> Misdemeanours Council of Larisa, Decision 455/2012.

<sup>19</sup> Article 31 para.1 of Criminal Procedure Code. See also Misdemeanours Council of Volos, Decision 203/2015 and A. Karras, Criminal Procedure Law (*Ποινικό Δικονομικό Δίκαιο*), Nomiki Vivliothiki, 2017, p. 396.

virtue of Article 171 (1)(d) of the Criminal Procedure Code, will lead to the absolute nullity of the procedure.<sup>20</sup>

According to Article 73 of the Greek Criminal Procedure Code, the status of the accused is maintained pending a) the issuing of a final judicial council decision of acquittal (*απαλλακτικό βούλευμα*) or b) the issuing of a final court decision of acquittal or conviction (*απαλλακτική ή καταδικαστική απόφαση*). This means that the status of the accused ends only through a court action. However, when the person has received the status of the accused during the investigation procedure and the prosecutor has not been convinced of his/her guilt, and refrains from initiating the prosecution, the status of the accused does not have to be revoked by a court or council decision and ends when the case is filed.<sup>21</sup>

When the accused passes away the criminal prosecution pending against him/her also ends (Article 310 para. 1 and 370 b of the Criminal Procedure Code).

On the other hand, if the inquiry officers determine that the accused is a person suffering from a disturbance in their intellectual functions (*διατάραξη πνευματικών λειτουργιών*), then they are allowed to issue an order which suspends the investigation process.<sup>22</sup> If the accused is being temporarily detained, then the same order will contain a provision ordering his/her transfer to a psychiatric detention facility or public psychiatric ward.

The status of the accused, finally, lasts as long as the statute of limitations (*παραγραφή*) of the relevant criminal act (Article 111 of the Greek Criminal Code). Prosecution of serious crimes (felonies) is barred after 15 to 20 years from the commission of the offense (20 years when the foreseen penalty is life imprisonment), misdemeanors after 5 years and minor offenses after one year. In this case, the Council or Court issues a relevant decision which terminates the prosecution.

In 2016, a law was adopted which eliminates the criminality and introduces a cessation of prosecution for certain offenses. According to the eighth article of Law 4411/2016<sup>23</sup> para. 1, the criminal offence is abolished and the prosecution of the following offences committed up to 31 March 2016 ceases: (a) for minor offences (*παιίσματα*) and (b) misdemeanors against which the law foresees a sentence of imprisonment of up to two (2) years or a pecuniary penalty; or both. The case-files related to the above offenses shall be filed by an act of the competent prosecutor or public prosecutor.

Finally, it should be noted that following the adoption of Law 4236/2014 which introduced Directive 2010/64/EU, the Greek Criminal Procedure Code was amended and thus according to Article 99A para. 1 of the aforementioned Code: the suspect or accused is without delay notified of the following rights: a) the right of an attorney, b) the right and preconditions for receiving free legal aid, c) the right to be informed of the charges, d) the right of translation and interpretation and e) the right to remain silent. Furthermore, more rights are recognized in reference to the accused held in detention, virtue of Articles 99B and 99C, which are analysed in the next section.

<sup>20</sup> A. Karras, Criminal Procedure Law, p. 396, and N. Androulakis, On the issue of the preliminary inquiry testimony of the accused (*Επί του προβλήματος της προανακριτικής απολογίας*), *NomikoVima* 22, p. 1349.

<sup>21</sup> Appeals Court of Ioannina, Decision No. 114/1964, *Poinika Chronika* IE/302.

<sup>22</sup> Explanatory Report for the Criminal Procedure Code, p. 10.

<sup>23</sup> Greece, Law 4411/2016 on the ratification of the European Convention of the Council of Europe on Cyber-crime and its Additional Protocol, related to the criminalisation of racist and xenophobic acts committed through Computer Systems – Adoption of Directive 2013/40/EU of the Council, regulation of penitentiary and crime-fighting policy and other provisions (*Κύρωση της Σύμβασης του Συμβουλίου της Ευρώπης για το έγκλημα στον Κυβερνοχώρο και του Προσθέτου Πρωτοκόλλου της, σχετικά με την ποινικοποίηση πράξεων ρατσιστικής και ξενοφοβικής φύσης, που διαπράττονται μέσω Συστημάτων Υπολογιστών - Μεταφορά στο ελληνικό δίκαιο της Οδηγίας 2013/40/ΕΕ του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου για τις επιθέσεις κατά συστημάτων πληροφοριών και την αντικατάσταση της απόφασης - πλαισίου 2005/222/ΔΕΥ του Συμβουλίου, ρυθμίσεις σωφρονιστικής και αντι-εγκληματικής πολιτικής και άλλες διατάξεις*) (O.G. 142 A/03-08-2016).



## 2. Custodial and non-custodial measures during proceedings

### 2.1. Alternative procedures

In recent years, following global developments on alternative measures at the pre-trial stage as well as due to the pressures on the criminal justice organizations because of extreme caseload, certain provisions have been introduced.<sup>24</sup> Accordingly, as mentioned above, the prosecutor may refrain from prosecution after conducting a preliminary examination which results in insufficient indications of guilt (Article 31 paragraph 2 Criminal Procedure Code). On the other hand, the following alternative procedures are restrictively provided in law, which may result in postponement or refraining from prosecution at this stage:

A) Victim compensation (reparation – *ικανοποίηση του παθόντος* under Articles 384 paragraphs 3-5 Criminal Code and 406 paragraphs 3-5 Criminal Code as amended by Law 3904/2010<sup>25</sup>) as an out of court settlement in cases the victim is fully compensated.

B) Criminal mediation in cases of intra-family violence (*ποινική διαμεσολάβηση*, Articles 11-14 Law 3500/2006<sup>26</sup>), where the prosecutor acts as mediator.

C) Postponement of prosecution in cases of drug related offences, under the condition that the suspect will participate in an official drug treatment programme (Article 31 paragraph 1(a) Law 4139/2013<sup>27</sup>). This procedure may result in refraining from prosecution if the treatment is successfully completed.

D) Criminal reconciliation in certain felony offences (*ποινική συνδιαλλαγή* Article 308B Criminal Procedure Code as added by Law 3904/2010), under the direction of the prosecutor.

### 2.2. Restrictive measures which can be imposed on the accused

Article 282 para. 1-4 of the Greek Criminal Procedure Code contains the preconditions under which custodial or non-custodial measures may be imposed during the preliminary criminal proceedings (i.e. investigation phase).

The inquiry officer (*ανακριτής*), according to Article 283 para. 1 of the Greek Criminal Procedure Code and under the preconditions of Article 282, following the plea of the accused has the option either to set the accused free or to issue an order which imposes custodial or non-custodial measures, which has to be approved in writing by the prosecutor. The prosecutor, in turn and prior to issuing a written approval, has the obligation to hear the accused and his/her defense attorney (*προηγούμενη ακρόαση*).

The most onerous inquiry act (*ανακριτική πράξη*) that can be imposed on the accused is his/her temporary detention (*προσωρινή κράτηση*), i.e. the deprivation of their personal freedom for a specific time period prior to their trial on the criminal charges. However, according to Article 282 para.

<sup>24</sup> Confederation of European Probation, M. Mavris, N. Koulouris and M. Anagnostaki, Probation in Europe: Greece, January 2015, p. 20-21, available in English at: <http://www.cep-probation.org/wp-content/uploads/2015/06/Greece-2015.pdf>, last accessed on 05-02-2018.

<sup>25</sup> Greece, Law 3904/2010 Redefining and improving the awarding of criminal justice and other provisions (*Εξ ορθολογισμός και βελτίωση στην απονομή της ποινικής δικαιοσύνη και άλλες διατάξεις.*) (O.G. 218 A/23-12-2010).

<sup>26</sup> Greece, Law 3500/2006 Addressing domestic violence and other provisions (*Για την αντιμετώπιση της ενδοοικογενειακής βίας και άλλες διατάξεις*) (O.G. 232 A/24-10-2006).

<sup>27</sup> Greece, Law 4139/2013 on abusive substances and other provisions (*Νόμος περί εξαρτησιογόνων ουσιών και άλλες διατάξεις*) (O.G. 74 A/20-03-2013).

2 of the Greek Criminal Procedure Code, this measure should be imposed only in exceptional circumstances and after all other alternative options of the same article have been exhausted.

Article 282 para. 1 of the Criminal Procedure Code contains an indicative catalogue of restrictive measures (custodial and non-custodial) which includes: pre-trial detention, bail (*εγγυοδοσία*), appearance on a periodical basis before the inquiry authorities or any other authority, travel ban or restriction to a specific location, ban from meeting or socializing with certain individuals and house arrest with electronic surveillance (i.e. ankle bracelet).

Statistical information on persons serving non-custodial measures can be found in the SPACE II Report of the Council of Europe, which has been updated till 05-09-2017.<sup>28</sup>

### **2.3. Pre-trial detention**

Pre-trial detention can be imposed if a person a) is accused of a felony, b) there are serious indications of guilt that the crime was committed, c) the person does not have known residence in the country or has made preparations to flee and d) has been a fugitive or has violated restrictions in the past or might commit other crimes.

During the pre-trial stage, if there are serious indications of guilt of the accused for felony or misdemeanor punished with imprisonment of at least three months, it is possible to order restrictive conditions under Article 282 of the Criminal Procedure Code, in order to prevent the risk of new crimes and to ensure that the accused will be present at the investigation or trial and subject to the execution of the decision (see Article 296 of the Criminal Procedure Code). Pre-trial detention is possible instead of restrictive conditions only when it can be decided, based on founded grounds, that restrictive conditions do not suffice or cannot be imposed (Article 282 of the Criminal Procedure Code). If the offence in question is punished with life sentence or imprisonment with a maximum limit of twenty years or if the act is committed serially or in the context of a criminal or terrorist organization or if the offence has resulted in a high number of victims, pre-trial detention can be imposed when, based on the specific features of the act, it can reasonably be expected that if left free the person might commit further crimes (Art. 282 par. 4 Criminal Procedure Code). The law specifically stipulates that the severity of the act is not in itself sufficient to justify pre-trial detention (Art. 282 par. 4 Criminal Procedure Code). In extremely exceptional circumstances, and if it can be established that restrictive conditions are not sufficient, pre-trial detention can be imposed also for the misdemeanor of serial negligent manslaughter, if the accused is likely to flee (virtue of Article 296 Criminal Procedure Code). In this case, the maximum limit of detention is six months.

These provisions do not apply to accused people with disability of 67 % or more and people awaiting trial with a disability of more than 50 % if their detention is problematic due to their limited capacity to serve themselves. In these cases, other restrictive conditions can be ordered including home restriction or hospitalisation upon request (Art. 557 par. 2 Criminal Procedure Code).

It should be noted that the Greek Criminal Procedure Code was amended in 2017 by Law 4478/2017,<sup>29</sup> which introduced Articles 99B and 99C. These Articles transposed articles 5, 7, 8 and 13 of Directive 2013/48/EU. Thus, according to Article 99B of the Criminal Procedure Code, the accused has the right to ask for a person of his choice to be informed, without undue delay, of the deprivation of his liberty. Where the accused is a minor, the parent shall be informed of the child's custody unless this is contrary

<sup>28</sup> CoE, Annual Penal Statistics, SPACE II, Survey 2015, *Persons serving non-custodial sanctions and measures in 2015*, Updated Version 05-09-2017, available at: [www.coe.int/en/web/prison/space](http://www.coe.int/en/web/prison/space), last accessed on 05-02-2018.

<sup>29</sup> Greece, Law 4478/2017 Ratification and amendment of Greek legislation for the legalisation, tracking, confiscation of financial gain from criminal activities and the funding of terrorism and other provisions (*Κύρωση και προσαρμογή της ελληνικής νομοθεσίας για τη νομιμοποίηση, ανίχνευση, κατάσχεση και δήμευση εσόδων από εγκληματικές δραστηριότητες και για τη χρηματοδότηση της τρομοκρατίας και άλλες διατάξεις*) (O.G. 91 A/23-06-2017).

to the interests of the minor, so that another appropriate adult or the authority responsible for the protection of minor is informed. If the accused is a foreign national and deprived of his liberty he/she shall have the right to ask that the consular authorities of the State of which he is a national be informed without undue delay. Under Article 99C, the accused deprived of his liberty shall have the right to communicate, without undue delay, with at least one third person indicated by him. In exceptional circumstances and in order to prevent immediate danger, the competent authorities may restrict or postpone the exercise of this right. In this case, it is first examined whether the accused can communicate with the person he suggests. On the other hand, the accused which is a foreign national and deprived of his liberty shall have the right to communicate without undue delay with the consular authorities of the State of which he/she is a national. He/she also has the right to be visited by the consular authorities, the right to chat and exchange correspondence with them, and the right to arrange legal representation with them, provided that these authorities have no objection.

The pre-trial detention varies in duration. Article 6 para. 4 of the Greek Constitution provides that the maximum duration of detention pending trial is specified by law. It sets however maximum limits: it cannot exceed a period of one year in the case of felonies or six months in the case of misdemeanors. In exceptional cases, these maximum limits can be extended by six or three months respectively, by decision of the competent judicial council (Article 282 of the Criminal Procedure Code). It is prohibited to exceed these maximum limits of detention pending trial, by successively applying this measure to separate acts of the same case (Article 6 para. 4 of the Greek Constitution). After 6 months or 12 months the Judicial Council is called again to decide on the continuation or not of the pre-trial detention for a further 6 months. The pre-trial detention cannot in any case exceed the 18 months (Article 287 of the Criminal Procedure Code). However, if during the time the accused is held in detention he/she is accused of another felony, the total duration of the pre-trial detention can be up to 30 months.

If the accused was arrested in the act of committing a misdemeanour, he/she can be kept in pre-trial detention. In such a case, they will be detained at the police station for 24 to 48 hours and will then be taken straight to court, where they will be tried under summary procedures, which is a fast-track procedure (*διαδικασία αυτόφωρου εγκλήματος*).

The procedure for challenging decisions on pre-trial detention is contained in article 285 of the Criminal Procedure Code. When detention is based on a warrant from the inquiry officer (*ανακριτής*), the accused can challenge the decision imposing restrictive conditions or pre-trial detention before the council of misdemeanor judges (*Συμβούλιο Πλημμελειοδικών*) within five days from the start of the pre-trial detention. The appeal does not suspend the execution of the order. If the decision on pre-trial detention was issued by the judicial council upon disagreement between the inquiry officer and the prosecutor (as presented above), no appeal is possible.

Article 474 para. 1 of the Criminal Procedure Code describes how the prisoner may file his appeal: A report is drafted by the secretary of the court of misdemeanors or the prison director (in case of pre-trial detention). The appeal is transmitted to the prosecutor of the court of misdemeanors (*εισαγγελέας πλημμελειοδικών*) and is introduced by him without delay with his proposal to the judicial council that decides irrevocably.

The council of misdemeanor judges (*Συμβούλιο Πλημμελειοδικών*) when examining the appeal can repeal the pre-trial detention or replace it with restrictive conditions.

In Greece, prison occupancy is a burning issue and one that dates back several years. The Council of Europe CPT Committee in a 2010 report<sup>30</sup> (based on visits conducted in 2009 in five Greek prisons)

<sup>30</sup> CoE, Committee on the Prevention of Torture, Report to the Government of Greece on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), CPT/Inf(2010)33, November 2010, available at: <https://rm.coe.int/16806965ee>, last accessed on 05-02-2018. The latest

referred to a ‘chronic overcrowding’ of Greek prisons with increasing numbers of detainees that exceed the capacity of prison institutions. During 2010-2014, overcrowding ranged from 124.8 % (2010) to 130.5 % (2011) to a percentage of 128.3 % for 2014.

According to “Prisonstudies.org” World Prison Brief data on Greece, as of January 1<sup>st</sup>, 2017, 29.6 % of the total prison population consists of pre-trial detainees.<sup>31</sup>

Year	Number in pre-trial/remand imprisonment	Percentage of total prison population	Pre-trial/remand population rate (per 100,000 of national population)
2000	2,217	29.1 %	20
2005	2,481	28.4 %	22
2010	3,541	31.2 %	31
2015	2,470	20.9 %	23
2017	2,829	29.6 %	26

The total population of prisoners is 9.956 as of 1.12.2017 (according to the Ministry of Justice).

According to the same World Prison Brief, as of 1.1.2017 female prisoners represent 5.5 % of the prison population, whilst foreigners represent 54.3 % of the prison population.<sup>32</sup>

Information on the overall prison population in Greece is also contained in the SPACE I Report of the Council of Europe, which is updated till 25-04-2017.<sup>33</sup>

Greece has been condemned several times by the European Court of Human Rights for excessive duration of pre-trial detention and inhuman conditions of detention, especially in relation to migrants.<sup>34</sup> Most recently, in the *Case of Stergiopoulos v. Greece* (App. no. 29049/12) the applicant, complained about the examination of his appeal against the order made for his detention.<sup>35</sup> On 23 November 2011 Mr. Stergiopoulos was arrested and held in Korydallos Prison. On 28 November 2011, the inquiry officer ordered his detention after questioning him. On 2 December 2011 Mr. Stergiopoulos appealed against the order for his pre-trial detention before the Judicial Council of the Athens Criminal Court. He requested that his appeal be examined “speedily”. On 19 December 2011, the public prosecutor at the Athens Criminal Court proposed that the applicant’s request be rejected. On 5 January 2012, the Judicial Council rejected the request and ruled that the applicant should continue to be held in pre-trial detention. It observed in particular that there was strong evidence that the applicant was guilty, that he had previously been convicted of fraud and theft and that the health problems he referred to could be treated in detention. On 3 February 2012 Mr. Stergiopoulos lodged an application for the detention order to be lifted subject to certain conditions. On 3 April 2012, the Judicial Council of Appeals allowed the application and the applicant was subsequently released.

Report of the CPT, issued in 2014, CPT/Inf(2014)26, can be found here: <https://rm.coe.int/1680696620>, last accessed on 05-02-2018.

<sup>31</sup> Prisonstudies.org, World Prison Brief data: Greece, available in English at: [www.prisonstudies.org/country/greece](http://www.prisonstudies.org/country/greece), last accessed on 05-02-2018.

<sup>32</sup> Prisonstudies.org, World Prison Brief data: Greece, available in English at: <http://www.prisonstudies.org/country/greece>, last accessed on 05-02-2018.

<sup>33</sup> CoE, Annual Penal Statistics, *SPACE I – Prison populations*, Survey 2015, Updated on 25-04-2017, available at: [www.coe.int/en/web/prison/space](http://www.coe.int/en/web/prison/space), last accessed on 05-02-2018.

<sup>34</sup> Examples of cases where a violation of Article 5 (1) of the ECHR include: *Housein v Greece*, Decided 24-01-2014, App No 71825/11; *Barjamaj v Greece*, Decided 02-08-2013, App No 36657/11; *Ahmade v Greece*, Decided 25-12-2012, App No 50520/09; *Lica v Greece*, Decided 17-10-2012, App No 74279/10.

<sup>35</sup> ECtHR, *Stergiopoulos v. Greece*, App. no. 29049/12, Judgement 08-03-2016.

Relying on Article 5 § 4 (right to speedy review of the lawfulness of detention), Mr Stergiopoulos alleged in particular that the Judicial Council had not examined his appeal against the detention order “speedily” and that he had been unable to appear before the Indictment Division (Judicial Council). The ECtHR found that there had been a violation of Article 5 § 4 – concerning the obligation to rule “speedily”- and of Article 5 § 4 – concerning the obligation to have Mr Stergiopoulos appear before the Indictment Division.

In the case of *Dimitrios Dimopoulos v. Greece* (App. No 49658/09, Judgment from 09/10/2012) concerning inhuman and degrading conditions of detention (art. 3 ECHR) and a non speedy decision on the application challenging provisional detention, the ECtHR found that there was a violation of Art. 3 of the Convention and Art. 5 § 4 as regards the applicant’s absence from the appeal hearing and the lack of a speedy review of the applicant’s appeal. Furthermore, in *Christodoulou and Others v. Greece* (App. no. 80452/12) Mr Christodoulou was detained on remand in Salonika prison.<sup>36</sup> The case concerned the conditions of his detention (registered as 90% disabled and suffers from numerous medical conditions) and the fact that the judicial council did not examine speedily his appeal against his detention order. Mr Christodoulou was remanded in custody on 2 October 2012 and placed in Salonika prison, charged with a number of offences related to white-collar crime. On 5 October 2012, he lodged an appeal against the detention order, arguing that his 90 % disability and his four hemodialysis sessions every week ruled out any risk of his absconding. The judicial council deliberated in his absence on 16 November 2012 then dismissed his appeal, without referring to his request to appear in person. He was released on 4 February 2013 by a decision of the Court of Appeal. On 4 March 2013, Mr Christodoulou was sentenced to eight years’ imprisonment for tax fraud with a stay of execution of the sentence subject to a surety payment of EUR 200,000. Mr Christodoulou fled and went into hiding to avoid arrest. He claimed that he could not afford to pay the sum requested and that his family was living on benefits. Relying in particular on Article 5 § 4 (right to a speedy decision on the lawfulness of one’s detention), Mr Christodoulou complained that the judicial council had failed to rule speedily on his detention order, and that he had not been allowed to appear in person before the judicial council or to apprise himself of the public prosecutor’s submission. The Court observed that the authorities’ decision was taken more than a hundred days after the proceedings had been lodged and it considered that there has been a violation of Article 5 § 4 of the Convention because of the national authorities’ failure to decide on the lawfulness of the applicant’s detention “speedily”.

In the case *Vafiadis v. Greece*<sup>37</sup> (App. No. 24981/07), the Court noted that the evidence taken into account in 2007 that resulted in the release of Vafiadis was known to the court when decisions to prolong detention were made (known residence, clear penal record, participation in rehabilitation programme). Even if the authorities were afraid of reoffending, the Court noted that the judicial council did not assess the impact of this information on alternative measures. The Court also noted that Vafiadis suffered from a neurologic condition and was a drug addict and had provided medical evidence certifying that the detention would endanger his health. Neither the prosecutor nor the judicial council made any reference to these arguments. The court accepted that there was a violation of Art. 5 § 3 of the Convention. However, it rejected that the practice of judicial councils to examine briefly the applications for release without going into the details of each case made applications for release *ab initio* doomed to fail.

<sup>36</sup> ECtHR, *Christodoulou and Others v. Greece*, App. no. 80452/12, Judgement 05-06-2014.

<sup>37</sup> ECtHR, *Vafiadis v. Greece*, App. No. 24981/07, Judgment 02-07-2009.

Finally, even national courts have dealt with the conditions for imposing pre-trial detention as well as the conditions for substitution of pre-trial detention with restrictive conditions<sup>38</sup> and the reasoning required for pre-trial detention.<sup>39</sup>

There are no other legal restrictions applicable to suspects and accused which are not directly linked to the criminal procedures.

## 2.4. Good practices

The European Prison Observatory in its 2016 Handbook referred to the early diversion from prosecution for young drug offenders as a good practice in Greece.<sup>40</sup>

According to the aforementioned, from June 2012 to April 2015 a pilot project for early intervention and diversion was conducted by the Greek Organization Against Drugs<sup>41</sup> (OKANA). This was aimed at diverting from prosecution young people (aged from 13 to 24) arrested for drug offences. The project aimed not only to provide an alternative to prosecution and imprisonment but also to offer an early diversion from the path of drug use. Those selected for the project were offered assessment at an early stage, and given support and advice. They were able to participate (voluntarily) in therapeutic programmes and be referred if necessary for addiction treatment. The pilots were conducted in Athens and Thessaloniki and 263 adolescents, young adults and their families were referred to the programme.<sup>42</sup> At the time of writing of the aforementioned handbook the pilot had ended. There is a proposal for it to restart and develop a network of services and interventions aiming at a holistic approach of dealing with the immediate needs of marginalized populations of drug users, the protection of their children, social cohesion.

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<sup>38</sup> Council of Appeals of the Aegean Decision 17/2013, Court of Appeals of Piraeus Decision 20/2014.

<sup>39</sup> Court of Appeals of Thessaloniki Decision 373/2014.

<sup>40</sup> European Prison Observatory, *Alternatives to Imprisonment in Europe: A handbook of good practice*, May 2016, p. 29, available at: [www.prisonobservatory.org/upload/Good%20practice%20handbook%20AS.pdf](http://www.prisonobservatory.org/upload/Good%20practice%20handbook%20AS.pdf), last accessed on 05-02-2018.

<sup>41</sup> For more information on the Organisation 'OKANA' visit: [www.okana.gr/2012-04-03-07-49-40](http://www.okana.gr/2012-04-03-07-49-40), last accessed on 05-02-2018.

<sup>42</sup> See also, P. Skandami, M. Vetouli, E. Kerasiote, E. Kafetzopoulos, M. Malliori, *Early intervention for young users of illicit psychoactive substances who present delinquent behaviour, (Εγκαιρη παρέμβαση σε νεαρούς χρήστες παράνομων ψυχοδραστικών ουσιών με παραβατική συμπεριφορά)* Archives of Hellenic Medicine 2016, 33(1), p. 115–123, Abstract in English at: [www.mednet.gr/archives/2016-1/pdf/115.pdf](http://www.mednet.gr/archives/2016-1/pdf/115.pdf), last accessed on 05-02-2018.

## 3. Disclosure of information

### 3.1. Principles governing the pre-trial phase

According to Article 241 of the Criminal Procedure Code, the investigation is carried out without publicity (*χωρίς δημοσιότητα*). This means that during the investigation phase citizens are banned from being present and monitoring the investigative acts. This is known as the principle of external or popular secrecy of the investigation (*εξωτερική ή λαϊκή μυστικότητα της ανάκρισης*). This secrecy is necessary, on the one hand, for the elucidation of the crimes, and on the other hand, for the protection of the accused, who might be subjected to a futile and morally degrading experience in case he/she is later on acquitted through a judicial council decision.

On the other hand, the imperative of protecting the individual freedom and rights of the accused led to the imposition of an “open” investigation, i.e. the disclosure of information to the accused and – virtue of the principle of equality- to the other litigant parties (such as the civil claimant and whoever is liable to damages), as well as their attendance before any investigative act.

This means that the principle of secrecy of the investigation does not apply to the parties of the case, who have full access to the case file and should be informed without delay of the entire investigative process.

Moreover, every accused is presumed innocent until proven guilty. The prosecution, arrest or detention of an individual does not constitute a precondition of guilt nor does it constitute proof thereof. This is the very notion of the presumption of innocence, a fundamental principle of modern criminal law and the condition *sine qua non* of the right to a fair trial.<sup>43</sup> The presumption of innocence of the accused until his/her guilt has been irrevocably and lawfully proven is not clearly stipulated in the Greek Constitution. However, it is implied through the constitutional guarantees of personal security and the principle of *nulla poena sine lege* (Articles 6 and 7 of the Greek Constitution) as well as the protection of one’s personality and personal life (Articles 5 and 9 of the Greek Constitution).<sup>44</sup> The national legislator has ensured this basic principle of presumption of innocence, by safeguarding multiple rights of the accused in the Code of Criminal Procedure.<sup>45</sup>

Another important principle of Greek Criminal Procedure Law is that it prohibits any affront against the personality of the accused perpetrated through the Media (*απαγόρευση της προσβολής της προσωπικότητας από τα μέσα ενημέρωσης*). It should be observed that the depiction of the investigation through the media – apart from violating the principle of secrecy – constitutes a flagrant violation of the presumption of innocence. Thus, Media reports should be restricted to a reasonable and acceptable framework and should refrain from depicting the accused as a guilty person, but should instead highlight that he/she is suspected of carrying out a certain crime.

“The accused is brought before court to be tried fairly, to be acquitted or convicted, but not to be publicly shamed”.<sup>46</sup> This phrase embodies the need to find a balance between the freedom of information and the fundamental right to a fair trial. A balance which takes into consideration on the

<sup>43</sup> P. Kostakos, The influence of the Media on the right to fair trial, (*«Η επιρροή των ΜΜΕ στο δικαίωμα για μια δίκαιη δίκη»*), Δικαιοσύνη και Μέσα Μαζικής Ενημέρωσης, p. 65.

<sup>44</sup> Council of State Decision 3336/2007, Council of State Decision 1380/2005.

<sup>45</sup> Indicatively these refer to the right of communicating the investigation documents (Art. 101 of the Criminal Procedure Code), the right to counsel (Articles 100 and 376 of the Criminal Procedure Code), the right to plea (Articles 102, 273 para. 2 and 36 of the Criminal Procedure Code), the right to summon witnesses (Articles 326, 327 and 581 para. 2 of the Criminal Procedure Code), the right to an interpreter for those who do not speak Greek (Article 233 of the Criminal Procedure Code), etc.

<sup>46</sup> In the original Greek text: *«Ο κατηγορούμενος οδηγείται στο δικαστήριο για να δικαστεί σε μια δίκαιη δίκη, να αθωωθεί ή να καταδικαστεί, να τιμωρηθεί, αλλά όχι να διαπομπευθεί»*, N. Androulakis, Fundamental principles of the criminal trial, (N. Ανδρουλάκης, Θεμελιώδεις έννοιες της ποινικής δίκης), 2007, p. 227.

one hand the freedom of press and the free and objective access to information by the general public, and on the other hand the need to protect the personality, the honor and the reputation of the accused from the over-expanding intervention of the Media which appears to have already decided on his/her guilt.

It should be added that the obligation to respect the presumption of innocence is also ensured in Article 3, para. 3 of Law 1730/1987 on the Hellenic Radio-Television, which outlines the framework of general principles regulating the operation of radio-television broadcasts and which, furthermore, stipulates that in relation to events connected to criminal actions, radio-television broadcasts should not only respect the principle of “innocent until proven guilty” but should also refrain from “passing judgment” on the individuals which appear to be responsible or suspected of carrying out these actions.<sup>47</sup>

It should be noted that virtue of Article 3 para. 1 of Law 2328/1995 on the Legal Status of private television and local radio stations, this obligation is not only limited to public television or radio broadcasts, but extends also to private broadcastings as a necessary pre-requisite for their licensing.<sup>48</sup> This obligation furthermore derives from the Greek Constitution itself<sup>49</sup> as well as secondary EU law.<sup>50</sup>

The presumption of innocence was also enshrined in the initial Reporters’ Code of Ethics, adopted in 1991 by the Greek Council of Radio-Television.<sup>51</sup> Today, the Code of Ethics of News and other journalist and political broadcasting, (P.D. 77/2003)<sup>52</sup> contains a special provision in Article 11, which stipulates that: “the principle of presumption of innocence of the accused until he/she is irrevocably convicted, is respected and therefore, the outcome of the court should never be predicated nor should the accused be referred to –directly or indirectly- as guilty” («[η] αρχή ότι ο κατηγορούμενος τεκμαίρεται αθώος μέχρι την αμετάκλητη καταδίκη του γίνεται σεβαστή και συνεπώς δεν προ εξοφλείται το αποτέλεσμα της δίκης ούτε οι κατηγορούμενοι αναφέρονται, άμεσα ή έμμεσα, ως ένοχοι»)<sup>53</sup>. The principle of presumption of innocence is therefore specified and amplified so as to clearly and undoubtedly prove that its fundamental objective is the respect of the individual’s personality, honor, reputation and private life when they appear to be suspected of committing a crime. Moreover, this entails an obligation to protect him/her from the publishing of their name or any information which may render them identifiable through the Media (including images). To this end, not only are degrading characterizations prohibited at the expense of the accused or suspect,<sup>54</sup> but also any other reference to their name or identity, as well as the use of their image.<sup>55</sup>

Moreover, according to Article 8 of Law 3090/2002,<sup>56</sup> releasing any photos or videos of individuals while they are being brought before the judicial, prosecutor, police or other authorities in violation of

<sup>47</sup> Greece, Law 1730/1987 Greek Radio and Television, (*Ελληνική Ραδιοφωνία και Τηλεόραση Α.Ε.*) (O.G. A145/18-8-1987).

<sup>48</sup> Greece, Law 2328/1995 Legal Status of private television and local radio, regulation of radio television market and other provisions («*Νομικό καθεστώς της ιδιωτικής τηλεόρασης και της τοπικής ραδιοφωνίας, ρύθμιση θεμάτων της ραδιοτηλεοπτικής αγοράς και άλλες διατάξεις*») (O.G. A 159/3-8-1995).

<sup>49</sup> See Article 15, para. 2 of the Greek Constitution.

<sup>50</sup> Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities (L 298/17-10-1989, p. 23-30).

<sup>51</sup> Article 10 para. 1 of Regulation n. 1/1991 of the Radio and Television Council (ESR) concerning journalist’s ethics in radio television (*Κανονισμού υπ’ αρ. 1/1991 του ΕΣΡ «περί δημοσιογραφικής δεοντολογίας στη ραδιοτηλεόραση*) (O.G. B’ 421/21-6-1991).

<sup>52</sup> Greece, P.D. 77/2003 Code of Ethics for news, journalistic and political broadcastings (*Κώδικας Δεοντολογίας ειδησεογραφικών-δημοσιογραφικών-πολιτικών εκπομπών*) (O.G. A’ 75/28-3-2003).

<sup>53</sup> Article 11 para. 1 of P.D. 77/2003.

<sup>54</sup> Article 11, para. 1 PD 77/2003.

<sup>55</sup> Article 11, para. 5, PD 77/2003.

<sup>56</sup> Greece, Law 3090/2002 Establishment of an Investigative and Control Body for Penitentiary Facilities and other provisions (*Σύσταση Σώματος Επιθεώρησης και Ελέγχου των Καταστημάτων Κράτησης και άλλες διατάξεις.*) (O.G. A 329/24-12-2002).



the aforementioned principles, is punished with up to three years imprisonment and a fine of twenty thousand to two hundred thousand euros.

The Greek Council of Radio-Television (ESR), acknowledging that the right to fair trial is a crucial element of the rule of law, and recognizing the previous effect of journalistic speech and mainly televised images, has emphasized through its recommendations, the need to maintain basic principles which should govern the information provided by the Media to for the public opinion and always on the basis of protecting the presumption of innocence.<sup>57</sup> The ESR has expressed its concern by acknowledging that “the pursuit of higher viewer ratings by certain television shows and news broadcasts, and through a manner which exceeds the limits of journalistic ethics, has garnered a negative dynamic of uncontrollable competition, tension, conflicting confrontation, lack of responsibility and composure” (*«η προσπάθεια αύξησης της τηλεθέασης από ορισμένες τηλεοπτικές ενημερωτικές εκπομπές και δελτία ειδήσεων, με τρόπο που ξεφεύγει από τα όρια της δημοσιογραφικής δεοντολογίας, έχει αποκτήσει μια αρνητική δυναμική ανεξέλεγκτου ανταγωνισμού, έντασης, συγκρουσιακής αντιπαράθεσης, ανευθυνότητας, υπερβολής και έλλειψης ψυχραιμίας»*).<sup>58</sup> It has instructed the television outlets to keep in mind their legal obligation to display due diligence and restraint when transmitting news reports and other news broadcasts<sup>59</sup> and calls for their constant vigilance against the risk of “transforming [the trial] into a peculiar commodity with private economic gain and at the social expense of diminishing our legal culture” (*«μετατροπής της [δίκης] σε ιδιόμορφο εμπόρευμα με ιδιωτικό οικονομικό όφελος και κοινωνικό κόστος την έκπτωση του νομικού πολιτισμού μας»*).<sup>60</sup>

On the other hand, the Council of State (*Συμβούλιο της Επικρατείας*) has accepted that, “the unsolicited involvement of the Media in pending criminal trials and in particular at the pre-trial (interrogation) stage seriously violates the presumption of innocence and offends the personality of the accused who is stigmatized, while at the same time leads to an unfair trial” (*«η αυτόκλητη ανάμιξη των ΜΜΕ στις εκκρεμείς ποινικές δίκες και ιδίως στο στάδιο της ανάκρισης παραβιάζει κατάφωρα το τεκμήριο αθωότητας και προσβάλλει την προσωπικότητα του στιγματιζόμενου κατηγορούμενου, οδηγεί δε ταυτόχρονα σε μια όχι δίκαιη δίκη»*).<sup>61</sup> In one case, the Council of State rejected the annulment claim against a Decision of the ESR, by reaffirming that, in order to protect and ensure the rights of the accused and any other individuals linked to the case, it is prohibited to reveal and broadcast the content of documents or other information of the criminal pre-trial phase.<sup>62</sup> It further added that this does not lead to a general and absolute prohibition of the right of the public to be informed, within the framework of radio and television broadcasts, on cases which are pending at the pre-trial phase. On the contrary, it contributes to the effective conduct of the judicial investigation and the impartiality of the relevant judicial authorities.<sup>63</sup>

In 2016, the Greek National Council for Human Rights published its recommendations the application of the presumption of innocence and how it should be addressed in light of the freedom of press.<sup>64</sup>

<sup>57</sup> ESR, Recommendation no. 2/5-8-2008, Directive 1/28-2-2003, Recommendation no. 1/18-9-2002.

<sup>58</sup> ESR, Recommendation no. 1/18-9-2002, p. 1.

<sup>59</sup> ESR, Recommendation no. 2/5-8-2008, p. 2.

<sup>60</sup> ESR, Directive 1/2003, 28-02-2003, p. 1.

<sup>61</sup> Council of State Decision 152/2004.

<sup>62</sup> Council of State Decision 891/2015, para.6 and 8.

<sup>63</sup> Council of State Decision 891/2015, para.6 και 8.

<sup>64</sup> GNCHR, Recommendations on the Freedom of Information and the Presumption of Innocence: In search of a balance, (*Ελευθερία Πληροφορίας και Τεκμήριο Αθωότητας: η Αναζήτηση της Αναγκαίας Ισορροπίας*), 1-6-2016, available in Greek at: [http://nchr.gr/images/pdf/apofaseis/dikaih\\_dikh/EEDA\\_2016\\_Tekmirio%20Athwotitas.pdf](http://nchr.gr/images/pdf/apofaseis/dikaih_dikh/EEDA_2016_Tekmirio%20Athwotitas.pdf), last accessed on 05-02-2018.

### 3.2. Principles governing the trial phase

As for the trial phase, according to Article 93, paras. 2 and 3 of the Greek Constitution, court hearings are public and every court decision is delivered through a public hearing. Therefore, according to Article 329 para. 1 of the Criminal Procedure Code, the hearing before an audience (*επ' ακροατηρίου συζήτησης*), as well as the recital of the verdict are carried out publicly at all criminal courts, meaning that anyone can be present during the court hearings. People under the age of 17 however, may – virtue a decision of the presiding judge – be prohibited from attending public hearings (Article 329 para. 1 of the Criminal Procedure Code). Moreover, for cases that might attract more attention and thus larger attendance, the presiding judge may restrict the number of attendees after convening with the prosecutor, in accordance with Article 329 para. 2 of the Criminal Procedure Code.

On the other hand, according to Article 93 para. 2 of the Greek Constitution and Article 330 para. 1 of the Criminal Procedure Code, court hearings are not public when there are risks to public moral, or for the protection of family or private life of the parties. In this case, the prosecutor and the parties prior to the trial apply to the court in order to issue a decision on a closed hearing (Article 330 para. 2 of the Criminal Procedure Code).

Finally, according to Article 96 para. 3 of the Greek Constitution and Article 1 of Law 3315/1955 and Article 7 para. 3 of Law 3090/2002, all minor courts hold hearings behind closed doors (*κεκλεισμένων των θυρών*).

### 3.3. Protection of personal data

Concerning the protection of personal data of the accused and suspects, it should be highlighted that under Greek Data Protection Law, they are in principle protected from the processing and publication of their personal data.

However, according to Article 3 para. 2b of Law 2472/1997:<sup>65</sup> *“In particular, in cases of criminal charges or convictions, it is possible to allow their publication by the Public Prosecutor's Office for the offences referred to in item b, paragraph 2 of Article 3 following an order by the competent Public Prosecutor of the Court of First Instance or the chief Public Prosecutor if the case is pending before the Court of Appeal. The publication of criminal charges or convictions aims at the protection of the community, of minors and of vulnerable or disadvantaged groups, as well as at the facilitation of the punishment of those offences by the State.”*

Processing of personal data is permitted when carried out by judicial-public prosecution authorities and authorities which act under their supervision in the framework of attributing justice or for their proper operation needs with the aim of verifying crimes which are punished as felonies or misdemeanors with intent, and especially with the aim of verifying crimes against life, against sexual freedom, crimes involving the economic exploitation of sexual life, crimes against personal freedom, against property, against the right to property, violations of legislation regarding drugs, plotting against public order, as well as crimes against minors (Article 3 para. 2b of Law 2472/1997).

Ever since 2007 the Greek authorities have often resorted to the publication of data of the accused with the purpose of alerting the public and gathering information<sup>66</sup> but also for reasons of protecting the general public and preventing/repressing crime (see Article 2 para. b of Law 2472/1997). In practice, following the order of the prosecutor, the data is published on the Hellenic Police website.

The most problematic case of such publication of data was that of 11 women, who were HIV positive, in May 2012. The publication included personal but also sensitive data such as their photos, their

<sup>65</sup>Greece, Law 2472/1997 on the protection of individuals from the processing of personal data (*Προστασία του ατόμου από την επεξεργασία δεδομένων προσωπικού χαρακτήρα*). (O.G.A 50/10-04-1997).

<sup>66</sup> Circular of the Supreme Court (*Areios Pagos*) No. 4/2016.

identification details, their profession (sex-workers), the fact that they were HIV positive and that they were being prosecuted. The Greek National Commission for Human Rights condemned the governmental authorities for the humiliating and degrading treatment of these women. It considered the publication a flagrant violation of the principle of human dignity, the right of privacy as well as personal data (including medical data), the right to social protection and the right of health, all of which are safeguarded by the Greek Constitution, European and international law.<sup>67</sup> The Greek Ombudsman also condemned the publication of personal data of the 11 women highlighting that it constituted an affront to human dignity and the rights of patients.<sup>68</sup> It added that the publication was wrongfully based on reasons of public health and safety since it did not take into account the need to protect basic fundamental rights of the women. On the other hand, the General Secretariat for Gender Equality characterised the women as victims of violence which were unduly stigmatised and thus re-victimised.<sup>69</sup> It should be noted that on 16 December 2016 the women, who were prosecuted for serial aggravated bodily harm and violating the law against prostitution, were acquitted on all charges by the Fourth Three-Member Court of Misdemeanours of Athens.<sup>70</sup>

<sup>67</sup> GNCHR, Press Release of 25 May 2012, available in Greek at: [http://nchr.gr/images/pdf/nea\\_epikairothta/deltia\\_tupou/DT\\_EEDA\\_orotheitikes.pdf](http://nchr.gr/images/pdf/nea_epikairothta/deltia_tupou/DT_EEDA_orotheitikes.pdf), last accessed on 05-02-2018.

<sup>68</sup> Greek Ombudsman, Press Release of 10 May 2012, available in Greek at: [www.synigoros.gr/resources/20120510dt.pdf](http://www.synigoros.gr/resources/20120510dt.pdf), last accessed on 05-02-2018.

<sup>69</sup> General Secretariat for Gender Equality, Press Release of 2 May 2012, available in Greek at: [http://old.isotita.gr/var/uploads/PRESS%20\(APO%20SEP%202010\)/DT\\_2-5-12\\_PORNEIA.pdf](http://old.isotita.gr/var/uploads/PRESS%20(APO%20SEP%202010)/DT_2-5-12_PORNEIA.pdf), last accessed on 05-02-2018.

<sup>70</sup> Vice, The justification of the HIV positive women came four years later, (*Η Δικαίωση των Οροθετικών Άργησε Τέσσερα Χρόνια*), available in Greek at: [www.vice.com/gr/article/3dz5d8/orotheitikes-gunaiques-2012-dikastirio](http://www.vice.com/gr/article/3dz5d8/orotheitikes-gunaiques-2012-dikastirio), last accessed on 05-02-2018.

## 4. Legal impact of proceedings on suspects and accused

### 4.1. Principles of presumption of innocence and non-excessiveness

As demonstrated earlier, Greek Criminal Procedure Law embodies the notion that every accused is presumed innocent until proven guilty. The prosecution, arrest or detention of an individual does not constitute a precondition of guilt nor does it constitute proof thereof. This means that we cannot expect any criminal proceedings to have serious and irreversible effects on the lives of the accused or suspects.

In light of the principle of secrecy (non-disclosure) which governs the pre-trial phase and analysed above, as well as the adherence to the presumption of innocence, there should be no legal impacts of proceedings on suspects and accused either. The authorities, in general should treat the accused as a non-guilty party.<sup>71</sup> This is also evident from the Code of Criminal Procedure itself, which states that the arresting authorities should treat individuals they are arresting with the best possible courtesy, they should respect their dignity, they should avoid uncalled for violence and they should not restrain them unless they are resisting or suspected of flight (Article 278 para. 2).<sup>72</sup>

What is more, the authorities should adhere to the principle prohibiting excessiveness (*αρχή απαγόρευσης του υπερ μέτρου*). This means that the investigative procedure should not be excessively burdensome, to the point that the accused experiences in an excessive and unjustified manner an affront to his/her legally protected rights under the given circumstances.<sup>73</sup> The investigating authorities therefore, should always balance the special conditions of every situation when applying various investigative acts (i.e. restrictive measures). For example, applying a very high amount for bail on an individual with limited financial resources should be avoided (as stipulated by Article 297 para. 1 of the Criminal Procedure Code) as should a travel ban on a business man, whose business activities are carried out abroad.

Thus, criminal proceedings in principle should not have any legal effects on the accused or suspects. However, there are exceptions to this rule.

It should be mentioned that in practice the accused when challenging restrictive measures imposed against them can invoke the disproportionate and unreasonable effect they may have on their employment and family status. In fact, it is considered a legitimate reason even for claiming compensation for wrongful pre-trial detention (pre-trial detention of an individual who is later on acquitted or sentenced with smaller penalty).<sup>74</sup>

### 4.2. Employment status of suspects or accused

In some cases, criminal proceedings do not affect the accused or suspect's work life at all.<sup>75</sup> Most people who have not had restrictive measures imposed against them or who have to adhere to more lenient restrictive measures (such as periodical appearance at the police station or bail) can carry on with their life until their trial. Given that the criminal proceedings are governed by the principle of non-disclosure (secrecy), they can even conceal it from their employers.

<sup>71</sup> See also Alexiadis, The presumption of innocence of the accused (article 6 para. 2 of the ECHR (*Το τεκμήριο αθωότητας του κατηγορουμένου (άρθρο 6 παρ. 2 ΕΣΔΑ)*), ΕΕΕυρΔ 1, 1986, p. 54.

<sup>72</sup> A. Karras, Criminal Procedure Law, p. 373.

<sup>73</sup> N. Androulakis, The limits of investigative action and the principle of necessity (*Τα όρια της ανακριτικής δράσεως και η αρχή της αναγκαιότητας*), ΠΧρ. ΚΕ/10&Α. Karras, Criminal Procedure Law, p. 371.

<sup>74</sup> See for example Court of Appeals of Athens Decision 5132/2015.

<sup>75</sup> Information was provided through personal interview with defence attorneys and practitioners.

However, there are cases when the crime has been reported by employers or where the employer has been made aware of the charges.<sup>76</sup> Moreover, restrictive measures might hinder the accused or suspect's ability to carry out his/her professional duties, such as travel bans or prohibition on meeting or socializing with certain individuals. Inevitably, there will be an impact on the suspect or accused professional life.

The impact on the employment status of the accused or suspect depends on the type of crime, the type of employment status, whether pre-trial detention has been imposed and whether it concerns the public or private field.

Under Greek Labour Law, employers may terminate employment contracts (dismiss) when their employee is being accused of committing a crime.

If the accused or suspect is in an open-term employment agreement (*σχέση εργασίας αορίστου χρόνου*) the employer may terminate the agreement (*καταγγελία σύμβασης*) without compensation:

- a) When the crime was committed while carrying out their work
- b) When the employee has been charged for a misdemeanor (Article 5 para. 1 Law 2112/1920<sup>77</sup> and article 6 of Royal Decree 16/18 July 1920 together with Article 7 para. 1 of Law 3198/1955<sup>78</sup>). It is generally accepted, that the misdemeanor committed outside the work relationship can provide grounds for termination of the agreement when it affects the continuation of the cooperation between employer and employee (for example, when a kindergarten teacher is accused of domestic violence).

In this case, if the accused or suspect is later on acquitted of the charges issued against him/her, the termination of the agreement cannot be annulled. There might be exceptions according to the contract which may render the termination unlawful and therefore, the employee should be rehired. The same applies when the employer submitted a criminal complaint (*μήνυση*) on false grounds with the purpose of terminating the contract. In the above cases, the employer is obliged to pay compensation.

Greek case-law has adopted the view that employees which have been dismissed from work because they were a suspect or accused of committing a crime but were then acquitted of all charges through a court or council decision should be compensated or even re-hired if they wish to by serving the decision to their former employer.<sup>79</sup>

If the accused or suspect is in a fixed-term employment agreement, the employer may terminate the employment agreement by invoking serious reasons (*σπουδαίος λόγος*) such as the violation of trust<sup>80</sup> or the inability of the employee to carry out his duties due to legal reasons<sup>81</sup> or even due to events in the personal life of the employee which are capable of affecting his/her employment status. The terms of compensation applicable above (open-term agreement) also applies here.

Compensation due to pre-mature termination of work contracts can be sought through the civil courts and the labor procedures (*εργασιακές διαφορές*). The Civil Courts are responsible for examining the legality of the termination of contract and the amount of compensation which should be awarded and whether the individual should be re-hired (Articles 621-622 of the Greek Civil Procedure Code).

<sup>76</sup> Information was provided through personal interview with labour law practitioners.

<sup>77</sup> Greece, Law 2112/1920 on the mandatory termination of employment contracts with private employees as amended (*περί υποχρεωτικής καταγγελίας σύμβασης εργασίας ιδιωτικών υπαλλήλων*) (O.G. A 67/18-03-1920).

<sup>78</sup> Greece, Law 3198/1955 on the amendment and complement of provisions on termination of employment relationships (*Περί τροποποίησης και συμπλήρωσης των περί καταγγελίας της σχέσεως εργασίας διατάξεων*) (O.G. A 98/20/23-04-1955).

<sup>79</sup> Areios Pagos Decisions 991/2015, 1829/1999 and 1106/2000.

<sup>80</sup> Areios Pagos Decisions 810/1974 and 1711/2007.

<sup>81</sup> Areios Pagos Decision 632/1973.

Recently, the Greek Civil Procedure Code was amended so as to include faster procedures for individuals who had been unlawfully fired. The amendment of Article 621 of the Civil Procedure Code established the priority of legal differences arising from unlawful termination of work contracts, as well as those amounting from unpaid salaries.<sup>82</sup> The discussion of such cases should without exception take place within 60 days after the application has been filed. If the discussion is deferred to another day, it should be within 30 days. The Court's decision should be published within 30 day after the trial. This provision ensures the fast resolution of relevant differences, which are socially quite sensitive, with obvious advantages for the employee, who is in need of receiving his wages at an appropriate time or of returning to work.<sup>83</sup>

For accused or suspects who are also public servants, Article 103 of Law 3528/2007 and article 107 of Law 3584/2007 leads to the *ipso jure* suspension of the employee which can only be revoked by a Disciplinary Board.

### **4.3. Education and family status**

Greek law does not include any provisions which allow for the suspension or expulsion of a student because he/she is suspected or accused of a crime. Education is not affected unless restrictive measures are in place and render its enjoyment difficult.

Family status can be affected when the parent is placed in pre-trial detention and there is no other relative to take charge of a child's custody. The child will be placed in protected custody and a social worker will be appointed. Article 1598 of the Civil Code on guardianship applies.

Greek law does not include any provisions which allow for the removal of social security status when a person is suspected or accused of committing a crime. Social security is mandatory by law and individuals are insured at organizations which are set up for their specific type of employment (public servant, entrepreneurs, private employees etc.).<sup>84</sup> Both the employee and the employer participate in paying the insurance contributions. Depending on the type of contract the sum is paid in full by the employer, within the period provided by law. Therefore, given that social security is linked to the employment status, it could be indirectly affected by the termination of contract as we saw earlier.

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<sup>82</sup> Article 47 Law 4488/2017 on Pension measures of the State and other social security provisions, enhancing the protection of workers, the rights of persons with disabilities and other provisions (Συνταξιοδοτικές ρυθμίσεις Δημοσίου και λοιπές ασφαλιστικές διατάξεις, ενίσχυση της προστασίας των εργαζομένων, δικαιώματα ατόμων με αναπηρίες και άλλες διατάξεις.) (O.G. A 137/13-9-2017).

<sup>83</sup> Explanatory Report to Law 4488/2017.

<sup>84</sup> For more information see European Commission, Your Social Security Rights in Greece, 2017, available in English at: <http://ec.europa.eu/social/main.jsp?catId=1112>, last accessed on 05-02-2018.

## 5. Practical impact of proceedings on suspects and accused

### 5.1. Practical impact of proceedings

Even though Greek law does not allow for any lasting legal impacts of proceedings on the lives of suspects or accused, there are practical implications thereof. Personal interviews with accused show that one of the largest problems they have to face in practice is the overly long duration of proceedings. Most complain that it takes years before they can have their case heard before the Court.<sup>85</sup> This is also verified by the case-law of the ECtHR which led to the pilot judgements against Greece.

As we saw earlier, under some circumstances suspects and accused can be wrongfully dismissed from work. When a decision on their acquittal is issued either by the Court or the Judicial Council, they have the right to be re-hired or compensated by their former employer as soon as they serve them with the acquittal decision.<sup>86</sup> In practice however it is not that easy especially if we take into account the duration of proceedings. In any case, they can seek redress before the Civil Courts however it is an expensive and just as time-consuming procedure.

Interviews with accused<sup>87</sup> also showed that the financial dimension is another major issue. They claim that the criminal proceedings affect their financial status either because of costs to hire a lawyer either because they have been prevented from working or obtaining work. It should be mentioned that the Criminal Procedure Code does provide for legal aid. However, if the accused or suspect has not been awarded legal aid they have the added burden of lawyer fees.

Virtue of Article 6 para. 3 of the ECHR, the accused has the right to request the appointment of a lawyer free of charge as long as he /she cannot afford one. This is a necessary pre-requisite of the right to be heard (*δικαίωμα ακρόασης*).<sup>88</sup> The mandatory appointment of a lawyer to defend free of charge the accused who does not have the financial means to hire one himself/herself is also stipulated in Law 3226/2004<sup>89</sup> which provides a system of legal aid for those with a low income. It should be highlighted that the right to legal aid during the main investigation phase (*κύρια ανάκριση*) is clearly stipulated in Article 100 para. 3 of the Criminal Procedure Code. According to this article, the inquiry officer (*ανακριτής*) is obliged to appoint a lawyer *ex officio*, when it is explicitly requested by the accused. In other words, when a main investigation is being carried out, the accused has the right to ask the inquiry officer to appoint a lawyer to him. This is mandatory and irrespective of the financial status of the accused. Thus, legal aid is given to all of those accused of committing a felony (i.e. a serious criminal offence) irrespective of their financial situation and place of residence (as we saw in the first chapter main investigations are carried out for felonies).

However, the same should also apply to the preliminary examination phase, carried out according to Article 31 para. 2 of the Criminal Procedure Code and the preliminary investigation phase which is carried out without the prosecutor's order, in exceptional circumstances according to Article 243 para. 2 of the Criminal Procedure Code- when the accused does not have the financial means to hire a lawyer.<sup>90</sup> This is further reaffirmed in Article 99A of the Criminal Procedure Code which stipulates that the accused is immediately notified that he/she has – under certain conditions – the right to free legal counselling. The inquiry officer should also proceed to the *ex officio* appointment of a lawyer – even

<sup>85</sup> The information here was shared by practitioners, i.e. defence lawyers or lawyers specialised on labour law.

<sup>86</sup> Areios Pagos, Decision 991/2015.

<sup>87</sup> Personal interviews with individuals which were awaiting trial for a crime they allegedly committed. Note that these individuals did not have any restrictive measures imposed against them or just had to appear on a periodic basis at a police station.

<sup>88</sup> A. Karras, Criminal Procedure Law, p. 407.

<sup>89</sup> Greece, Law 3226/2004 Providing Legal Aid to citizens with a low income and other provisions (*Παροχή Νομικής Βοήθειας σε πολίτες χαμηλού εισοδήματος και άλλες διατάξεις*) (OG. A. 24/4-2-2004).

<sup>90</sup> A. Karras, Criminal Procedure Law, p. 408.

without the prior request of the accused- when he/she intends to have the accused admitted to a public psychiatric ward for observation with the purpose of conducting a psychiatric evaluation and the accused does not have a lawyer (Article 200 para. 1 of the Criminal Procedure Code).

Especially when a preliminary investigation (*προανάκριση*) is being carried out according to Article 243 para. 1 of the Criminal Procedure Code, the suspect may also exercise the rights included in Articles 101 and 102 which is read in conjunction with Article 99A which clearly refers to the rights of both suspects and the accused. These rights include the right to free legal counsel.

The criminal proceedings may affect the personal life of the suspect or the accused, even though the principle of secrecy calls for such proceedings to be private. In some communities where it is impossible to keep the identity of those involved private or due to extensive coverage by the Media, there have been cases where neighbours demand that such persons must leave the neighbourhood, or that such persons' children must be moved to another school.

One case, for example, is that of the Roma community in the town of Menidi and the shooting of a little boy. In brief, the members of the Roma settlement were holding celebrations and firing guns in the air, when one of the bullets ricocheted and killed a young boy playing in the near-by school yard.<sup>91</sup> The local community held violent protests and even demanded the removal of the settlement entirely.<sup>92</sup>

In the previous section, the case of the disclosure of information of 11 women who were HIV positive was mentioned as one of the most problematic cases of disclosure of information of the accused. The women were all acquitted by the Court and even the prosecutorial order disclosing their data and photos was revoked in an attempt to clear their names. During the hearing of their case, one of the accused women claimed that "I am trying to start over and leave this all behind. I am clean, I provide voluntary work and my health is strong. I tried to find a job but everything ended for me because of this story. Anytime I think of starting a healthy relationship, I am always afraid that they will go online and see those pictures and I will then have to explain to everyone what happened".<sup>93</sup> She added that "We all had a difficult time not only with this whole story but also because we found out about our medical condition through the Media".

The Council for Radio and Television has often delivered sanctions against broadcasters following the complaints of individuals who have been stigmatised by their coverage through the Media finding that the broadcastings violate the presumption of their innocence. Thus, it has accepted that references to an individual suspected of perpetrating a kidnapping as the "mastermind of the kidnap" and the man "who organised and carried out the abduction" were capable of violating the presumption of innocence and making people believe that he did indeed commit the crime.<sup>94</sup> Moreover, it has found that captions and headlines with phrases such as: "he raped for five years his fourteen year old daughter"<sup>95</sup> or that "the mother drowned her baby which was diagnosed with Down syndrome"<sup>96</sup> were in clear violation of the principle of presumption of innocence, especially since the captions

<sup>91</sup>ProtoThema, Police detain 23-year-old Roma suspect over death of 11-year-old school boy (photos), 11-06-2017, available in English at: <http://en.protothema.gr/police-arrest-23-yea-old-roma-suspect-over-death-of-11-year-old-school-boy-photos/>, last accessed on 05-02-2018.

<sup>92</sup> New Greek TV, Tension between Menidi residents and Roma, 12-06-2018, available in English at: [www.newgreektv.com/english-news/item/22700-tension-between-menidi-residents-and-roma](http://www.newgreektv.com/english-news/item/22700-tension-between-menidi-residents-and-roma), last accessed on 05-02-2018.

<sup>93</sup> News247, Innocent the women who were humiliated, justified four years later (*Αθώες οι γυναίκες που διαπομπεύθηκαν-δικαίωση τέσσερα χρόνια μετά*), available in Greek at: <http://news247.gr/eidiseis/koinonia/athwes-oi-gynaikes-poy-diapompeuthhkan-dikaiwsh-4-xronia-meta.4434974.html>, last accessed on 05-02-2018.

<sup>94</sup> ESR, Decision no. 198/8-4-2013, p. 41.

<sup>95</sup> ESR, Decision no. 336/11-7-2006, p. 4-5.

<sup>96</sup> ESR, Decision no. 324/4-7-2006, p. 14



included the identity of the accused.<sup>97</sup> The Council of Radio and Television in these cases found that these broadcasts only resulted in the public humiliation and stigmatisation of the suspects and the members of their families.

## 5.2. *The effects of pre-trial detention*

With regard to the substance of PTD, until today no in depth research is in place on the ways that the relevant decisions are made. In December 2015, the Centre for European Constitutional Law published a research report on the practice of pre-trial detention in Greece.<sup>98</sup> Despite the fact that the data generated through the research was not representative, it suggested, *inter alia*, the following interesting findings:

- 1) Although no specific groups are a priori connected to pre-trial detention, the personal and social circumstances of third-country nationals, especially the lack of permanent or known residence and the danger of fleeing made them more vulnerable to detention. The aim of pre-trial detention to ensure the presence of the accused in trial appears to have a negative impact on people who do not have permanent residence (mostly immigrants, foreigners) who are often detained, even though less restrictive measures would suffice, as no other effective alternatives exist.
- 2) The reasoning of pre-trial detention orders are often viewed critically by practitioners. Even when orders are considered justified, their reasoning is brief and general, repeats the legal provisions in force and do not examine in detail the facts in favour or against requirements for detention with specific references to evidence and the specific case. This is not in compliance with the ECtHR standards that require a convincing and specific justification.
- 3) While access to a lawyer, understanding the proceedings and access to the case file are overall guaranteed in the law, challenges are identified in regard to the representation of foreign nationals and their understanding of the proceedings (through the availability of interpretation and translation). While interpretation is available, its quality is not guaranteed. Translation of case file documents needs to be provided.
- 4) Decision making on pre-trial detention is not facilitated by bureaucratic procedures, organisational shortcomings, backlog and lack of human resources and infrastructure.

On the other hand, there are reports that those held in pre-trial detention in Greece, also have to face the impact detention may have on their mental health.<sup>99</sup>

## 5.3. *Compensation of those detained and later on acquitted*

Articles 533-545 of the Criminal Procedure Code establishes and regulates the compensation of those detained and later on acquitted, offered by the State. This rule is necessary and reasonable, since it concerns the restriction of rights perpetrated by the State authorities responsible for delivering justice.<sup>100</sup> The obligation of the State to compensate those who were wrongfully or unlawfully

<sup>97</sup>See for instance ESR Decisions nos. 4/3-7-2002, 5/3-7-2002, 6/3-7-2002, 7/3-7-2002, 8/10-7-2002.

<sup>98</sup> Greece, Centre for European Constitutional Law, The Practice of pre-trial detention in Greece, Research Report, December 2015, available at: [www.fairtrials.org/the-practice-of-pre-trial-detention-in-greece-research-report/](http://www.fairtrials.org/the-practice-of-pre-trial-detention-in-greece-research-report/), last accessed on 05-02-2018.

<sup>99</sup> See CoE, Committee on the Prevention of Torture, Report to the Government of Greece on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), CPT/Inf(2014)26, available at: <https://rm.coe.int/1680696620>, last accessed on 05-02-2018; E. Lambropoulou, Pre-trial detention in Greece: the Achilles Heel of the prison system, in van Kempen (Ed.), *Pre-trial detention, human rights criminal procedure law and penitentiary law, comparative law*, International Penal and Penitentiary Foundation, Vol. 44, 2012, pp. 415-462.

<sup>100</sup> Ch. Dedes, *Criminal Procedure (Ποινική Δικονομία)* 1991, p. 682; P. Papadatos, The compensation of crime victims by the State (*Η αποζημίωση των θυμάτων του εγκλήματος από την Πολιτεία*), 1981, p. 45; N. Amygdalos, The institution of

convicted, detained temporarily or deprived of their freedom through any other way is enshrined even in the Greek Constitution (Article 7 para. 4).

More specifically, according to Articles 533-537 of the Criminal Procedure Code, the individuals which may claim compensation from the State are: a) those temporarily detained, who were acquitted irrevocably through a Court or Council decision, b) those detained following a decision on their conviction, which was overturned irrevocably following a judicial remedy and c) those convicted and detained, who later on acquitted through a decision following an application for the repetition of proceedings (*επανάληψη*).<sup>101</sup>

Moreover, compensation is also owed to the aforementioned individuals when they are convicted to serve a sentence smaller than that initially served (Article 533 para. 1 of the Criminal Procedure Code). It is important to highlight that under Article 533 para. 2, those detained due to a conviction or through pre-trial detention according to para. 1 have the right to claim compensation, even if they have committed the criminal act, but for any reason where not sentenced (for example, pre-trial detention for a crime that has met the statute of limitations by the time it reaches the Court).

An independent claim for compensation under the same conditions is also available to those who were convicted or temporarily detained and had a legal obligation to provide financial support (i.e. child support) (Article 534 of the Criminal Procedure Code).

Regarding the State obligation to provide compensation, the Court that delivered the decision for the case is responsible to adjudicate thereon. At the hearing the Court issues a separate decision following a verbal or written petition of the individual acquitted and after he/she and the prosecutor have heard them (Article 536, para. 1)

If the petition is accepted, then the acquitted is granted a flat-rate daily subsistence compensation for overall implicit property damage and moral damages (non-pecuniary) which can neither be less than 8.80 Euros nor higher than 29 Euros per day. When assessing the amount to be paid, the court takes into account the financial and family status of the acquitted.<sup>102</sup> The lowest and highest rate of compensation mentioned earlier can be readjusted through a Joint Ministerial Decision of the Ministers of Justice and Finance (Article 536, para. 2).

A petition for compensation can be filed before the same Court of acquittal at a later stage (Article 537 para. 1). In this case, the acquitted should petition the prosecutor of the Court within 10 days of the announcement of the decision at the hearing or the notification of temporarily detainee on the council decision or court decision relieving him/her of all charges when he/she was not present for the hearing. The aforementioned time-period cannot be extended due to distance. The Prosecutor then introduces the petition to the Court or Judicial Council, which convenes especially and extraordinarily for its examination at the fastest available date following the filing of the petition (*«[ε]κδίκασή της κατά το δυνατό σε μία από τις πρώτες εργάσιμες ημέρες μετά την παράδοση της αίτησης»*) (Article 537 para. 2). The Court or the Council should ideally consist of the same judges who delivered the decision on the acquittal (Article 537 para. 3)

Finally, according to Article 543 of the Criminal Procedure Code, the provisions of Article 533-542 are also applicable to third-country nationals or stateless individuals.

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compensation for those wrongfully convicted and its application in practice (*Ο θεσμός της αποζημίωσης των αδικώς καταδικασθέντων και η εν τη πράξει εφαρμογή του*), ΠΧρ. ΛΔ'/982.

<sup>101</sup> This is an extraordinary redress mechanism provided through the Criminal Procedure Code, which allows for the repetition of proceedings when new information proving the innocence of the convicted turns up. This extraordinary redress mechanism applies to case of irrevocable Court decisions and is provided through Articles 527-530 of the Criminal Procedure Code.

<sup>102</sup> Athens Three-Member Felonies Court of Appeals, Decision 5132/2015.

If the criminal court recognises only the State's obligation to compensate the individual, without defining the amount or when the amount is deemed insufficient by the former accused, redress before the civil courts is also possible according to Article 663 and onwards of the Code of Civil Procedure (Articles 539-540 of the Code of Criminal Procedure). The civil courts will not decide on the obligation to award compensation but instead will determine the amount of compensation to be awarded. There is a statute of limitations on this claim which expires two years after the criminal court decision becomes irrevocable (i.e. cannot be contested through a legal remedy).

There is no available statistical data on the compensation decisions mentioned above.

## 6. Assessment of the impact of proceedings by the competent authorities

There are no available reports on the assessment of impact of the proceedings on the accused by the competent authorities and their practices. Interviews with practitioners indicate that police authorities responsible for investigations will examine any given case according to the strict instructions of the prosecutor handling the file. Thus, the manner in which the authorities will address the accused and treat him/her, depends on the instructions of the prosecutor. There are of course cases where the police authorities might overstep their boundaries and suffer the disapproval of the prosecutor (*επίπληξη*).

In any case, Greek Criminal Procedure Law contains safeguards which render the assessment of impact of the proceedings on the accused an obligation.

According to Article 240, para. 4, of the Criminal Procedure Code during the investigation any act is carried out in order to support the verification of the truth, and *ex officio* the guilt but also the innocence of the accused is examined, as well as any other element relevant to his/her personality/character which affects the sentencing as an aggravating or mitigating circumstance.

If the accused is a minor, a special investigation into their health, moral or intellectual status, their prior life, family conditions and overall environment is carried out.<sup>103</sup>

According to Article 179 of the Criminal Procedure Code, during the criminal procedure, and thus during the investigation phase, any type of evidence is acceptable. Thus, the inquiry officers are free to use any evidence they can find. According to Article 178 of the Criminal Procedure Code, the main types of evidence during the criminal procedure are: a) indications, b) autopsies (*αυτοψία*), c) evaluation reports (*πραγματογνωμοσύνη*) d) the plea of the accused (*απολογία*), e) witness testimonies (*μάρτυρες*) and f) documents (*έγγραφα*). This list is not exhaustive.

During the investigation phase, the authorities under Greek Criminal Procedure Law have to uphold, apart from the principles mentioned earlier in a previous section and in relation to the presumption of innocence, the following principles which derive from the principle of respect of human dignity:

- The principle of necessity<sup>104</sup> (applicable also during the imposition of custodial and non-custodial measures)
- The principle prohibiting excessiveness<sup>105</sup> (the investigation should not be overly burdensome for the accused in a way that infringes upon other rights)
- The principle of proportionality *strictosensu*<sup>106</sup> (the investigation should be carried out in a proportionate manner to the type of crime perpetrated)
- The principle of suitability<sup>107</sup> (the investigation should be suitable for accomplishing its purpose, which is the verification of the truth)
- The principle of non-self-incrimination or *nemotenetur se ipsumprodere/accusare* (see Articles 223 para. 4 and 273 para. 2 of the Criminal Procedure Code)

First, the accused has the right to refuse to respond to any inquiries (Article 273, para. 2 of the Criminal Procedure Code). However, in practice this right is not exercised because even though the silence of the accused cannot be used against him/her, it might inadvertently affect the judge's opinion in a

<sup>103</sup> A. Karras, Criminal Procedure Law, p. 368.

<sup>104</sup> N. Androulakis, The limits of investigative action and the principle of necessity, ΠΧρΚΕ/p.73.

<sup>105</sup> N. Androulakis, The limits of investigative action and the principle of necessity, ΠΧρ. ΚΕ/p.10.

<sup>106</sup> Th. Dalakouras, The principle of proportionality and measures for procedural enforcement (*Αρχή της αναλογικότητας και μέτρα δικονομικού καταναγκασμού*), 1993.

<sup>107</sup> N. Androulakis, The limits of investigative action and the principle of necessity ΠΧρΚΕ/10.

negative way.<sup>108</sup> Secondly, the accused has the right to prepare his/her plea in written form (Article 273, para. 2 of the Criminal Procedure Code). In this case, the inquiry office may resort to follow-up questions which the accused can refuse to answer.

Thirdly, if the accused does not resort to the aforementioned options (to remain silent or submit a written plea), then, according to Article 273 para. 3 in conjunction with Articles 223 paras. 2,3 and 5 and 225 of the Criminal Procedure Code:

- a) the accused should not be interrupted when providing his/her plea. Questions should be made after he/she has finished
- b) the inquiry authorities should avoid misleading questions
- c) every accused is questioned separately unless it is necessary to examine them while confronting another accused or a witness
- d) if the accused is going to identify individuals or objects, he/she is invited in advance in order to describe them in the best detail possible.

Most importantly, the accused is invited to support in their entirety all the reasons that contribute to his/her defence. Whoever is in charge of the investigation has an obligation to carefully and diligently examine any circumstance invoked by the accused in his/her defence, especially if it is useful for uncovering the truth (Article 274 of the Criminal Procedure Code).<sup>109</sup> If the inquiry officer refuses to look into circumstances and events presented by the accused in his/her defence, then the accused can challenge the validity of the procedure according to Article 171 para. 1d of the Criminal Procedure Code.<sup>110</sup> Within this framework, the accused can even propose the examination of witnesses in the support of his/her defence. The validity of the procedure can be challenged before the judicial council.<sup>111</sup> Absolute invalidity of the procedure can also occur when the person in charge of the examination of the accused (police investigator or investigating magistrate in the preliminary investigation) does not explain his rights in accordance with 103 of the Criminal Procedure Code and does not explain to him/her in full, with clarity and detail the act for which he/she is accused. Otherwise it would lead to a violation of one's right to defend him/herself.<sup>112</sup> The accused can also challenge the validity of the trial procedure when the judges have not taken into account the evidence submitted to it by the accused in his/her defence.<sup>113</sup>

Finally, the accused has the right to challenge any act of the pre-trial phase before the Judicial Council (through the prosecutor who will introduce the claim to the council) and especially in connection to the violation of the aforementioned principles.<sup>114</sup>

<sup>108</sup> N. Androulakis, *Fundamental Principles of the Criminal Trial (Θεμελιώδεις έννοιες της ποινικής δίκης)*, 2012, p. 73.

<sup>109</sup> See also P. D. Christopoulos, *The right of the accused to request the production of evidence (Το δικαίωμα του κατηγορουμένου να ζητεί την προσκόμιση αποδεικτικών μέσων από τις δικαστικές αρχές)* ΠΧρ 2016/721.

<sup>110</sup> See for example Areios Pagos, Decisions 1569/1990 and 1273/2009.

<sup>111</sup> Areios Pagos, Decision 498/2001.

<sup>112</sup> Athens Council of Misdemeanours, Decision 382/2016.

<sup>113</sup> Areios Pagos, Decision 1789/2016.

<sup>114</sup> N. Androulakis, *Fundamental Principles of the Criminal Trial (Θεμελιώδεις έννοιες της ποινικής δίκης)*, 2012.