



Valtetsiou 39, Athens 10681, Greece / [www.hlhr.gr](http://www.hlhr.gr) / [info@hlhr.gr](mailto:info@hlhr.gr)

DGI Directorate General of Human Rights and Rule of Law  
Department for the Execution of Judgments of the ECtHR  
F-67075 Strasbourg Cedex  
FRANCE  
Email: [DGI-Execution@coe.int](mailto:DGI-Execution@coe.int)

### **Communication**

**In accordance with Rule 9.2 of the Rules of the Committee of Ministers  
Concerning Nisiotis group of cases (34704/08)**

13 January 2022

Hellenic League for Human Rights

#### **Konstantinos Tsitselikis**

Professor, University of Macedonia-Thessaloniki

[kt@uom.edu.gr](mailto:kt@uom.edu.gr)

with contribution by **Nikolaos Koulouris**, Associate Professor, Democritus University of Thrace, on 2021 legislative amendments and the “strategic plan 2021-2023”

## I. Introduction

1. The present submission has to be read in relation to the report submitted on the 3<sup>rd</sup> September 2018 and its addendum of the 16<sup>th</sup> October 2020 on the *Nisiotis group of cases* regarding the conditions of detention in prisons in Greece. It aims to provide further information on the current state of the art in relation to detention conditions in Greece and the observance of Art. 3 and to comment on legislative measures taken by the government.
2. According to the Committee of Ministers of the Council of Europe, the implementation of this group of cases is under review until the Greek government effectively addresses the causes that led to the repeated violation of the Convention.<sup>1</sup>

## II. Description of the Organisation

3. The Hellenic League for Human Rights is the oldest human rights organisation in Greece (established originally in 1936 and re-established in 1953), member of the International Federation for Human Rights. It aims at human rights advocacy, public awareness, and elaboration of legal proposals. For the past years, detention conditions has been one of topics of high concern.
4. These cases concern the inhuman and/or degrading treatment of the applicants arising from poor conditions of detention in overcrowded prisons, including in prisons' disciplinary cells (notably in Ioannina, Korydallos, Diavata/Thessaloniki, Larisa, Alikarnassos, Tripoli, Korinthos, Komotini, Patras, Corfu, Grevena, Chios and Nafplion) between 2005 and 2017 (violations of Article 3). In a number of cases, the Court also found violations of Article 13 in conjunction with Article 3 on account of the lack of effective domestic remedies regarding the applicants' complaints concerning the conditions of detention. In Kalandia the Court also found a violation of Article 3 on account of inadequate conditions of the applicant's transfer by cellular vehicles between prisons or to hospitals.

---

<sup>1</sup> Recommendation Rec(2006)2 (952nd meeting, 11/1/2006) on the detention conditions, 1172nd meeting, 4-6/6/2013, decision on the execution of ECtHR judgments, at: <<http://hudoc.exec.coe.int/eng?i=004-15760>>

### III. Executive Summary

5. Detention conditions in Greece are characterized by chronic and structural problems. Overcrowding is a persistent and acute problem. Health care in prison also faces structural deficiencies<sup>2</sup>. These major issues caused a series of judgments by the ECtHR (*Nisiotis group of cases*) that found violation of Art. 3. The CPT and other international bodies criticized the Greek prisons for not been able to provide guarantees for human dignity of detainees. The Greek government need to draw up and implement a new detailed Strategic Plan following the initial, expired 2018-2020 document in view to make living conditions in prisons complying with Art. 3. The Report recommends, among others, that the government ensure “free space to move” of at least 3 sq.m. for each inmate, make health care accessible and adequate for all inmates, hire and train staff, and approve and implement the currently draft “Strategic plan on prisons” (2021-2023) through a specific timetable and consultation with all involved parties, including with civil society.

### IV. General Measures

6. In December 2020, the CM “noted with interest the criminal law amendments adopted in 2019, aiming at enforcing a more moderate criminal policy and resolving the structural problem of prison overcrowding”. However, this moment of hope has been overthrown. If one compares the document the Greek government submitted to the CM in October 2020 and the sentencing and other measures adopted since then, they would draw the conclusion that the policies applied by the Greek government have not tackled prison overpopulation or any other structural issue that concerns living conditions in the Greek prison facilities. The memo submitted by the government on 11 January 2022 has not added any substantial information. On the contrary, it shows that Greek authorities fail to take into account Council of Europe recommendations and priorities, insisting that the remedy to tackle overcrowding is a prison expansion policy increasing custodial institutions capacity and that transferring the prisoners’ surplus population from one overcrowded institution to another is a solution to the problem.
7. The “Strategic plan for the prison system 2018-2020” had entered into force in January 2018, but it has not been implemented by the government elected in July 2019. After two years, the Greek prison administration drafted the (not approved yet)

---

<sup>2</sup> Issues concerning inadequate medical treatment of detainees (raised in *Kalandia* and *Tsokas* cases) are examined in the context of the *Serifis group of cases*.

“Strategic Plan 2021-2023”, on the basis of persistent suggestions of the CPT and the report submitted in 2019 by the Directorate General of Human Rights and Rule of Law, entitled “Reducing Prison Overcrowding in Greece”.<sup>3</sup> However, it seems that the reference to the report by the government is ostensible as it does not correspond to the various recommendations formulated by the group of experts of the Council of Europe. The Greek government submitted in October 2020 their comments and plans on how they would comply with these recommendations.<sup>4</sup> However, the legislative measures that were gradually adopted do not comply with the recommendations adopted by the Committee of Ministers in December 2020<sup>5</sup>. Allocation of funds is a requirement which remains unfulfilled causing understaffing and low-quality health care services. The exceptionally high proportion of prisoners serving long-term and life sentences, in combination with restrictions and shortcomings in the implementation of alternative measures keep overcrowding at high levels in the great majority of closed prisons (with occupancy rates surpassing 130% and sometimes even 200%), while open (rural) prisons and therapeutic centers for prisoners are almost empty (with occupancy rates ranging from 14 to 48%). Understaffing,<sup>6</sup> unequally distributed overpopulation and inadequate health care are enduring structural problems, affecting a large number of detainees and prison officers throughout the Greek prison facilities.

8. Most of the recommendations addressed to the Greek government were not implemented and no structural measures have been adopted in order to address the causes which lead to the violation of Art. 3, such as improvement of health services according to the National Health System standards, reorganization of the prison administration, establishment of a permanent staff training institution and above all the preparation and implementation of a strategic plan. As regards prison occupancy, in January 2017, there were 9,559 prisoners in Greece. On the 1<sup>st</sup> January 2022, the number was 11,030. The total capacity of all Greek prisons amounted to 10,175 places, a disputable number because it includes accommodation in therapeutic custodial institutions, which is not additional capacity as prison beds in these institutions should be available to prisoners of other prisons who and when they face

---

<sup>3</sup> <<https://bit.ly/3dmCUig>>

<sup>4</sup> Secretariat of the Committee of Ministers, DH-DD(2020)893.

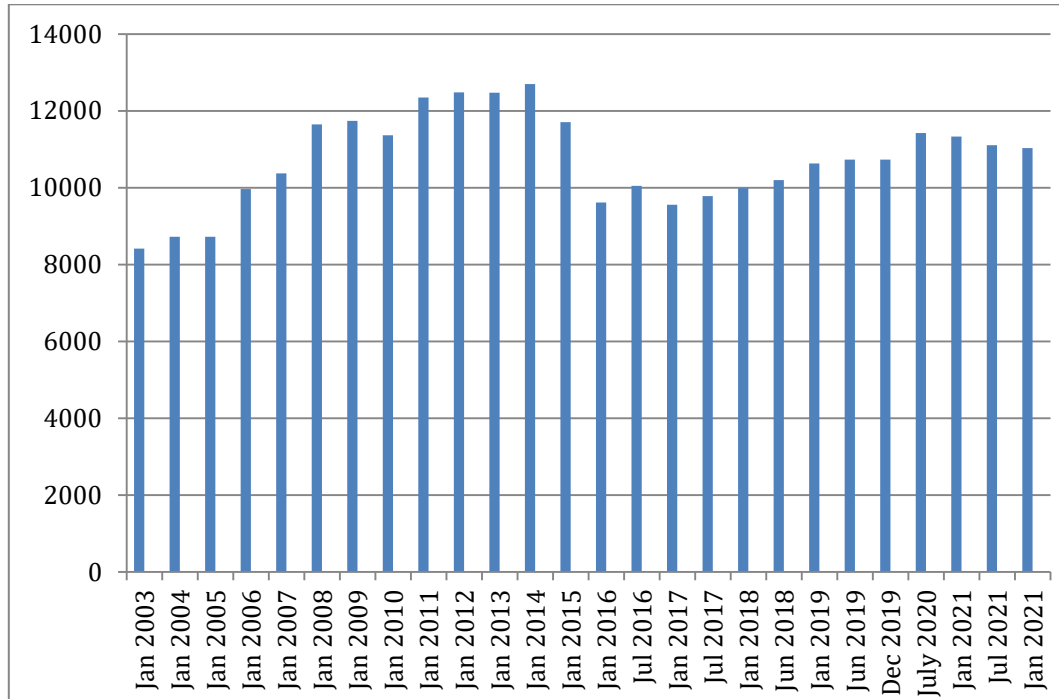
<sup>5</sup> CM/Del/Dec(2020)1390/H46-11, at:

<[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=0900001680a090e7](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a090e7)>

<sup>6</sup> The recent announcement that the appointment of 557 prison officers (custodial and perimeter security staff) is expected after the issuance of the final results of the 2018 tender is a positive but insufficient step, taking into consideration the extremely low staffing levels of the Greek prison system in all categories of prison officers, especially qualified staff.

health problems. As shown in the following chart, prisoners' population steadily increasing up to 2014 approaching 12,500, was reduced in 2015-2017 to less than 10,000 and started to rise again afterwards to 11,400, stabilized in the last two years to 11,100-11,200.

**Chart: Number of prisoners in Greece (2003-2022)<sup>7</sup>**



9. According to data provided by the Ministry of Citizen's Protection, occupancy in almost all prisons exceeds steadily their capacity, as the government has not taken any decongestion measures (such as early release, home detention or other alternative forms of punishment). The latest memo submitted by the government on the 11 January 2022 states that the calculation of prison capacity is based on a 4 sq.m. surface per inmate, according to the CPT standards, while it could be recalculated on the basis of 3 sq.m. and thus "the occupancy rate of each prison would be substantially decreased". At this point it is crucial to be stressed, first that prison capacity should be calculated on the basis of 6 sq.m. according to Art. 21 par. 4 of the Penitentiary Code (Law 2776/1999); Second, that 3 sq.m. is the threshold of violation of Art. 3 ECHR, and by default this could not be the basis for an official statement (the surface of a bed alone measures approximately 2 sq.m, while according to the ECtHR each inmate must dispose of at least 3 sq.m. of floor space and the overall surface area of the cell must be such as to

<sup>7</sup> Sources: Ministry of Citizens' Protection <<https://bit.ly/2GXnV2i>>, CPT Reports of 2006, 2008, 2010, 2012, 2014, 2016.

allow detainees to move freely between items of furniture<sup>8</sup>. In any case, one can observe that even if capacity is counted with the personal space available to a prisoner being 4 sq.m. **most of the prisons, constantly, operate in conditions of serious overcrowding** (occupancy % with reference to capacity):<sup>9</sup>

Korydallos prison (Athens)	131%	Larisa	136%
Komotini	188%	Tripoli	181%
Volos (for young prisoners)	202%	Avlona (for young prisoners)	138%
Ioannina	155%	Patras	148%
Alikarnassos	138%	Corfu	174%
Hios	124%	Kos	145%
Amfissa	138%	Halkida	154%
Diavata prison (Thes-niki)	118%	Trikala	118%
Malandrino	120%	Nafplion	141%
Neapoli	136%	Nigrita	124%

Despite the overcrowding in the majority of prisons, detention facilities of less restrictive conditions (favorable ) **are kept under-populated**:

Rural prison of Agia (Chania)	30%	Health centre of Korydallos	48%
Rural prison of Kassandra	28%	Rural prison of Tiryntha	14%
Rural Prison of Kassaveteia	31%	Addicted Prisoners' Detoxification Centre	41%

10. One of the first measures of the new government (elected in July 2019) “was to suspend the enforcement of community service that is foreseen by the new Penal Code for misdemeanour offenders (art. 98, Law 4623/2019). Moreover, the government rejected the early release schemes that their predecessor adopted to combat prison overcrowding, refusing to resort to them even in the COVID19 pandemic.

11. The 2019 Criminal Code, more liberal than previous legislation in some (but not all) aspects as regards conditional release of offenders having committed serious crimes (i.e. art. 105B par. 6) has been **extensively amended within a few months**, with Law 4637/2019 (GG A' 180/18.11.2019)<sup>10</sup> towards a more punitive direction in

<sup>8</sup> MURŠIĆ v. CROATIA, Application no. 7334/13, judgment of 12 March 2015.

<sup>9</sup> Statistical data by the MCP, <<https://bit.ly/2GXnV2i>> data of 1<sup>st</sup> January 2022.

<sup>10</sup> <<https://www.kodiko.gr/nomothesia/document/578067/nomos-4637-2019>>

particular cases as regards the time of a custodial sentence that must have been served actually in prison, before electronically monitored conditional release eligibility is considered (art. 110A par. 2 and 4).

12. A wide range of amendments passed by law 4855 in November 2021 “Amendments of the Criminal Code and the Code of Criminal Procedure” (GG A’ 215)<sup>11</sup> changing the content of the legislation provisions adopted in 2019. The new law introduced stricter and more punitive sentences for serious crimes, restricting judicial discretion with mandatory, exclusively life sentences in some serious crimes (i.e. amendments to art. 134, 299, 336, 351A, 380 of the Criminal Code) and increasing both the penalty imposable by the courts and the actual time an offender must stay in prison before his/her case is considered for conditional release (amendments of art. 105B and 110A of the 2019 Criminal Code). The same law restricts the range of crimes that are punishable with sentences convertible to alternative, non-custodial modes of execution such as suspended sentences (amendments to art. 99 of the 2019 Criminal Code) and electronic monitoring (amendments to art. 110A of the 2019 Criminal Code). The Ministry of Justice in their press release (2 November 2021) on the then draft law explicitly **admit clearly that “more strict sentences will keep offenders in prison for longer periods of time”**.<sup>12</sup>

13. In addition, it is worthy to be mentioned that conditional release (early release), the "safety valve" of the prison system to tackle overcrowding, granted almost automatically from 2015 up to the 2019 reform and as the rule before the emergency legislation of that period, is currently left more to the discretion of the competent judicial council, which became wider upon the new amendment of the 2019 Criminal Code, reasonably implying stricter and reduced use of conditional release.<sup>13</sup>

- Art. 106 of the 1950 Criminal Code: Conditional release shall be granted in any case, unless it is determined on specific grounds that the prisoner's conduct during the sentence served makes it absolutely necessary to continue their detention in order to prevent them from committing new punishable offences.
- Art. 106 of the 2019 Criminal Code: conditional release may not be granted if determined on specific grounds that the conduct of the sentenced person, during serving the sentence, makes it absolutely necessary to continue their detention in order to prevent them from committing new punishable offences. The mere invocation of disciplinary misconduct during serving the sentence is not sufficient for the non-granting of the release.

---

<sup>11</sup> <<https://www.e-nomothesia.gr/law-news/demosieutheke-sto-phek-nomos-4855-2021.html>>

<sup>12</sup> MoJ, press release “Amendments of the Penal Code and the Penal Procedure Code”, 2 November 2021.

<sup>13</sup> It has to be highlighted that the latest official data on early release date back to 2015 (Hellenic Statistical Authority: <<https://www.statistics.gr/el/statistics/-/publication/SJU30/->>>).

- 2021 draft Criminal Code: Conditional release may not be granted if determined on specific grounds that the conduct of the sentenced person, during serving the sentence, makes it necessary to continue their detention in order to prevent them from committing new punishable offences. The mere invocation of unjustified disciplinary misconduct during serving the sentence is not sufficient for not-granting the release.
14. As Elisavet Symeonidou-Kastanidou, professor of Criminal Law, commented on the 2021 draft law (now Law 4855/2021), "A key feature of the bill submitted by the Ministry of Justice to amend the new Penal Code is the dramatic increase in sentences and the threat of life imprisonment as the only sentence for a significant number of crimes. In this way, the Ministry certainly does not seek to solve any problem that preoccupied implementation- as it states. On the contrary, it seeks to impose its own view on the necessary amount of penalties, deliberately ignoring both the basic principles governing modern criminal law and the recommendations that have been made repeatedly to the Greek governments. Particularly, the Ministry ignores the recommendations of the Council of Europe [...] and the basic principles of criminal law [...], as the principle of proportionality".<sup>14</sup>
  15. On suspension of execution of sentences of criminal offences that are punished by up to three years' imprisonment, under certain conditions: Provisions on recidivism not allowing the court to suspend execution of imprisonment were abolished in 2019, but they have been reintroduced (art. 9 of the 2021 law, amending art. 99 of the Criminal Code). Consequently, when the suspension of a custodial sentence is considered, recidivism restricts the implementation of this sentencing option.
  16. Inmates serving sentences of crimes punished by custodial sentences except life imprisonment (the maximum of 15 years introduced in 2019 has been abolished in 2021) who have reached 70 years of age or are sentenced by such sentence at that age, serve their sentence/the rest of the sentence at home. The same applies to mothers that have children younger than eight years and to people suffering from certain very serious diseases.
  17. Community service has been introduced as a sentence in its own right and a sentencing option that can be imposed on criminal acts that are punished by up to three years' imprisonment. However, the implementation of community service in all its

---

<sup>14</sup> E. Symeonidou Kastanidou, "Tightening the sentences as a major orientation of the Ministry of Justice", *Efimerida ton Syntakton*, 18 October 2021, <<https://bit.ly/3FRDdz4>>



forms introduced in 2019 (as a sentence and a mode of execution of a custodial sentence) has been suspended according to art. 92, Law 4623/2019.

18. The New Code of Criminal Procedure (Law 4620/2019) foresees: a. refraining from prosecuting (a) misdemeanors punishable by up to three years' imprisonment and (b) specific crimes, on condition that the accused person shall provide full redress for the damage caused. However, the implementation of such diversionary institutions is excluded when impossible sentences for misdemeanours are longer than three years and when the investigated crimes are felonies. Plea bargain is implemented but there are no data or studies to show its real impact on prison population.
19. The Ministry of Citizen's Protection has considered to further extend the use of alternative measures of community work/service and electronic monitoring, but there are no concrete measures (excluding the assignment of drafting an implementation proposal for community service to a committee) adopted to implement them. On the contrary, as mentioned, community service implementation is suspended since 2019. Moreover, with 2021 amendments, electronic monitoring (still a pilot since 2014) is excluded for certain serious crimes although similar exceptions of the pre-2019 legislation were abolished with the new Criminal Code.
20. The programme "Strengthening prison healthcare in Greece", implemented by the Action Against Crime Department of the Council of Europe, in cooperation with the Ministry of Justice has just been completed. The programme included actions on combating prison overpopulation. The consultation that took place on 22 October 2021 (in Athens) between the Council of Europe experts and the Greek authorities showed that, although 2019 legislation and some 2021 amendments are in line with Council of Europe recommendations, many of these "recent developments in the field of crime and prison policy and planning are not harmonised with the principles and guidance of the Council of Europe for i) minimum use of prison ("as a last resort"), ii) promotion of community alternative sanctions and measures and avoiding of prison construction and expansion, iii) moderation instead of punitiveness in sentencing and sentence execution".<sup>15</sup>
21. **The 2021-2023 Strategic Plan** for the prison system has been drafted by the Ministry of Citizen's Protection, based on the principles of transparency, justice and

---

<sup>15</sup> Interview with prof. N. Koulouris, expert of the Council of Europe, participant in the meeting.

security for prisoners and prison staff, **but it has not been approved and published yet, no public consultation has taken place and it is not known whether and when it will be applied, while the first year of its supposed implementation has just ended.** The memo by the government of 11 January gives a false impression as if the Strategic Plan exists and is in force. On the contrary, the information given is the living proof that there is only a set of thoughts and actions, far from being a structured strategic plan describing the current situation of prisons, the vision of the authorities, the goals to be achieved, the available means and resources and the timeframe of particular actions, Moreover, no strategic plan exists as regards the development of community sanctions and measures, subject to the competence of the Ministry of Justice. There is just a set of vague principles, such as respect for human rights and international standards, proportionality and leniency with priority given to the mildest means of repression, rationalization of the administration, fight against stigma and social stigmatisation. Additionally, 20 month-study is currently assigned to a group of experts to present the state of the art in probation services and to propose ways forward, including the reorganisation of these services and the introduction of new working methods, but it is not possible to predict its outcome.

22. The above mentioned legislative measures result in more and longer use of custody, curtailing the chances for offenders to be conditionally released or subject to alternative sanctions and measures. Consequently, as similar policies introduced in the first decade of the 21<sup>st</sup> century show, it is expected that the prison population will gradually expand. The announced intentions of the government to implement an extensive prison building programme, increasing dramatically the overall capacity of the prison system, indicates that the growth of the prison population is a highly likely outcome of the “tough on crime policy” of the post 2019 period, amplified with Law 4855/2021. After all, should the prisons planned to be built or being under construction replace already existing facilities and expand their current capacity, it has to be clarified that it is not reasonably expected that such a policy will be implemented earlier than five years from now. It is exact that the prison of Drama, increasing the capacity of the prison system by 600 places, can be operative, but only on condition that new staff is appointed and trained, namely after a long period (the last tender to appoint new prison staff, not including Drama prison, has been issued in June 2018 and has just been completed). Nevertheless, even if these 600 new prison places of Drama prison were immediately available, it is not suffice to counterweigh the expected increase of prisoners, that will be the outcome of the current tough on crime policies and punitive legislation.

## **V. Concluding remarks and recommendations**

23. Up to date no structural measures have been taken by the Greek government in order to tackle efficiently the serious deficiencies highlighted by the *Nisiotis group of cases* adjudicated by the ECtHR. Therefore, we reformulate a series of recommendations and we kindly ask the Committee of Ministers to request the Greek government to:

Reconsider, approve and enforce the “Strategic plan” through a specific timetable and consultation with all involved parties, including civil society.

Specifically, the “Strategic plan” should:

- Guarantee allocation of funds for prisons in order to upgrade prison premises and staff and promote meaningful activities for prisoners.
- Ensure “free space to move” of at least 3 sq.m. for each inmate. Re-calculate and allocate the real capacity of prison facilities, according to the CPT standards and national legislation. Reallocate the prison population with transfers to rural, productive prisons which currently operate at a very low occupancy.
- Consider credible community sanctions and measures, resulting in the reduction of prisoners entries (front end measures) and facilitating their conditional release (back end measures) .
- Ensure formal and substantial incorporation of the Korydallos and Thiva therapeutic custodial institutions to the NHS and take measures to guarantee adequate medical care to all prisoners.
- Conduct regular training on security, crisis management, health issues etc, in relation to prison for all existing staff and hire additional (trained) staff of all categories (custodial, administrative, scientific).

We kindly request the Committee of Ministers to maintain the *Nisiotis group of cases* on the agenda for its upcoming meetings.

Hellenic League for Human Rights

Konstantinos Tsitselikis

*the*