

# TARGETED STAKEHOLDER CONSULTATION 2021 RULE OF LAW REPORT

## UN HUMAN RIGHTS REGIONAL OFFICE FOR EUROPE (OHCHR)

This document presents the UN Human Rights Office's contribution to the targeted stakeholder consultation held by the European Commission in 2021 in the context of the second annual rule of law report.

It is a compilation of information related to Greece, included in reports and documents of United Nations Treaty Bodies, Special Procedures and the Universal Periodic Review of the UN Human Rights Council, presented in a summarized manner. It also refers to statements and reports of the UN High Commissioner for Human Rights and her Office. The cited material covers the period 2018-2020.

It mentions both positive developments and challenges to the rule of law in Greece, as well as recommendations issued by the UN Mechanisms on how these challenges can be addressed and how the rule of law can be further strengthened.

In light of the methodology proposed by the European Commission the submission is divided in four pillars: national justice systems, anti-corruption frameworks, media pluralism and freedom and other institutional issues related to the checks and balances essential to an effective system of democratic governance.

## GREECE REVIEW

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### Justice System

#### ➤ *Independence*

In the 2020 report on its visit to Greece, the UN Working Group on Arbitrary Detention ascertained that individuals are normally presented before the Public Prosecutor within 24 hours of arrest, but considered that presentation before the prosecutorial authorities, whose role is to prosecute rather than adjudicate each case, cannot be equated with presentation before a judge as required under the International Covenant on Civil and Political Rights. The Working Group considered that, given their role and interest in prosecuting cases, prosecutorial authorities do not possess the requisite degree of independence to assess the necessity and proportionality of detention. It recommended that Greece comply with its obligations under the Covenant ([A/HRC/45/16/Add.1](#), para. 35).

#### ➤ *Quality of justice*

In its 2019 concluding observations, the UN Committee on the Rights of Persons with Disabilities expressed concern that Court buildings were insufficiently accessible, as were legal services and legal information, including in Braille, Easy Read formats and sign language. Procedural accommodations were also not fully ensured at all stages of civil, criminal and administrative proceedings, particularly for persons with hearing and speech disabilities. The Committee recommended Greece to ensure effective access to justice without any

discrimination, including effective access to legal services and legal aid, cost-free assistive technologies, and quality translation and interpretation in relevant languages and formats free of charge at all stages of the proceedings ([CRPD/C/GRC/CO/1](#), para 19-20).

In the 2020 report on its visit to Greece, the UN Working Group on Arbitrary Detention (WGAD) noted numerous concerns regarding access to justice in the criminal justice system. It was informed of cases where detainees accused of misdemeanours were not informed of their right to legal aid and assistance. In most instances, the detainees were brought before the Public Prosecutor without a lawyer when pretrial detention was ordered, and thus were not given a fair opportunity to contest their detention. The WGAD recommended to extend the right to legal assistance to all persons accused of any type of crime and to promptly inform of such right upon apprehension. In view of numerous reports about lack of interpreters, it urged Greece to provide interpretation services to all persons deprived of their liberty. Noting several credible reports about short criminal trials, often with no opportunity for the accused to address the court, while law enforcement agents were extensively heard, it called on Greece to ensure that the accused be given adequate time to present a defence and address the court ([A/HRC/45/16/Add.1](#), para 41-43, 46-47).

In its 2019 concluding observations, the UN Committee against Torture also noted reports that detainees had often had difficulty gaining access to counsel, a doctor, an interpreter or family members, and that police detention registers were not properly maintained. It recommended that Greece ensure all arrested or detained persons are afforded in practice all fundamental legal safeguards from the very outset of their deprivation of liberty, including the rights to be assisted by a lawyer without delay, to be informed of their rights, the reason for their arrest and the charges against them in a language that they understand, to have the assistance of an interpreter if necessary and to be brought before a judge without delay ([CAT/C/GRC/CO/7](#), para 14,15).

In its 2019 concluding observations, the UN Committee against Torture expressed concern at the lack of information on the evaluation of the impact of training programmes for judges, prosecutors, members of the police and coast guard and prison staff. The Committee recommended inter alia that Greece provide instruction and further develop mandatory in-service training programmes to ensure that all public officials are well acquainted with the provisions of the Convention against Torture as well as specialized training on the identification of cases of torture and ill-treatment ([CAT/C/GRC/CO/7](#), para 44-45).

In its 2019 concluding observations, the UN Committee on the Rights of Persons with Disabilities recommended that Greece continue to provide adequate training on the rights of persons with disabilities to judges, lawyers and law enforcement officials, progressively strengthening its efforts in this area ([CRPD/C/GRC/CO/1](#), para 20).

In the 2020 report on its visit to Greece, the UN Working Group on discrimination against women and girls welcomed the specific training provided for judges, prosecutors and others to increase awareness of all forms of violence against women and girls and to ensure that those actors are able to provide adequate gender-sensitive support to victims. Noting the National Commission for Human Rights had deplored the contrast between the significant number of reported cases of domestic violence and the very few perpetrators prosecuted and

punished, the Working Group noted that raising awareness about domestic violence was still essential ([A/HRC/44/51/Add.1](#), paras. 63, 58).

➤ ***Other***

In the 2020 report on its visit to Greece, the UN Working Group on Arbitrary Detention noted that it received credible information concerning non-nationals in pretrial detention who had been detained exclusively on the basis of police testimony, including when there was other evidence that did not support their guilt, and that similar instances were reported in cases of drug-related crime and organized crime. The Working Group urged the judicial authorities to ensure that they afford accused persons the presumption of innocence and fair consideration of all available evidence when making decisions to detain, regardless of the nationality of the accused ([A/HRC/45/16/Add.1](#), para 39).

In its 2019 concluding observations, the UN Committee against Torture considered that the definition of the crime of torture set forth in article 137A remained incomplete, to the extent that it did not mention acts based on discrimination of any kind, as outlined in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In addition, there was no specific mention of acts of torture committed by a third person at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. The Committee observed with concern that the maximum penalty for the basic offence of torture – without aggravating circumstances – has been reduced from 20 years to 10 years of imprisonment. ([CAT/C/GRC/CO/7](#), para 10).

## **Media pluralism**

➤ **Framework for journalists' protection**

In March 2020, the Special Rapporteur on the human rights of migrants entered in a dialogue with Greece about serious concerns regarding the rise of hostilities at the border area and in the Greek Aegean Sea against migrants, humanitarian workers providing assistance to them, and journalists carrying out their legitimate work reporting on the situation. He called on Greece to ensure their safety and the accountability of those responsible for such hostilities. This was followed by another communication sent by several Special Procedure mandate-holders in May 2020 reiterating similar concern, including about reports of attacks by unidentified individuals on journalists reporting on the arrival of migrants to Lesbos on 1 March 2020 and the arbitrary detention between 9 and 11 March 2020 of five foreign journalists reporting on migrant issues ([UA GRC 1/2020](#) and [AL GRC 2/2020](#), available at <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>; also [www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25736&LangID=E](http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25736&LangID=E)).

## **Other institutional issues related to checks and balances**

➤ ***Independent authorities***

In its 2019 concluding observations, the UN Committee against Torture welcomed the designation of the Greek Ombudsman as the national preventive mechanism (NPM) under the Optional Protocol to the Convention. Nevertheless, it expressed concern about the lack of

stable, regular and sufficient budgetary allocations and the absence of full-time staff assigned to the Office so that it could effectively carry out its mandate as NPM. It recommended that Greece ensure the operational autonomy of the NPM and provide it with the necessary financial and personnel resources for the performance of its work ([CAT/C/GRC/CO/7](#), para 42,43).

In the 2020 report on its visit to Greece, the UN Working Group on Arbitrary Detention identified a lack of a visible mechanism in places of deprivation of liberty to present claims to the Greek Ombudsman on violations of human rights and a general lack of awareness among detainees as to how to submit a complaint in relation to their detention and its conditions. It urged Greece to consider establishing a hotline for reporting in the prisons, taking into account the need for confidentiality of complaints; to display information about the hotline throughout the prisons; and to provide sufficient funding for regular and independent monitoring and oversight of places of detention ([A/HRC/45/16/Add.1](#), para 55).

➤ ***Accessibility and judicial review of administrative decisions***

In the 2020 report on its visit to Greece, the UN Working Group on Arbitrary Detention identified gaps resulting in lack of access to judicial remedies against immigration detention decisions. It noted with particular concern the policy of geographical restriction on the movement of asylum seekers from the islands and the lack of awareness among asylum seekers of the consequences of breaching this restriction, namely placement in detention. It observed that many detainees did not understand their right to apply for asylum and the corresponding procedure, with some individuals incorrectly believing that the process was initiated when they were fingerprinted, and that there was no established legal aid scheme during the first-instance asylum application, and interpretation was not consistently provided. Moreover, the Working Group noted that legal aid was provided on appeal only and, if a person did not have his or her own lawyer during the initial first-instance hearing and given that the Asylum Service lawyers were unable to meet all demands, it was practically impossible to find a lawyer within the prescribed time in order to prepare for the appeal. The Working Group also noted that inadequate legal aid was provided for challenging a second-instance negative decision on an asylum application, and furthermore the application for annulment would not automatically suspend deportation, and there was no guarantee that the applicant would not be removed during lengthy delays in the court hearing the matter ([A/HRC/45/16/Add.1](#), para 61, 83-85).

In its 2019 concluding observations, the UN Committee against Torture also raised concern that, in practice, detained migrants and asylum seekers were often denied fundamental legal safeguards, such as access to a lawyer and the right to challenge the lawfulness of their detention. It recommended that Greece guarantee judicial review or other meaningful and effective avenues to challenge the legality of administrative immigration detention ([CAT/C/GRC/CO/7](#), para 20, 21).

➤ ***The enabling framework for civil society***

In its 2019 concluding observations, the UN Committee against Torture was seriously concerned about consistent reports of intimidation and harassment of human rights defenders and humanitarian workers and volunteers. It regretted that only scant information

had been provided by Greece regarding several cases raised by the Committee, including the prosecution and later acquittal of three Spanish firefighters, two Danish volunteers accused of trying to help migrants enter Greece via Lesbos island, and the arrest and pending trial of two foreign NGO volunteers on people-smuggling, espionage and money-laundering charges. It urged Greece to ensure that human rights defenders and humanitarian workers and volunteers are protected against threats and intimidation, and to allow them the necessary latitude to carry out their activities; ensure that persons are not prosecuted for engaging in aid work, including maritime search-and-rescue activities; and refrain from detaining and persecuting humanitarian workers and volunteers as a means of intimidating them or discouraging them from delivering vital emergency assistance to refugees and migrants ([CAT/C/GRC/CO/7](#), para. 48-49).

In 2019 and 2020 (see also reply to question 35), several Special Procedure mandate-holders, individually or jointly, also entered in dialogues with Greece about several individual cases and the general environment for individuals and organisations working on migrant issues, notably the intimidation and criminalisation and the increase in hostility and violence. They pointed to the fact that on 4 February 2020, the Greek Parliament passed a new law requiring all NGOs working on migration issues to submit a record of their members, employees and partners to a new registry. They expressed deep concern that the new regulations under Joint Ministerial Decision 3063/2020 on the “Determination of the operation of the Registry of Greek and Foreign Non-Governmental Organizations (NGOs) and of the Registry of Members of the Non-Governmental Organizations (NGOs)” put undue reporting requirements on NGOs working in migrant rights, and that the wide margin of discretion given to the authorities to reject the registration of NGOs or its members may not be consistent with Greece’s international human rights obligations ([GRC 2/2019](#), [GRC 1/2020](#) and [GRC 2/2020](#), available at <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>; also [www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25736&LangID=E](http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25736&LangID=E)).

In her February 2021 global update to the Human Rights Council, the UN High Commissioner for Human Rights also expressed concern about measures in several EU countries restricting the work of organizations that protect migrants’ rights and deliver life-saving assistance. She noted that criminal or administrative proceedings had been initiated in Greece against humanitarian actors involved in search and rescue in the Mediterranean. ([www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26806&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26806&LangID=E)).