



**OPSIDIANET**

OFFENDERS WITH PSYCHO-SOCIAL AND INTELLECTUAL DISABILITIES  
IDENTIFICATION, ASSESSMENT OF NEEDS AND EQUAL TREATMENT

**PROCEDURAL RIGHTS  
OF SUSPECTS AND ACCUSED  
WITH PSYCHOSOCIAL OR  
INTELLECTUAL DISABILITIES  
GREECE**



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**GREECE**

**Centre for European Constitutional Law**

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## Introduction

The present research, conducted in the context of the OPSIDIANET project, aims at identifying gaps and best practices regarding the exercise of the procedural rights of suspects and accused persons with psycho-social or intellectual disabilities in Greece. In particular, the purpose of this report is to collect and summarise sufficient contextual data to better design and target the other project activities, by mapping the situation of suspects and accused with psychosocial or intellectual disabilities in the context of criminal proceedings in Greece.

The main body of the report consists in five parts. The first part will examine the legal framework on defining and determining the status and legal standing of individuals with psycho-social and intellectual disabilities in the Greek criminal procedure. To that end, the report will examine the Greek Constitution, Greek domestic laws, including the Greek Civil and Criminal code. The aim is to have a holistic overview of all legal provisions that might impact the status and standing of an individual with such disabilities in the criminal procedure.

The second part will examine the procedural aspects of the criminal procedure, the actors involved and the practice of the authorities involved. The Code of Criminal Procedure and the Code of Police Conduct, as well as landmark case law, will be the main source of information on criminal proceedings. The third part will then examine the custodial and non-custodial measures applicable to individuals with psycho-social and intellectual disabilities throughout the criminal proceedings, as well as after the conclusion of the trial, including the practices related to the relevant decision-making processes. In addition, part IV will be dedicated to the examination of the involuntary admission and involuntary treatment in Greece. We will examine the legal framework at play, the cases where it intersects with the criminal process, and the practical issues arising from it. Finally, in Part V, we will present our observations, in a short section of Promising practices which will include critical assessment and room for improvement in the current system. The bibliography and detailed list of best practices are presented in Annex.

## Methodology

The main method of collecting data for this report was desktop research. This included extensive research of the legal framework in Greece, by examining health laws, criminal laws, the Criminal and Civil Codes, the Code of Criminal Procedure and the Constitution. In addition, the research extended to case law, reports and findings from NGOs, the Greek Ombudsman, and international legal documents applicable to Greece.

What is more, to the extent possible and within the timeframe of the research, attempts were repeatedly made to communicate with competent authorities in order to document their



perspective on the practical aspects of the issue at hand. These were not particularly successful, either due to time constraints or unwillingness to provide information. To fill in the gaps resulting from this lack of direct communication, additional research was conducted on practices, standards, guidelines and processes for educating public servants, drawing from various sources such as publications, government websites and digital news sites.



## Part I: Legal status of individuals with psycho-social and intellectual disabilities

### The Greek Constitution

The Greek Constitution establishes in *Article 4*, paragraph 1, that all Greeks are equal before the law.<sup>1</sup> This legal equality signifies the principle of equal treatment by the State of all citizens, without discrimination, as well as the equality in rights and obligations.<sup>2</sup> This right to equality before the law has a complimentary or supplementary role, so as to cover all possibilities and fields of applications that might not be explicitly and exhaustively enumerated in the text of the Constitution.

The right of equality before the law as established in the Constitution is not binding only during the application of the law by a judge or any other administrator, but, is binding towards the legislator as well, making sure that any further legislative acts would incorporate the spirit of this right. The notion of equality does not entail numerical equality, does not preclude the same or identical treatment in all situations regardless.<sup>3</sup> This means that equality should be seen in its substance and applicability; as such individuals with similar status and situation must be treated in an equal basis, while individuals that are in an unequal situation compared to others should be treated in such a way, even favourably, so as to lift them up and equate them to others.<sup>4</sup>

In particular, *Article 21* makes concrete reference to individuals with disabilities and specifies that, “*persons suffering from incurable bodily or mental ailments are entitled to the special care of the State*”, while the State “*shall care for the health of citizens and shall adopt special measures for the protection of youth, old age, disability and for the relief of the needy*”.

In a similar manner to *Article 13* of CRPD, the Greek Constitution ensures access to justice through the establishment of judicial protection for all citizens, including for individuals with any disability. *Article 20*, paragraph 1 spells out this right as “*anyone has the right to the provision of legal protection from the courts and may argue before those her views for her rights or interest, according to the law*”.<sup>5</sup>

Finally, the Constitution of Greece includes two more Articles that can contribute to the fortification of the rights of individuals with disabilities. *Article 2*, paragraph 1 guarantees the

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<sup>1</sup> The Constitution of Greece, as revised by Parliamentary Resolution of May 27th, 2008, available 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).

<sup>2</sup> Dagtoglou, P.D. (2011), *Civil Rights*, Ant. N. Sakkoula Publications, pg. 1031.

<sup>3</sup> *Id.*, supra note 5, at pg. 173.

<sup>4</sup> Chrysogonos, K. (2006), *Civil and Social Rights*, Legal Library, pg. 119.

<sup>5</sup> *Id.*, supra note 19.



respect and the protection of human dignity as an outstanding principle within the Greek legal order, and which the Greek State has an obligation to ensure. *Article 5*, paragraph 1, of the Constitution guarantees the free development of the personality of all citizens, individually and as a whole in all areas of everyday life. At the same time, in paragraph 3 of the same Article, the Greek Constitution guarantees that the personal liberty of an individual is inviolable. In that respect, any prosecution, arrest, imprisonment or otherwise confinement should only take place under the strict letter of the law.

## The Civil Code

As we observed above, every Greek citizen enjoys equality before the law, has the right to determine freely their personal and social lives, and have the right to enjoy the protection of the Courts whenever their rights are violated. To exercise nonetheless those equal rights and obligations, it is necessary for one to enjoy legal capacity to act, which is the ability to take decisions with legal effect and enter into legal agreements. An example would be minors, which bare no legal capacity to act, which is displaced to their parents or legal guardians, until the fulfil the 18<sup>th</sup> year of their age.<sup>6</sup>

Legal capacity is paramount for almost all legal relations. It constitutes an expression of individual autonomy, and at the same time can affect all aspects of the everyday life and development of an individual.<sup>7</sup>

The Greek legal system determines and differentiates on the cases where an individual might have limited legal capacity, or no legal capacity. In cases of a person with limited legal capacity, he or she may enter into legal agreements only under the conditions prescribed by law, otherwise, such agreements will be null and void.<sup>8</sup>

Persons with mental health problems, psycho-social or intellectual disabilities, and disabilities in general might find themselves with a limited or restricted legal capacity. This does not mean that because of their functional impediments, solely because of their disability, their right to decide and participate equally is lost. Such a status based approach, is not found in the Greek Civil Code. The legal systems and the Civil Code intervenes when needed to either substitute decision making or provide support to enhance decision making capacity, in the spirit of *Article 12* of the CRPD.

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<sup>6</sup> Mousmouti, M. (2016), Mental Illness and the ability to take decisions, in *The Age of Autonomy: A guide to Rights in Mental Health*, National Confederation of Persons with Disabilities, available at [http://psydikaiomata.gr/wp-content/uploads/2016/05/egxeiridio\\_teliko\\_en.pdf](http://psydikaiomata.gr/wp-content/uploads/2016/05/egxeiridio_teliko_en.pdf).

<sup>7</sup> European Union Agency for Fundamental Rights (2013), Legal capacity of persons with intellectual disabilities and persons with mental health problems, <http://fra.europa.eu/en/publication/2013/legal-capacitypersonsintellectual-disabilities-and-persons-mental-health-proble-0>.

<sup>8</sup> Id., supra note 27.



The Greek legal system imposes court-mandated guardianship. Throughout *Articles 1666-1688* of the Civil Code, provisions set out the conditions and circumstances under which, when an individual with psycho-social disabilities or mental health problems cannot exercise her rights autonomously, the court appoints a guardian who will either function as a representative of that individual, or will decide jointly with her, providing consent in order for the legal acts and agreements to be valid.<sup>9</sup>

The guardianship imposed by the courts can take several forms:

- It can be full **private guardianship**, which deprives individuals with mental health problems of the right to enter into legal acts;<sup>10</sup>
- It can be **partial private guardianship**, which deprives a person of the right to enter into specific legal acts stipulated expressly and restrictively;<sup>11</sup>
- It can be **full supportive guardianship**, which does not remove the capacity to make decisions and enter into valid agreements, but establishes a form of co-decision, where the guardian's consent is mandatory for the agreement to be valid;<sup>12</sup>
- It can be **partial supportive guardianship**, which provides that the guardian must consent in order for specific legal acts to be valid;<sup>13</sup>
- And it can be a **combination of the above**, where for certain legal acts a person might require partial or supportive guardianship, while for others, that individual cannot perform them at all, and therefore full private guardianship must be imposed.<sup>14</sup>

Under the Greek Civil Code, any form of guardianship must be court-mandated and court-imposed. The proceedings are instituted either in a voluntary manner, *i.e.* by a petition filled by the person in question, who is requesting guardianship, or it can be involuntary, and be initiated by a petition filled by the individual's parents, family, by the public prosecutor or even *ex officio* by the court that has jurisdiction.<sup>15</sup> The competent court to hear such cases, in non-contentious proceedings, is the Court of First Instance of the place of residence of the individual in question. For individuals that have physical disabilities, such guardianship proceedings can only be initiated by a petition filled by themselves.<sup>16</sup>

The Greek legal framework allows judges the freedom to assess the facts related to the petition for placement under guardianship, and places the obligation on them to decide based on the

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<sup>9</sup> *Id.*, supra note 27, at pg. 48.

<sup>10</sup> Article 1676 of the Greek Civil Code.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Article 1667 of the Greek Civil Code.

<sup>16</sup> *Id.*



interests of the person to be placed under the guardianship scheme, while at the same time they are mandated to demonstrate restraint in the deprivation of autonomy, imposing the minimum restrictions possible under the circumstances.<sup>17</sup>

When guardianship proceedings are initiated, and in light of Article 1676, the court communicates with the person concerned, in order to formulate a first-hand opinion on their condition; the communication is private, and can take place either at the court, or in the interested person's private setting.<sup>18</sup>

Once the court reaches a decision, it issues the judgement on the petition for guardianship, which communicates to the person in question, making explicit reference to the right to appeal.<sup>19</sup> The judgement will be entered in a special book of records, held by the court clerk, and in the special book of records of guardianship, held by the competent social services. Following service and registration, the competent coordinator will assign a social worker to monitor the individual placed under guardianship, including the guardian's activities.<sup>20</sup>

The Greek Civil Code also provides for the termination of the guardianship, if the reasons that led to its institution cease to exist. If the factors and obstacles that prevented the individual, on whom a guardianship scheme is imposed, from taking decisions no longer continue, then the Court can restore said individual's autonomy and legal capacity. The process is similar, and a petition for termination of guardianship must be filled, and a new court judgement is required.<sup>21</sup>

To ensure the safeguard and protection of the rights of the person placed under guardianship, Greek law provides that a supervisory board will be established for persons under private guardianship. This board will consist of three to five members chosen among friends and relatives of the person placed under the guardianship, and said board is assigned specific competences by the court, including supervising the actions of the guardian.<sup>22</sup> Finally, in the cases where there is a conflict between the supervisory board and the guardian, where the latter disagrees with the decisions of the former, the court may be called to rule thereon, following the submission of a petition by the guardian, by another person with a lawful interest, or even *ex officio*.<sup>23</sup>

In Greece, from studies and reports, it has been found that the most common form of judicial guardianship is the full private guardianship, which completely strips the individual in question

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<sup>17</sup> Article 1676, Greek Civil Code.

<sup>18</sup> Article 804 of the Greek Code of Civil Procedure.

<sup>19</sup> Article 1675 of the Greek Civil Code.

<sup>20</sup> Article 4 of the Presidential Decree 250/1999.

<sup>21</sup> Article 1685 of the Greek Civil Code.

<sup>22</sup> Articles 1642 and 1682 of the Greek Civil Code.

<sup>23</sup> Article 1642 of the Greek Civil Code.



of its legal capacity and renders him or her codependent to the decision making of the guardian.<sup>24</sup> In the Court of First Instance in Athens, between 2007-2011, 97.15 % of the decisions ordered concerned full private guardianship, 0.72 % were partial private guardianship, 1.26 % was full supportive guardianship, 0.43 % was partial supportive guardianship, and only 0.43 % was temporary guardianship.<sup>25</sup>

The situations where the request came from a petition from a family member or relative, 71.73 % regarded petitions for permanent guardianship, while only 10.62 % regarded temporary guardianship. In the rest of cases where the judicial guardianship was ordered ex officio by the prosecutor, 17.51 % was for permanent guardianship, and only 0.50 % was for temporary guardianship.<sup>26</sup>

## The Criminal Code

### Persons with mental disabilities as offenders

In most criminal legal systems, an accused is examined towards his or her ability to “stand trial”, often called “fit to plead”. This constitutes a fundamental principle, where no one may stand trial if he is unable to understand the charges, what he or she is accused of.<sup>27</sup> What is in question here is the mental capacity of the accused, which must be seen in two instances: first, in the case where an individual perpetrated a serious offence while in such a mental state that renders him unable to stand trial for his acts; and secondly, the cases where an individual accused of a serious crime, regardless of his mental state at the time of the act, is unable to stand trial because of the mental state he or she is during the particular time of the trial.<sup>28</sup>

In the cases where it is determined that the mental disability has influenced or affected in any way the ability of the perpetrator to grasp and acknowledge the wrongfulness of the acts committed, or render him incapable to act in accordance with the perception of such wrongfulness (ability to impute), or stand trial, then in such cases, the Court must examine whether the individual can be held criminally liable.<sup>29</sup>

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<sup>24</sup> Id., supra note 9, at 193-210.

<sup>25</sup> Id.

<sup>26</sup> Id.

<sup>27</sup> Anagnostaki, M. (2016), The detainment of criminally unimputable offenders in public psychiatric hospitals, in *The Age of Autonomy: A guide to Rights in Mental Health*, National Confederation of Persons with Disabilities, available at [http://psydikaiomata.gr/wpcontent/uploads/2016/05/egxeiridio\\_teliko\\_en.pdf](http://psydikaiomata.gr/wpcontent/uploads/2016/05/egxeiridio_teliko_en.pdf).

<sup>28</sup> Shah, A. (2012), Making fitness to plead fir for purpose, *International Journal of Criminal Sociology*, Volume 1, 2012, at 176-197.

<sup>29</sup> Id., at pg. 67.



**Article 34** of the Greek Criminal Code determines such inability to held the perpetrator criminal liable, due to the disruption of mental function of consciousness:

*“The perpetrator shall not be charged with the act, if, when it was committed, due to mental or intellectual disturbance or disturbance of conscience, he did not possess the ability to perceive the wrongfulness of his act or to act in accordance with his perception of that wrongful act.”*

The term *“mental or intellectual disturbance”* is of wide range, and Greek courts have found it to encompass every form of insanity, derangement or imbecility, including psychoses, mental disorders, neuroses and so forth. On the other hand, the term *“disturbance of consciousness”* entails psychological disorders that are not found to stem from pathological conditions of the brain, but manifest in mentally healthy individuals and are as such temporary; this can include for example sleep drunkenness, sleepwalking, panic.<sup>30</sup>

To establish whether a perpetrator is of unsound mind, or suffers from severe disturbance of his mental capabilities, the court requests the assistance of a psychiatrist, who investigates and declares whether the perpetrator is indeed mentally disturbed, if he is considered a danger and if treatment is possible. It is based on that medical and psychiatric evaluation that the courts decide if the accused had the necessary mental state during the criminal act, is fit to stand trial, or if he or she must be declared criminally imputable.

**Article 36**, paragraph 1 of the Greek Criminal Code proceeds with clarifying the cases where there can be limited capacity to impute, establishing the notion of *“reduced imputability”*:

*“If due to the existence of a mental condition stated in Article 34, which renders not absent, but limits substantially the ability to criminally charge according to this article, then a lesser sentence is imposed.”*

Perpetrators with mental or intellectual disabilities that fall into that category are considered to be of unsound mind, therefore the ability to establish the *mens rea* for the criminal act, which is one of the two necessary to impose a conviction is lacking. A decision declaring an accused to be of unsound mind and therefore lacking imputability is an acquittal. This however does not mean that in all cases the accused is free from any restriction of his personal liberty. For criminal acts committed that are punishable with less than one-year imprisonment, no addition measure is imposed. However, in all other cases, detainment in a state psychiatric hospital is imposed as a form of treatment measure, instead of any other punishment.<sup>31</sup>

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<sup>30</sup> Id., at pg. 68.

<sup>31</sup> See Paraskevopoulos, N. in Margaritis, L. – Paraskevopoulos, N. (2005), Penology [Poinologia], 7th ed., Sakkoulas Publications, Athens –Thessaloniki, p. 44-56. Specifically on the measure of confinement to a psychiatric hospital see Paraskevopoulos, N.



Article 37 and Article 69 of the Greek Criminal Code regulate the sentencing in psychiatric facilities:

**Article 37:** *“When the state of the individuals that are found, according to Article 36, of limited ability to impute, requires special treatment or provision, the imposed sentences limiting their freedom are carried out in special psychiatric facilities or prison chapters.”*

**Article 69:**

- “1. If someone who has committed a criminal act, which bears a deprivation of freedom of at least one year, has been relieved from the sentence due to psychological or intellectual disorder (Article 34), the court orders a measure fit for treatment, providing it [the court] finds that, due to the individual’s state, there is, at the time the decision is rendered, danger of commission of more crimes of similar gravity at least, if said individual is released.*
- 2. The previous paragraph is applicable for all crimes against life or physical integrity that bare a sentence of deprivation of freedom of at least three months. It is not applicable for crimes against property and estate that do not preclude the use of violence or threat of violence.*
- 3. Proper measures of treatment are: (a) admission to a special chapter of a public psychiatric or general hospital, (b) admission in a psychiatric public or general hospital, (c) mandatory treatment and psychiatric observation in frequent intervals in proper external facilities of Mental Health or external medical facilities of public psychiatric or general hospital.*
- 4. The conditions of imposing the above measures are to be certified with one, at least, expert evaluation, that is to be conducted immediately after arrest, and with another, at least, expert evaluation, to be carried out as closer to the court session as possible, with the provision of the prosecutor of the court in which the case is to be heard. The expert evaluations are to be carried out by an expert, preferably chosen from the list that is kept in the closer Court of First Instance. The expert evaluation can potentially include a suggestion of the right measure of treatment.”*

The **Article 69** of the Criminal Code has been very recently reformed to reflect international standards and perception of the need for treatment of the criminally imputable. Domestic Law 4509/2017 made significant changes in the content of Article 69, and of Article 70. It entered into force in December 2017, following a Presidential Decree and its publication in the Government Paper.<sup>32</sup>

Article 69 renders evident the shift from safety measures to treatment measures. The Article enumerates what appropriate such measures are, details the frequent evaluation and assessment of such measures, while it extends the minimum of the severity of the wrongful act,

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(1997), Confinement to a psychiatric clinic as a preventive measure in the Criminal Code, *Tetradia Psychiatrikis*, vol. 60, 1997, pp. 27-31.

<sup>32</sup> See Domestic Law 4059/2017, available (in Greek) at [www.taxheaven.gr/laws/law/index/law/857](http://www.taxheaven.gr/laws/law/index/law/857).



from an act that incurs 6 months imprisonment to an act that incurs 1 year of imprisonment. In paragraph 3, alternatives to sentencing are defined as treatment measures.

### Persons with mental disabilities as victims and witnesses

Individuals with mental disabilities can also find themselves to be the victims of the crime. The Greek Criminal Code includes Articles that make reference to individuals with psycho-social and intellectual disabilities as victims of certain crimes.

**Article 338** of the Criminal Code mandates that: *“whoever, in abusing the madness of another person, or any other cause derived from the inability of that other person to resist, proceeds in intercourse or any other involuntary and indecent act, is to be punished to a prison sentence of maximum 10 years. If the victim is a minor, the punishment is at least 10 years.”*<sup>33</sup>

In addition, **Article 439**, that concerns the negligence of a mentally or intellectually disabled person, states: *“Whoever neglects the duty of supervision of a madman in such a way that danger may arise from that negligence to another, is punished with a fine or with detention”*.<sup>34</sup>

It is clear that the Criminal Code only envisions intellectually disabled individuals as victims of specific wrongful acts. What is more, the term and status that is given to the said individuals remains anachronistic, by identifying them as “mad” or suffering of “madness”. This perception is not compatible with modern standards, and is even in contradiction with the terms used to describe an individual with intellectual disabilities as the accused of a crime.

This view is a remnant of old perceptions where individuals with mental or intellectual disabilities where of “not sane mind”, paranoia was used to describe any psychiatric illness or disability, establishing as such the terms “madman”. In England for example, accused that suffered from a mental disability, and it was determined that their act was a result of their madness or paranoia, where found “guilty but insane”, and where indefinitely imprisoned.<sup>35</sup>

In a similar manner, the Code of Criminal Procedure positions individuals with intellectual or mental disabilities when found in the position of a witness to a crime. By identifying them as “insane” or “of lower intellectual capacity” or in a position that renders them unable to observe the facts as they took place, the court, or anyone who executes the interrogation may choose to dismiss them as witnesses.<sup>36</sup> The Code of Criminal Procedure details more procedural aspects in

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<sup>33</sup> Article 338, Greek Criminal Code.

<sup>34</sup> Article 439, Greek Criminal Code.

<sup>35</sup> Allen, Kesavarajah and Moses, A crime, R 376 at para 397, 1993 in Shah, A. (ed) (2012), Making fitness to plead fit for purpose, International Journal of Criminal Sociology, 2012, 1:176.

<sup>36</sup> Article 210 of the Greek Code of Criminal Procedure.



the examination of witnesses with disabilities, which we will examine in the next part, when we focus of the criminal procedures and practices.

In recent study, the First Psychiatric Clinic of “Eginitio” Hospital, the School of Medicine of the National and Kapodistrian University of Athens, and the Department of Social Work of the Athens University of Applied Sciences examined the number of criminally imputed mental health patients that have been admitted in the three major public psychiatric facilities in Greece, examining cases from May 2016 till February 2017, and a total of 155 patients.<sup>37</sup> Amongst them, 134 were male and 21 were women. The average age was 49.7 years, while the average time of duration of detention was 11 years.

The study observed the categories of various diagnoses that were given during the expert evaluation. From the individuals that were examined, 86.4 % were diagnosed with schizophrenia. Regarding the wrongful acts, 52.9 % of the patients were accused for homicide, 20.6 % attempted homicide, 9.7 % arson, while 16.8 % of the patients were accused of various types of crimes, such as robbery, harassment/harassment of minor, destruction of public property, battery, etc. The majority of the cases had victims the relatives of the patients (42.2 %), 28.3 % of the victims where a third person, and 10.5 % where unknown.

In the cases examined it was found that psychotic disorder and personality disorder were among the most frequent disorders patients suffered from, other than schizophrenia, which was the single most frequent. The study found that individuals suffering from psychotic disorders and who had committed a criminal act, suffered from hallucinations throughout the conduct of the crime, as well as during their arrest, trial and incarceration. This corresponds to scientific studies in Europe that claim homicide to be the premature characteristic of schizophrenia, and that it constitutes a reaction to the negative emotions that the offender is overcome with, before he/she loses complete control.<sup>38</sup>

The findings of the study correspond also to the general scientific findings in Greece that examine the mental illness of an individual and the consequent violent acts. Individuals suffering from schizophrenia are found to commit wrongful acts even prior to their first treatment at a 20 % rate.<sup>39</sup> What is more, the majority of the individuals with mental illnesses that commit homicide are found to suffer from a form of schizophrenia (50 % of patients), while most of the time homicide is not their first violent act against the victim (70 % of patients).<sup>40</sup>

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<sup>37</sup> Id., supra note 1, at 674.

<sup>38</sup> Taylor, Pj., Gunn, J. (1999), Homicides by people with mental illness: myth and reality, Br. Journal of Psychiatry, 174:9-14, 1999.

<sup>39</sup> Mourikis, H., Douzenis, A. (2008), Schizophrenia and criminality, in Douzenis, A., Lukouras, E. (ed), Judicial Psychiatry, Medical Publications P.X Paschalidi, pg. 121-129, Athens, 2008.

<sup>40</sup> Diaourta-Tsitouridi, M. (2008), Crimes against life, in Douzenis, A., Lukouras, E. (ed), Judicial Psychiatry, Medical Publications P.X Paschalidi, pg. 75-78, Athens, 2008.



## Part II: Procedural rules and practices applicable to offenders with psycho-social or intellectual disabilities

Police are mandated to demonstrate full respect for the rights and dignity of all individuals accused and in particular of individuals with intellectual and psychosocial disabilities during a criminal process. The Greek legal framework, from Constitution to Criminal code, as we have seen, guarantees such protection and treatment. At the same time however, the Code of Police Conduct, established by Presidential Decree, also makes concrete references and details the rights and obligations of the police in the pre-trial phase, when arresting, interrogating and detaining and individual with disabilities.<sup>41</sup>

The Police have the obligation to uphold the law in a socially sensitive manner, without discrimination, but with objectivity and transparency, protecting the dignity of all citizens in the process. The rights in life and personal freedom are to be respected, and strict prohibitions of torture, degrading or humiliating treatment and any violations of basic human rights are guaranteed.<sup>42</sup> What is more, the Police have the obligation to explain the rights and wrongful acts committed to the offender in a manner that can be completely understood by the latter. During the arrest and detention, the offender has the right of communication, including access to a lawyer. For individuals with mental disabilities, the Code of Conduct mandates that access to medical treatment and to conditions that will guarantee the medical safety of the offender are necessary and constitute a duty of the police.<sup>43</sup>

During the interrogation and pre-trial phase, police and the authorities that conduct the interrogation, must guarantee that the process will take place with the outmost respect to the dignity and presumption of innocence of the accused. In particular, the authorities must demonstrate special care to offenders that demonstrate mental or intellectual, or any other disabilities, and accommodate them during the interrogation process. They guarantee the presence of a lawyer, and must, in accordance with the legal framework, facilitate communication in a manner friendly and accessible to the accused.<sup>44</sup> Special reference is made in the cases where individuals with disabilities are victims, in which the above are in place, but the police are mandated to show extra care to avoid secondary or repeated victimisation of the individuals in question.

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<sup>41</sup> Code of Conduct of Police (Presidential Decree. 254/2004), available (in Greek) at [www.astynomia.gr/images/stories/Attachment14238\\_KOD\\_FEK\\_238A\\_031204.pdf?fbclid=IwAR2RniZiA05KeVXGzX\\_OMfBW3ZiudHzxsW10Sh\\_Mdx6xUpJ60qY8q34uzGc](http://www.astynomia.gr/images/stories/Attachment14238_KOD_FEK_238A_031204.pdf?fbclid=IwAR2RniZiA05KeVXGzX_OMfBW3ZiudHzxsW10Sh_Mdx6xUpJ60qY8q34uzGc).

<sup>42</sup> Id., Article 2.

<sup>43</sup> Id., Article 3.

<sup>44</sup> Id., Article 4.



The Greek legislation that ratified the CRPD, including the amended text of Law 4488 of 2017 have specific provisions that clarify the needs for the State to ensure effective access and ensure that the administrative and judicial system corresponds to the requirements set out in Article 13 and the CRPD. *Article 64* of Law 4488 mandates that the State must ensure the equal access of persons with disabilities to the physical and digital space; Article 65 establishes the obligation to the State – and as such the right to the individuals with disabilities – to ensure that the communication between public services and public administration on the one hand and individuals with disabilities on the other should take place in a manner friendly and accessible to the latter. Greek sign language and Brail language are recognised as equal forms of communication to that end.<sup>45</sup>

In addition, Article 66 of the Domestic Law 4488/2017 establishes a framework for information, education and awareness of the public servants, the administrative services and government bodies on the issues of disabilities and the rights individuals with disabilities enjoy under the international and domestic legal framework. Judicial employees and the police undergo training in reference to the needs and particularities of individuals with mental disorders, and how to best facilitate them during the criminal process. This is mostly carried out formal and informal training of law enforcement personal by advocacy centres and mental health groups. For example, in 2013 Police had undergone training on issues of mental health illness, suicidal tendencies, and the various types of patients with mental disorders, including personality disorder, bipolar disorder, depression, schizophrenia, and other psycho-social disorders that could result to self-harm.<sup>46</sup> What is more, in police journals and forums there are often materials disseminated, part of governmental research or research by police officers in the fields of mental health and involuntary admission.<sup>47</sup>

If an individual accused of a wrongful act has mental, psychosocial or intellectual disabilities, or indicates during his defence that he suffers from such disabilities, then a determination of his mental state and capacity is required. As mentioned in the previous parts, courts need to establish the mental state of the accused, including whether an individual has a mental illness or intellectual disability that may have impacted the perception of the wrongfulness of the act committed, or his ability to stand trial.

**Article 80** details this examination of the mental state of the accused:<sup>48</sup>

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<sup>45</sup> Id., supra note 9.

<sup>46</sup> Centre for the Prevention of Suicide (2013), Educating Police on suicidal interventions: Action for the elimination of suicides and skills to handle suicidal behavior, available (in Greek) at [www.klimaka.org.gr/wp-content/uploads/2017/05/EKPIAIDΕΥΣΗ-ΑΣΤΥΝΟΜΙΑΣ-ΓΙΑ-ΑΥΤΟΚΤΟΝΙΑ-.pdf](http://www.klimaka.org.gr/wp-content/uploads/2017/05/EKPIAIDΕΥΣΗ-ΑΣΤΥΝΟΜΙΑΣ-ΓΙΑ-ΑΥΤΟΚΤΟΝΙΑ-.pdf).

<sup>47</sup> See Lieutenant E. Diamanti (2013), Police and Involuntary Admission, Police Journal, 30, September-October 2013, available (in Greek) at [www.hellenicpolice.gr/images/stories/periodiko/281\\_2.pdf?fbclid=IwAR0XsMf86xP5I9RZDizazd1m9bTw\\_7746DI-7vh\\_i6Lw8GY1q16CjOSkozY](http://www.hellenicpolice.gr/images/stories/periodiko/281_2.pdf?fbclid=IwAR0XsMf86xP5I9RZDizazd1m9bTw_7746DI-7vh_i6Lw8GY1q16CjOSkozY).

<sup>48</sup> Article 80 of the Code of Criminal Procedure.



1. *When the accused is found in a state of disturbance of his mental functions, the court, if it is not going to acquit, it orders the suspension of the proceeding. If the accused is under temporary custody, the court orders simultaneously his placement in a judicial psychiatric institution, and in the cases that such institution does not exist, in another institution, preferably of public nature.*
2. *For the certification of the mental state of the accused, an expert evaluation is previously ordered.*
3. *If such mental state manifests prior to the end of the inquisitorial process, the above are ordered by the inquisitorial judge, without this hampering the carrying out of the necessary actions to confirm the crime.*
4. *If a suspension of proceedings is ordered, the public prosecutor may find recourse to civil courts.*
5. *If the reasons for the suspension of the proceedings cease to exist, the continuation of the proceedings is ordered from the court or from the inquisitorial judge, according to paragraphs 1 and 3.*

The above Article establishes the process, which commences early on in the criminal procedure, of establishing the mental state of the accused. In this article, we observe the role of the inquisitorial judge, which is a feature of the civil law system of the Greek legal order. When a criminal process is constituted in Greece, when someone is arrested and the prosecutor files a charge against him or her, that individual is brought in front of an inquisitorial judge. An inquisitorial judge is a judge that takes up the task of collecting the evidence of the case, cooperating with the police, and hearing the facts – the apology as mentioned in Greek – from the accused, in an attempt to put together what happened and whether a criminal offense and a criminal charge indeed arise.<sup>49</sup>

Paragraph 2 of the above Article mandates that for the mental state of an accused to be certified, which essentially concerns the mental capacity and intellectual ability of the said individual, an expert evaluation is required. This is further elucidated in **Article 200** of the Code of Criminal Procedure:<sup>50</sup>

1. *In the case of an expert evaluation that concerns the mental health of the accused, the inquisitorial judge, with the consenting opinion of the prosecutor, and the concurring opinion of the experts, even with just a majority, and after hearing from the defence, may order the admission of the accused in a public psychiatric institution for observation. If the accused does not have a defence attorney, one is provided by the court. The accused, or his attorney, may appeal against such an order at the judicial council within three days from the rendition of the order. The appeal is always of restraining nature. The decision of the judicial council is final.*

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<sup>49</sup> See definition at <http://edujob.gr/node/21733>.

<sup>50</sup> Article 200 of the Greek Code of Criminal Procedure.



2. *If the need of psychiatric observation manifests during the hearing of the case, the above are ordered by the court, discontinuing in a final way the hearing process until the end of the expert evaluation.*

3. *In any case, the duration of the admission to the psychiatric facility cannot be more than six months. In this time, the temporary custody is considered to be ceased. The time however is deducted from the sentence that might be imposed in cases of conviction.*

The procedural framework in the criminal process to establish the mental state of the accused, the existence of intellectual or psychological disabilities is complicated and it involves the participation of many actors. This can take place in various steps of the criminal process, from the interrogation and the pre-trial phase, to the trial and court hearing.<sup>51</sup>

The roles of the prosecutor and the police in the process are prominent. Upon the arrest of an individual by the police and when suggestive of the existence of a mental disorder or intellectual disability that would affect the commission of the crime, and/or the ability to stand trial, the prosecutor requests that the police transfers the individual in a Public Mental Facility for the expert evaluation. In practice, it is accustomed that the police will be entrusted with the transferring and returning of the individual in the mental facilities, along with the task of submitting to the prosecutor the attached mail and expert psychiatric evaluations, to be used in the case.<sup>52</sup>

The choice of the expert psychiatrist for the evaluation is not a random process. According to **Article 185** of the Code of Criminal Procedure, each year there is a process to determine and compile a list of experts in all fields, including psychiatrist, psychologists, etc., by the Courts in their region. The list is renewed and enriched every year, and it must be approved by the Appeals Chamber of the region in question to be valid.<sup>53</sup>

The expert evaluations will be submitted to the Court, and the trial may take place in closed session to protect the individual with mental disorder. The accused has the right to be accompanied by his attorney, by a psychiatrist, as well as a technical advisor of his choice. This process is very similar to the process followed in the cases of involuntary admission and treatment, as we will see in Part IV. The court has the right to request a third expert evaluation from another expert psychiatrist, if it deems that the two already provided are not convincing or in the case where they differ substantially.<sup>54</sup>

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<sup>51</sup> Id., supra note 61, at pg. 67.

<sup>52</sup> Special Report of the Ombudsman for involuntary treatment of mentally ill, May 2007, pg. 20-21, available at [www.synigoros.gr/resources/docs/206391.pdf](http://www.synigoros.gr/resources/docs/206391.pdf).

<sup>53</sup> Article 185, Code of Criminal Procedure.

<sup>54</sup> Id. supra note 89.



Followed the expert evaluation, and the interrogation of the offender, the case can be sent to trial when sufficient evidence exists. Article 313 of the Code of Criminal Procedure details the process, while Domestic Law 4059/2017 has added a paragraph in said article that affects the cases where the offender is an individual with mental or intellectual disabilities. As such, paragraph 2 of Article 313 mandates that the judicial council will order the introduction of the case for a hearing at the proper Court when it deems that there is a chance that the offender will be relieved from the sentence due to mental or intellectual disorder, and at which point a treatment measure according to Article 69 of the Criminal Code will be imposed.

It must be acknowledged at this point that Law 4059/2017 has significantly improved the procedural, and as we will see in the next part, the custodial processes in the cases of offenders with mental or intellectual disorders. Article 9 of Law 4059/2017 makes explicit reference in the basic principles of respect and dignity during the execution of the treatment measures, while it mandates that any issue not specifically regulated by the Law, must be interpreted and complimented, in these cases, by the Code of Medical Conduct, the Code of Nurse Conduct, the Protocols pertaining to Psychiatric Care, as well as the Code of the Correctional Facilities, as long as it does not conflict with the treatment purposes of the measure.

In addition, the procedures and process during the treatment measures of the individual under Articles 69 and 70 of the Criminal Code must be tailor made to the needs of the said individual, include medical support, psychological support for said individual and for his/her family, and be outward looking towards a general rehabilitative aim of returning the individual in the society, as an active citizen.<sup>55</sup>

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<sup>55</sup> Article 9, Domestic Law 4059/2017.



## Part III. Custodial and non-custodial measures during criminal proceedings

During the criminal proceedings, it is the cases that offenders might be placed under police custody, under temporary police custody, or under home surveillance, or be released on probation. It is in the discretion of the prosecutor, judging upon the severity of the crime, and the characteristics of the accused to order pre-trial detention measures.

Article 282 of the Code of Criminal Procedure provides for the temporary custody measures, as well as alternatives to it. According to paragraph two, probation can include bail, the duty of the offender to report to police station in his area of residence, prohibition of traveling abroad, home probation with electronic surveillance, and more. Article 282 also notes that the measures of temporary custody are not implemented in cases where the offender suffer from disabilities of 80 % for cases A and B of Article 339 of the Criminal Code, or when the offender suffers from disabilities of 67 % in all other cases of Article 339.

In the cases of persons with psycho-social and intellectual disabilities, the Code of Criminal Procedure details in Article 315, paragraph 5, that during the introduction of the case to the Court, when the conditions of paragraph 1 of Article 69 of the Criminal Code are met, the judicial council must impose as probation measure one of the measure mentions in paragraph 3 of Article 69 of the Criminal Code. In cases where the accused is being temporarily detained and under police custody, then this must be replaced immediately by treatment measure.<sup>56</sup>

After the trial, when an accused is found to be of limited capacity to be charged, and found guilty, often, instead of being incarcerated in a prison, he or she will be admitted at a public psychiatric facility. The same will take place if the accused, being criminally imputed, and as such acquitted, will be involuntary admitted to a mental facility for his treatment (Article 69 & 70 of the Criminal Code).

Under the new law, further clarifications have been given with regard to the facilities where treatment measure can be carried out. **Article 11** of Law 4056/2017 mandates that the facilities mentioned in case A of paragraph 3 of Article 69 of the Criminal Code must be facilities of a public psychiatric or general hospital, with a small number of rooms, that is of proper technical and physical construction, and properly equipped to care for the needs of the patients. There must be, in addition, highly specialised professional personnel, in double the numbers of the patient.

Facilities mentioned in case B of para. 3 of Article 69 can be wings of public psychiatric or general hospital that offer mental health services to involuntarily admitted patients. What is more, Article

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<sup>56</sup> Article 315 of the Code of Criminal Procedure, as amended by Article 6 of the 4059/2017 Domestic Law.



11 details that Mental Health facilities outside the public psychiatric or general hospitals can serve the needs of cases C of Article 69, and can include Mental Health Clinics (Article 5 of Law 2716/1999), and public mobile mental health units, that can offer treatment of special care services to individuals that can carry out their treatment measure at home, or in secluded areas.

For the treatment measures to start, a written order from the Prosecutor of the Court of Instance to the Director of the Facility is required. To identify the facility that the measure is to take place, the prosecutor consults a list that is created and provided by the Ministry of Justice, Transparency and Human Rights and the Ministry of Health and Welfare, and which is distributed in all courts and mental health facilities.<sup>57</sup> The facility closer to the place of resident of the individual in question or his family is to be preferred.

During the admission in a mental facility for the commencement of a treatment measure, a specific process is followed:

- Issuing of a ticket;
- Recoding of personal information, including ID number, social security number, place of residence, person of contact, legal guardian, etc.
- Medical and psychiatric examination;
- Creation of an electronic patient file;
- Interview with a social worker;
- Filling of records with Social Services.

Immediately after his admission, the Facility must provide to the patient, a form with a list of his basic rights as detailed in the Criminal Code, Code of Criminal Procedure, Code of Medical Procedure, Code of Nurse Procedure, and the Protocols of Psychiatric Care. This needs to be in a language understood by the patient.<sup>58</sup>

The treatment measure might be terminated, or might be replaced, as per paragraph 2 of Article 70 of the Criminal Code. For this to happen, the mental health of the individual in question needs to be assessed, the margin or improved evaluated, and the existence of a support system or family is necessary.<sup>59</sup> Article 70 and 70A of the Criminal Code, after their amendment by Law 4509/2017, detail the duration of the treatment measure and in particular the specifics of the treatment measure for individuals found criminally imputed due to mental or intellectual disturbance.

**Article 70** “Duration of the treatment measure”.<sup>60</sup>

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<sup>57</sup> Article 12 “Initiation of measure”, Domestic Law 4509/2017.

<sup>58</sup> Article 13 “Admission to the special or non-special facility”, Domestic Law 4059/2017.

<sup>59</sup> Article 15 “Replacement or termination of treatment measures”, Domestic Law 4509/2017.

<sup>60</sup> Id., supra note 66, Amending Article 2 of the Law 4059/2017.



1. *In the decision that orders the treatment measure, the duration of the measure must be set, which cannot be more than 2 years for misdemeanours, and 5 years for felonies. 1 month prior to the completion of the duration of the measure, the Court of Misdemeanours in the region where the measure is being served, can with a specially justified decision, order the prolongation of the measure or its replacement with another, in the same time limits as the previous, if such action is necessary for the treatment of the individual and the conditions of Article 69, paragraph 1 are still met. Prior to the rendition of the decision, the Court calls the patient and his attorney, as well as the management team of the facility in which the treatment measure is being carried out, for an argumentation. In deviation of the rule, the extension of the time of the duration of the treatment measure is feasible for reasons foreseen in paragraphs 2 and 3, provided that for those reasons and for the need of the extension, the consenting opinions of the caring doctor of the patient and of the Chief of the facility are provided. The overall duration of the treatment measure cannot be more than the duration of the sentence foreseen in the Criminal Code regarding the wrongful act the patient has committed.*

2. *The same Court, every year, through the same process, decides whether the treatment measure imposed must be continued or replaced with another. It can however, at any time, upon request of the prosecutor, or the patient or the management team of the facility the measure is taking place, and after petition of the doctor in care of the patient, to order the removal or replacement of the measure. In the event of a dismissal of the request, there must be a decision on specific grounds and justification for the continuation of the treatment measure. A new request may be filled, 4 months after the rejection of the last one.*

3. *During the procedure of the Court of Misdemeanour mention in the current Article, as well as in front of the Appeals Court in the cases of an appeal, if the patient treated has not legal counsel, one may be appointed, according to Article 340 of the Code of Criminal Procedure.*

Article 70A did not exist prior in the Criminal Code. Domestic Law 4059 of 2017 introduced it after Article 70 as clarification of the measure of treatment specifically for individuals that have been found criminally imputable, unfit to stand trial due to their mental or intellectual disorder.

**Article 70A details:**

1. *If someone has committed a wrongful act worthy of punishment, due to his or her mental or intellectual disorder that reduces or diminished substantially the criminal attribution (Article 36, paragraph 1), and that act is punishable with a sentence of at least one year of freedom deprivation, then the Court, other than imposing a decreased sentence (Article 38), orders the admission of said individual in a psychiatric facility of a detention centre or prison, or in the cases of sentenced being revoked, order the treatment measures of paragraph 3 of Article 69, if it deems that there is the danger found in paragraph 1 of Article 69. Paragraphs 2 and 4 of Article 69 are applied mutandis mutandis.*

2. *The execution of the treatment measure takes place after the rendition of the decision by the Court, under the responsibility of the prosecutorial authority.*



3. Article 70 is applied *mutandis mutandis*. After the completion of the treatment measure, the convicted shall serve his sentence in the cases where said sentence has not been revoked.

In any case of detention during the treatment measure, the rights of patients with mental or psychosocial disabilities are not to be limited. They patients in such facilities have the rights and obligations that are derived from their status as citizens, as human beings, and as part of the society, of which they still remain a subject.<sup>61</sup> However, Article 1 of the Correctional Facilities Code details that “*criminally imputable patients that are hospitalised in a psychiatric facility can be regarded as a detainee with the same rights as the rest of the detainees found in prisons*”.<sup>62</sup>

The practical reality in Greece is that the detention of accused with psycho-social and intellectual disabilities that have been found to be criminally imputable is a frequent practice, which only uses the basis of public safety as a justification, disregarding the need for treatment. In addition, in Greece, the specialised public facilities mentioned in the Criminal Code, do not meet proper treatment standards, and instead mostly function as detention facilities. As such, it is often the case that the criminally imputed patients will be hospitalised along with other patients in the various departments of the psychiatric facilities, without any significant differentiation.<sup>63</sup>

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<sup>61</sup> Article 4, Code of Correctional Facilities.

<sup>62</sup> *Id.*, Article 1.

<sup>63</sup> *Id.*, *supra* note 1, pg 677.



## Part IV. Involuntary Admission and Involuntary Treatment

Involuntary admission and involuntary treatment constitute a very frequent measure in Greece that is taken against individuals with intellectual and mental disorders or disabilities. In Greece, 55-56 % of admissions in psychiatric facilities or institutions are involuntary, in contrast to the average number of 7-8 % that is found in Europe.<sup>64</sup>

In **Article 95**, paragraph 1, defines what involuntary admission is:

*“Involuntary admission is the admission and stay of a patient in a Mental Health facility, without his or her consent.”<sup>65</sup>*

For such an admission to happen, there are a set of preconditions to be met:

- 1.A. *The individual must suffer from a mental disorder.*
- 1.B. *The individual should be incapable of deciding what is in the best interest of his or her health.*
- 1.C. *The consequences of non-admission will either be the lack of treatment or the deterioration of such an individual’s health.*
2. *The admission of the individual suffering from a mental disorder must be essential in order to prevent acts of violence either against himself/herself or against others.<sup>66</sup>*

In addition, the law clarifies that *“a person’s inability or refusal to conform to the social, moral or political values that appear to be prevalent in society does not in itself constitute a mental disorder”<sup>67</sup>*

Involuntary admission bears two important characteristics in its definition: the deprivation of freedom and the involuntary treatment. This is a crucial aspect of the involuntary treatment and the impact it has on the rights of individuals with mental disabilities. Deprivation of freedom is normally imposed only when a criminal act has been committed and a court decision to that end has been rendered. On the other hand, in most cases, any medical treatment requires the consent of the patient.<sup>68</sup> As such, involuntary treatment is a very harsh measure, to be seen not as a deprivation of freedom, but as limiting it, while concrete safeguards and judicial procedures are in place to deter any abuse of the process.<sup>69</sup>

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<sup>64</sup> Mylonaki, Evi K. (2016), Involuntary Hospitalisation, in *The Age of Autonomy: A guide to Rights in Mental Health*, National Confederation of Persons with Disabilities, available at [http://psydikaiomata.gr/wp-content/uploads/2016/05/egxeiridio\\_teliko\\_en.pdf](http://psydikaiomata.gr/wp-content/uploads/2016/05/egxeiridio_teliko_en.pdf).

<sup>65</sup> Article 95, Domestic Law 2071/1992.

<sup>66</sup> Article 96, Domestic Law 2071/1992.

<sup>67</sup> Id.

<sup>68</sup> Marquand, P. (2000), *Introduction to Medical Law*, p. 21.

<sup>69</sup> Koniaris, Th. / Karlovassitou-Koniari, A. (1999), *Medical Law in Greece*, pg. 118.



There is the view that the above conditions do not have to be simultaneously concurrent for the involuntary admission to take place, but if one is met that is sufficient for such a measure to be taken. At the same time, there are opinions in Greek literature that claim that only the first set of criteria need to apply, while the second has been abrogated and as such involuntary admission is not possible solely on the ground of dangerousness.<sup>70</sup> This view is based on the ratification by Greece with Law 2619 of 1998, of the *Oviedo Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine* (Article 7).

For an involuntary admission of an individual to take place, it is mandatory the certification and evaluation of his/her mental state by a specialized psychiatrist, and no other doctor can perform such an evaluation.<sup>71</sup> This follows the practice of other European countries, like Austria, Ireland and Luxembourg to name some, while it is different from the practice of other countries like Belgium, France, and Finland or Germany, where the evaluation can take place by a doctor of a specialty other than psychiatry.<sup>72</sup>

According to case law and judicial opinions of many courts, including the Supreme Court, involuntary admission constitutes *ante delictum* deprivation of personal freedom, and as such it cannot be a measure of general applicability, but an extraordinary measure which preconditions the existence of a mental illness and takes place due to the therapeutic result it may bring. It can also work as a measure of precaution and prevention, as the intent is the protection of the individual undergoing the involuntary admission, and a precautionary measure for other, against which the said individual might pose a danger.<sup>73</sup>

The ECtHR has found the Greek legal framework to be adequate and in accordance with EU Regulations and standards.<sup>74</sup> This was not the case in the past, as prior to the adoption and entry into force of the law 2071/1992, the ECtHR has found several violations of European and International standards. However, the domestic law 2071 put in place a modernized framework, that incorporated European standards. In particular, the new legal framework put an end to the competition between the notions of “treatment” and “detention”, by adopting in a clear wording the first one. As such, the current and undisputed purpose of an involuntary admission is the

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<sup>70</sup> See Phytakis, E. (2013), Involuntary hospitalisation: a dangerous cocktail of treatment with imprisonment, Paper read at the one day conference of the Hellenic Psychiatric Association and Ati magazine “Involuntary hospitalisation” Athens 02.03.2012. Also published in Ati magazine Issue 5/2013.

<sup>71</sup> Salize, H.-J. (2006), European Mental Health Laws, Social Inclusion and Fundamental Rights, Central Institute of Mental Health Mannheim, Germany, available at [http://ec.europa.eu/health/archive/ph\\_determinants/life\\_style/\\_mental/docs/ev\\_20060316\\_co02\\_en.pdf](http://ec.europa.eu/health/archive/ph_determinants/life_style/_mental/docs/ev_20060316_co02_en.pdf).

<sup>72</sup> Id.

<sup>73</sup> Expert Opinion of Prosecutor of the Supreme Court 12/2006.

<sup>74</sup> Police Report “Police & Involuntary Admission: Legislation and ECHR”, September-October 2013, available at [www.hellenicpolice.gr/images/stories/periodiko/281\\_2.pdf?fbclid=IwAR1qU256YI4e\\_OiSrl8fg3KREmeZWRlXPcw4fmTnvvBgxh0Daih5-Q00XA](http://www.hellenicpolice.gr/images/stories/periodiko/281_2.pdf?fbclid=IwAR1qU256YI4e_OiSrl8fg3KREmeZWRlXPcw4fmTnvvBgxh0Daih5-Q00XA); See cases: *Venios v. Greece*, ECtHR decision of 5 July 2011, and *Karamanov v. Greece*, ECtHR 26 July 2011.



necessary treatment of the individual in need, and that can serve as the sole ground for justification. In addition, as we saw above, the law established a clear set of preconditions.<sup>75</sup>

Finally, the law introduced a clear judicial process, at the centre of which we find the power of the prosecutor and the courts, that are safeguarding the rights of the individuals in question. The role of psychiatrists and expert evaluators remain crucial, but in contrast to the previous legal provisions, the process of involuntary admission is under the complete control of the justice system.<sup>76</sup>

The process for the involuntary admission of an individual is as follows:<sup>77</sup>

- The involuntary admission can be requested through a formal petition by the wife or husband of the person in question, or by a relative, or by the guardian of the individual in question or finally by the judicial guardian of the individual in question. The prosecutor can also request the involuntary admission *ex officio*.
- The petition is directed to the prosecutor of the Court of First Instance of the place of residence of the individual in question. The petition must be followed by written expert evaluations of two psychiatrists, or in lack of two, of one psychiatrist and of a doctor of similar specialty. The evaluation must make reference to the conditions found in Article 95. The experts that will form the evaluation must not be related to the individual in question.
- The psychiatrists that are called to provide the evaluations are found from a special list, put together annually or bi-annually by the local Courts and Medical Associations.
- In the cases where the prosecutor finds that all conditions are met, and provided that both written evaluations are concurrent to the need of involuntary admission, he orders the transport of the patient in a proper psychiatric facility, which exist in the place of resident of the patient, unless circumstances demand his admission elsewhere.
- If the two written evaluations differ, the prosecutor may order the transport of the patient in a mental facility, while introducing the petition at the Court of First Instance.
- In addition, in the cases where the examination of the individual was not feasible due to his denial, or when the prosecutor initiates the process of involuntary admission *ex officio*, the prosecutor may order his transfer to a Public Psychiatric Facility to undergo examination and expert evaluation involuntarily. This phase of examination cannot last more than 48 hours.

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<sup>75</sup> Salize, H.-J., Dressing, H., Peitz, M. (2002) Compulsory Admission and Involuntary Treatment of Mentally Ill Patients-Legislation and Practice in EU-Member States/Final report, Mannheim, pg. 22.

<sup>76</sup> Nikolopoulos, G. (2007), Critical View and objections on the notion of dangerousness: from the positive example to the theories of peril, in Edition of A. Giotopoylou-Phytraki, From the dangerous to the prudent man: mythology and empiricism in criminal law, 2007, pg. 684.

<sup>77</sup> See Article 96 of Domestic Law 2071/1992.



- Within three days from the order of transport to the Psychiatric Facility, the prosecutor requests the Court of First Instance to convene within 10 days. The hearing is in closed session, to protect the privacy of the patient.
- The patient is called 48 hours prior to the hearing, and for his transport the prosecutor is responsible. During the court proceedings, the patient has the right, and choice, to be physically present, assisted by a lawyer and a technical advisor, which can be a doctor, a psychiatrist, and so forth.
- The Court under jurisdiction, if found that the two expert evaluations are differing or are not convincing, or the Director of the Facility the patient was transport has a differing opinion, may order the evaluation from a third expert psychiatrist, found from the appropriate lists.
- The decision of the Court of First Instance must be adequately justified. In the cases where the patient has been admitted by order of the prosecutor, and the admission becomes accepted by the Court, the patient remains in his current facility; in the cases where the Court rejects the petition for admission, the admission is immediately terminated. The patient can appeal the decision of the court.<sup>78</sup>

In **Article 98** of Law 2071 there is a clear reference that the conditions of involuntary admission must serve the needs of the treatment. The restrictive measures imposed must not contravene or exclude the necessary measures for treatment, including leaves, organised leaves, or staying in supervised facilities outside the closed institutions.

Finally, according to Article 99 of Law 2071, involuntary treatment must be terminated when the conditions of paragraph 2 of Article 95 are no longer met. In such cases, the Director of the Psychiatric Facility that the patient is admitted must discharge him and at the same time notify with a written report the prosecutor. Involuntary admission cannot last more than 6 months. After the first 3 months, the Director of the Psychiatric Facility, along with another psychiatrist, are to submit a written report to the prosecutor, regarding the state of the patient. The prosecutor has the right to bring this report to the Court of First Instance, and either to request the constitution of the measure, or its termination. For the continuation of the measure for more than 6 months however, the approval of a committee of three expert psychiatrists is necessary; the committee shall include the current doctor of the patient, and two other psychiatrists, indicated by the prosecutor. In a similar manner, the relatives or guardian of the patient may request in a written petition the termination of the involuntary admission. If the prosecutor rejects their petition, a new one may be filled in three months.

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<sup>78</sup> Phytraki, E. (2007), Prosecutorial jurisdiction and judicial safeguards in psychiatric admissions, *Journal of Criminal Times NZ*, 2007, pg 952-958.



## Part V. Promising Practices

The legal framework for individuals with mental illness, psychosocial and intellectual disabilities in Greece is one that has been evolving constantly. From the changes in the Mental Health System and the psychiatric services offered, to the status of individuals with disabilities in the judicial system, there are attempts to modernise and lift the Greek framework up to international standards. However, the practical application of the reforms is slower, and it depends in the individual change of the actors involved in the process, from police officer, to judicial professionals, to professionals of mental health, and to society in general.

As seen in the Best Practices Annex, the research did not yield a big number of practices observed. On the most part, despite a well instituted legal framework, the distance between standards set by law and current practice is big. However, there are some encouraging practices observed. First of all, there is specialised training of the police that is taking place more frequently in the recent years, thanks to the cooperation of NGOs and mental health advocacy centres. What is more, publications within the police and in police journals on issues of mental health patients, detention and treatment during the criminal process is a positive practice.

What is more, in the past few years, due to the introduction of a new legal framework, the judicial authorities and most importantly the prosecutor come into more frequent contact with the individuals with mental disorder, have the chance to formulate personal opinion on their case, and have the chance to visit and inspect the places where treatment measures are executed. This is positive to the extent that it allows judicial authorities to have a better picture of the conditions that exist and how to further improve them in subsequent cases.

What is more, Court in Greece are mandated to keep a list of approved expert evaluators, that are to be used during psychiatric evaluations in the criminal process. These lists are compiled with the help of the Medical Association, and guarantee transparency and quality of expert advice, given the fact that they are renewed every one or two years.

Another practice observed is the power of inspections of private psychiatric facilities. In the past years, the practice of transferring patients from public institutions to private institution in an unlawful way was observed by authorities. Law 4509/2017 gave inspectorial authorities the power to conduct checks in private mental facilities, something that has taken place in the past 2 years, and as a result several such cases have brought into the attention of the authorities.



## Concluding remarks

To sum up, the report has found that the legal framework in Greece corresponds to international and European legal standards. The reforms that have been promoted in the past decade, the amendment of Mental Health Laws and the Criminal Code, have been directed towards establishing a firm protection framework that details the rights and legal status of individuals with psychosocial and intellectual disabilities, and at the same time underlines the obligation of authorities to ensure that upholding the best interest of said individuals is at the centre of the measures imposed.

At the timeframe of this study, it has been difficult to have access to information on various procedural and practical aspects other than those enumerated and detailed in official documents, laws and public registries. This is a field where much work needs to be done.

In addition, it was observed that despite a well-established legal framework, the practice of authorities, mental health professionals, mental health facilities, and society in general is a very different story, deviating from what the letter of the law dictates. This weakness can be attributed to the fast-paced and compound legal developments in the mental health sector and in the criminal process, which have been effected by the legislator without at the same time ensuring that changes can actually be implemented by the current structures and personnel, and without undertaking necessary frequent and systemic evaluations.



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## Annex. Best Practices

Actor involved	Practice Observed	Pertaining to Legal, Procedural or Custodial aspect
Police, Law enforcement	Training of the Police on issues of mental health, various types of mental illnesses, disorders and disabilities, different aspects of such disorders and the aspect of self-harm for the individuals with such disabilities. Also, the police receive training to identify issues of mental disorder and possibilities of self-amongst officers and law enforcement personnel.	This affects all aspects examined under the report, as the role and conduct of police is prominent in both identifying and attributing a legal right to an offender at the moment of the arrest, through the criminal procedure and custody.
Prosecutor and judicial authorities	The authorities, sporadically and in frequent intervals, now conduct emergent visits and assessment of the mental health and psychiatric facilities in which offender are executing treatment measures. This did not take place in the past, and is a result of the new Law that was introduced in 2018, Law 4509/2017, that enriched the duties of the prosecutor and of health and human rights authorities with regard to the quality of the treatment measure imposed to offenders criminally imputed.	This affects mostly the custodial aspect of the criminal phase, and in particular after the rendering of the decision and the transferring of the patient in the mental facility for the execution of the treatment measure, or during the involuntary admission of an individual at a psychiatric facility.
Prosecutor and judicial authorities	NGOs and Advocacy centers are bringing together practitioners from the judicial branch, prosecutors, judges and clerks to discuss their practice, cases of offenders with mental disorders and what the process in their case was. Such a Seminar took place in 2012 as part of a research study, but it has been also observed in literature, and it is one practice that allows retrospective evaluation of cases and sharing of practices amongst the judicial branch.	This practice affects overall the criminal process as it is considered to be a “training” and awareness practice of the actors involved in it.
Prosecutor, judicial branch	In involuntary admission, unlike in the criminal process, the prosecutor will have personal contact with the individual for which a petition of involuntary submission is requested. This was not a practice in the past. It was observed in literature in the past two years, since the legal framework changed with regard to the duties and obligations of the judicial authorities.	It affects the identification phase, as the prosecutor must have personal contact with the individual in question to assess whether the petition and psychiatric evaluation corresponds to reality, and formulate a personal opinion on the case.



<p>Expert Evaluators, Judicial Authorities</p>	<p>It is a practice mandated by Greek Law to have lists of expert evaluators and technical advisors, such as psychiatrists, psychologists, doctors and other experts, compiled and renewed every year and kept at the Court of First Instance of every Region. It is from these lists and only that the prosecutor may indicate an expert to conduct an evaluation. This contributes to transparency, to assessment and evaluation of the quality of the evaluator himself.</p>	<p>If affects the identification face, when the prosecutor is ordering the offender or patient to undergo expert psychiatric evaluation and he has to appoint such an expert.</p>
<p>Inspectoral Authorities</p>	<p>With the new law 4509/2017, inspectoral authorities of the Ministry of Justice and of Health and Welfare obtained the right to conduct emergent inspections, without need of prior notice, to private psychiatric facilities, to examine the conditions under which treatment is taking place, as well as whether patients have been unlawfully transferred from public to private. The inspective authorities have the right to call on a hearing the personnel, the management team and the patients. The Management Team of the facility is required to comply, and doctor-patient privilege cannot be used as ground for withholding information. The assessment and inspection will result to an official report that will be communicated to the Management Team and to the relevant Ministries.</p>	<p>This practice affects the custodial aspect, and in particular the conditions and duration of the treatment measure or involuntary admission imposed. The inspective authorities have the right to call on a hearing the personnel, the management team and the patients. The Management Team of the facility is required to comply, and doctor-patient privilege cannot be used as ground for withholding information. The assessment and inspection will result to an official report that will be communicated to the Management Team and to the relevant Ministries.</p>