CENTRE FOR EUROPEAN CONSTITUTIONAL LAW

THEMISTOKLES AND DIMITRIS TSATSOS FOUNDATION

Effective Legal Assistance in Pre-Trial Detention Decision-Making

Country Report Greece

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The Centre aspires to contribute to the promotion of democratic institutions and the welfare state under the rule of law, the deepening of European integration and the strengthening of international cooperation with respect for the cultural identity of each state.

The objective of the Centre is to undertake theoretical and applied scientific research in Greek, European and comparative public law, institutions and public policies, the provision of institution and capacity building to Greek institutions, developing countries and the new member-states of the European Union and the enhancement of public awareness on developments in the European area.

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I. Executive Summary

Pre-trial detention (PTD) is a measure of last resort and specific and strict criteria govern its application, where alternative measures do not adequately guarantee that the accused will be present during trial or that they will not commit further crimes. A number of shortcomings of the PTD decision-making process in Greece were identified and investigated in the context of the *"The Practice of pre-trial detention: monitoring alternatives and judicial decision-making"* project, implemented under the coordination of Fair Trials International between the years 2014-2016. The present report seeks to build on the data available through that research and expand the knowledge base on the relevant issues through additional qualitative research, as described in the project's methodology. The research focuses on the right to access to a lawyer in criminal proceedings and in European Arrest Warrant proceedings, as a resolute factor for the improvement of the pre-trial detention decision-making process.

The key findings regarding pre-trial detention decision-making in Greece were as follows:

1. **Police** does not properly apply legal standards on the rights of suspects and accused persons to information, interpretation, communication with third persons and access to a lawyer.
2. **Privacy and confidentiality of consultations** are not sufficiently ensured during police custody and pre-trial detention. There is a distinct lack of appropriate infrastructure available for that purpose.
3. **Translation and interpretation** services are not ensured during police custody and while in PTD. The quality of available services in court is dubious and no mechanisms for the accreditation of court interpreters are in place.
4. **Legal aid** is rarely made use of at the pre-trial stage. The *ex officio* appointment of lawyers by the investigating judge is more frequent but not available from the first stage of police questioning.
5. **Grounds for PTD** are generally compliant with EU standards, however, there are indications that decision-making may be influenced by other factors.
6. **Restrictive conditions** are sometimes used instead of unconditional release and not as an alternative to detention.
7. **The numbers of third-country nationals in PTD** remain relatively high.
8. **Persons dependent on illegal substances** face practical barriers to the enjoyment of favourable provisions in place for their protection.
9. **Good practices** within the Greek framework include access to case files, respect for statutory time limits**,** *ex officio* appointment of defence attorneys, and the option of submitting unlimited requests for PTD reviews.

These findings are further elaborated in the Research Conclusions section of this report.

II. Introduction

More than 100.000 accused persons are currently held in remand in the EU Member States. Placing someone in pre-trial detention (PTD) is often necessary in order to secure their appearance in court and to safeguard public order and security by preventing new crimes. However, research has shown that the measure is at times misused in a manner which impinges on personal liberty and the presumption of innocence of suspects and accused persons. Furthermore, PTD has been found in many cases to adversely impact the detainees' ability to effectively prepare for their trial, especially when it comes to their ability to have access to a lawyer in accordance with EU standards. In light of its potential impact on the detainees' fundamental rights, as well as their general wellbeing[1], it is crucial to assess the laws and practices related to the PTD decision-making process in terms of their compatibility with EU law and fundamental rights standards.

The institutional framework on pre-trial detention has been the subject of exhaustive research in the past. However, the adoption of the Directive on the right of access to a lawyer in criminal proceedings and in European Arrest Warrant proceedings (the access to a lawyer directive), which was due for transposition by the 27th of November 2016, has created the need to re-examine the relevant procedures, in order to monitor its implementation and register its impact with regards to the effective protection of the rights of suspects and accused persons in pre-trial detention.

The impetus for this project is, thus, the need to investigate the projected changes and to add to the existing data on the application of pre-trial detention in practice. The project is implemented by NGOs in five EU Member States, under the coordination of Fair Trials Europe. Its main goal is to contribute to the improvement of the quality of the decision-making process for pre-trial detention, building on the progress made in this area through the *"The practice of pre-trial detention: monitoring alternatives and judicial decision-making"* project, and to focus on the role of defence attorneys in safeguarding their clients' rights.

For this purpose, the partners have conducted research on the pre-trial decision-making process in their respective countries, focusing on the whether the guarantees enshrined in the access to a lawyer directive are actually upheld. Specifically, the research focuses in identifying and understanding existing barriers to the effective participation of defence attorneys in the pre-trial decision-making process, as they emerge through the current legal framework, judicial practice and the attitudes of the persons involved in the decision-making process. The project is expected to facilitate dialogues within and among member states on the role of defence attorneys in safeguarding the rights of the suspects and the accused and to reinforce the effective and proportional application of the pre-trial detention regime.

[1] http://website-pace.net/documents/10643/1264407/pre-trialajdoc1862015-E.pdf/37e1f8c6-ff22-4724-b71e-58106798bad5.

III. Methodology of the research project

This project was designed to develop an improved understanding of the process of the judicial decision-making on pre-trial detention. The research methodology was developed to gain insight into domestic decision-making processes, with the expectation that this would allow for a) analysing shortfalls within pre-trial detention decision-making, understanding the reasons for high pre-trial detention rates in some countries and establish an understanding the merits in this process of other countries, b) pinpointing barriers to effective legal representation at the pre-trial stage of criminal proceedings, assessing the role of defence practitioners, c) finding similarities and differences across the different jurisdictions, and c) developing recommendations that can guide policy makers in their reform efforts.

The stages of the research were as follows:

(1) Desk-based research on the national law and practice with regards to pre-trial detention, collated publicly available statistics on the use of pre-trial detention and available alternatives, as well as information on recent or forthcoming legislative reforms.

(2) Structured in-depth personal interviews with defence practitioners and investigating judges complementing and adding to the findings of previous projects, in particular the project titled "The practice of pre-trial detention: monitoring alternatives and judicial decision-making".

In Greece, the research data was collected through

a) desk research on legislation, academic literature and case law

b) interviews with 3 defence attorneys, specialising in criminal law, with over 10 years of professional experience each

c) interviews with 2 investigating judges serving in the First Instance Courts of Athens and Komotini, who also specialise in criminal cases

Access to case files remains a major challenge, as they are not made public and access to them is not granted by the Hellenic Ministry of Justice. In addition, case file reviews require a lot of time and effort on behalf of the defence practitioners volunteering for the research. Hence, unfortunately, it was not possible to conduct separate case files reviews for the purposes of this project.

IV. Context

Background information

Greece is located in southeastern Europe, covers an area of 131,957 sq. km and has a population of 10.816.286 (2011 census). It has land borders on the north with Bulgaria, the Former Yugoslav Republic of Macedonia and Albania; on the east with Turkey and on the west with Italy (sea borders). The Modern Greek State gained its independence from the Ottoman Empire in 1830 and joined the European Community in 1981. The Hellenic Republic is a Parliamentary Republic and the Constitution of 1975 is the fundamental Charter of the State.

The Greek legal system belongs to the civil law tradition. The Penal Code is the main codified legislative text of substantive criminal law and the Code of Criminal Procedure (CCP) is the main procedural law statute. Special penal laws exist to regulate specific matters with a penal dimension, for example the Military Penal Code (Law 2287/1995), the law on addictive substances (Law 4139/2013), laws for the protection of antiquities (law 3028/2002, law 3658/2008), etc.

The Greek criminal justice system is based on the Continental tradition and the criminal procedure follows a «mixed» model of inquisitorial and accusatorial systems. It is supported that although the procedure is basically inquisitorial, it has also strong adversarial elements[2]. Offences are prosecuted exclusively by the public prosecutor. The Greek criminal procedure is governed by the principle of mandatory prosecution (or legality principle). Prosecution is effected by a) a «summary» investigation conducted either by a Peace Court magistrate or by a police officer (misdemeanours); b) an «ordinary» investigation conducted by a judge (felonies and misdemeanours); or c) direct reference of the case to trial for petty violations or violations "caught in the act". Pre-trial procedures are conducted in writing, and are non-public and non-adversarial (art. 33, 34, 241 CPC). Evidence is collected by the investigating judge or by the police. The procedure has some accusatorial features, since the parties can influence the proceedings by submitting applications, adducing evidence, lodging appeals against the decisions of the investigating judge and the prosecutor, etc. The pre-trial phase is concluded with a decision issued by the court's judicial council, which may order that the accused is either brought to trial or finally acquitted[3].

Detention conditions in Greece raise a number of serious issues, regularly pointed out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in its reports. In its latest report of 2016[4], which made specific reference to the treatment of criminal suspects detained by the police, the Committee noted the sub-par detention conditions in police stations, especially as regards insufficient lighting, overcrowding and deteriorated facilities. The report also cited instances of severe ill-treatment and recommended that the Greek authorities *"take immediate and effective steps to ensure that the right of access to a lawyer applies for any*

[2] *D. Spinellis, C. Spinellis,* The Criminal Justice System of Greece, 1999
[3] Ibid.
[4] Available at https://rm.coe.int/pdf/168074f85d, accessed 25/6/2018.

detained person as from the very outset of deprivation of liberty by the police" and to also *"take the necessary steps to ensure that every detained person is granted the right to notify a close relative or third party of their choice of their situation and placed in a position to effectively exercise this right as from the very outset of their deprivation of liberty*". These measures should include "*the extension of the existing legal aid system to the police investigation stage or when the suspect is questioned by the police, irrespective of whether the person concerned has formally been declared 'accused'*".

Legal framework

Arrest and presence before a judicial authority

Article 6 par. 1 of the Constitution provides that «no one shall be arrested or imprisoned without a reasoned judicial warrant which must be served (upon the arrested person) at the moment of arrest or detention pending trial, except when he/she is caught while committing a criminal act» Art. 276 par. 1 CCP provides that, apart from the cases of art. 275 (offender caught «in the act») no person shall be arrested without a specifically and sufficiently reasoned warrant issued by the investigating judge or the judicial council, which must be served at the moment of arrest».

A person arrested in the act of committing a crime or on a warrant must be brought before the competent investigative judge within 24 hours of his/her arrest at the latest, or within the shortest amount of time necessary to bring the person before a judge, if the arrest is made outside the boundaries of their local jurisdiction (art. 6 par. 2 Constitution). The investigative judge may decide to release the detainee or to issue a warrant for their pre-trial detention at the latest within three days from the day the person was brought before them (art. 6 par.2 Constitution). This time limit can be extended by two days upon application of the detainee or in case of force majeure confirmed by reasoned decision of the competent judicial council. If these time limits elapse without action, the Constitution obliges any competent authority to release the arrested person immediately (art. 6. Par. 3 Constitution), subject to punishment for illegal deprivation of liberty and liable to restoration of damages (art. 6. Par. 3 Constitution).

Legal representation at the Pre-trial stage

The suspect or the accused person may be present in their own name during all investigative acts, and may be accompanied by a lawyer of their choice, should they wish so. If they are deprived of their liberty pending the examination of their case, they must necessarily be escorted to the judge and physically attend the proceedings, unless securing their presence proves to be exceedingly difficult (article 97 CCP). If the parties are for any reason unable to be physically present in any investigative acts, they may request that these be postponed until a later time, provided that this does not hurt the investigation (article 98 CCP). According to the CCP, parties to the case, which may include the victim of the crime, as well as any civilly liable persons, and their lawyers may direct questions to the investigating authorities and submit comments and observations, which may be recorded at their request (article 99 CCP).

Suspects and accused persons are to be provided, immediately upon their arrest or placement in detention, with a document listing their rights, written in plain and simple

language which they adequately comprehend. If the document is not readily available in such language, the persons placed in detention must be informed of their rights orally, with the use of interpretation services. The document must then be translated and delivered to them in due time. The document contains information on: a) the right to have a lawyer present in the proceedings, b) the right and the conditions upon which legal aid is made available, c) the right to be informed on the charges against them, d) the right to interpretation and translation, e) the right to remain silent, f) the right to access the case files, g) the right to have their country's consular authorities or a third person of their choice informed of their situation, h) the right to emergency medical assistance, i) the maximum number of hours or days of detention permitted until appearance before a court is ordered, and j) information on the remedies available to challenge the lawfulness of the arrest or detention. The person in detention must be allowed to retain this document for the duration of the proceedings against them (article 99A CCP).

Article 100 CCP on the rights of the accused, specifies that the latter enjoy the right to have their lawyer present at all times when examined by the authorities, especially when giving their official statement. For that purpose, they are notified 24 hours prior to any such investigative act. This time frame may be shortened if the delay poses a specific risk, verified in the investigating authority's report. The court must appoint a lawyer ex officio, should the accused request it. Communication between the accused and their lawyer must never be impeded and must always remain confidential (article 100(4) CCP). However, the CCP only guarantees the confidentiality of communications between the accused person and their legal representative, in the sense that what transpires between them may not be used later on in the proceedings, and not the privacy of these communications, as mandated in article 3 (3) (a) of the access to a lawyer Directive.

The accused may waive their right to legal representation insofar as this decision is taken on their own volition and is not subject to any terms or conditions. The waiver may be revoked at a later time, during any stage of the proceedings (article 96 CCP).

Legal aid and *ex officio* appointed legal assistance

Legal aid in Greece is regulated in law 3226/2004[5], on legal aid for citizens of low income, and may be requested in the context of all categories of proceedings (civil, criminal, administrative). However, legal aid in criminal proceedings is subject to differentiated conditions, in accordance with the particularities of criminal law and procedure. For serious crimes, capable of leading to pre-trial detention, attorneys can also be appointed *ex officio* by the investigating judge.

Persons eligible to receive legal aid are low-income Greek and EU citizens and third-country nationals or stateless persons lawfully residing in Greek territory whose legal case is not inadmissible or manifestly unfounded. Children, victims of certain specific crimes (human trafficking, kidnapping, child abuse and molestation, child pornography and sexual exploitation) are always eligible for legal aid as regards their civil or criminal law claims, in accordance with Directive 2011/93/EU, without the need to fulfill any additional requirements. A person wishing to receive legal aid must submit an application to that effect, which should include information on all the elements forming the basis of their request, including the subject matter of the case for which the aid is requested and proof of their financial status. The application process is free of charge and may be

[5]*Official Government Gazette Issue No A' 24/04-02-2004.*

initiated by the applicant in his / her own name (i.e. the application does not need to filed by a lawyer, albeit this option is not excluded). The request is assessed by a judge, whose decision in reached on the basis of the balance of probabilities. Unfavourable decisions must be specifically reasoned and a new application may be filed in case of changed circumstances. The judge may decide to revoke legal aid or limit the assistance provided if the eligibility conditions for it no longer apply or if they never existed in the first place. In the latter case, a fine may be levied on the applicant for the submission of a fraudulent application. If the person in need of legal aid is a child victim, as defined above, in accordance with paragraph 3 of article 1 Law 3226/2004 and Directive 2011/93/EU, the court may automatically appoint an attorney to represent the child without needing to follow the application process.

Legal aid lawyers are selected from a list, issued monthly by the Bar Association of the court's jurisdiction. Separate lists are created for criminal law cases, on the one hand side, and for civil and commercial law cases, on the other. The Bars also issue a daily list with lawyers on-call to provide legal aid at the pre-trial stage as well as during trial in cases involving felonies and *in flagrante* misdemeanours. The beneficiary of legal aid must accept the lawyer appointed to them and do not have the right to select a lawyer of their choice. In exceptional circumstances, the legal aid applicant may request the appointment of the lawyer who handled his/her case at a previous stage of the proceedings. The lawyer appointed through this system must accept and carry out their mandate and does not have any legal claim for the prepayment of their fees. Attorney fees as well as any other expenses are assumed by the state and reimbursed after the trial, on the basis of the allocation of costs decided by the court. The fees paid to the legal aid attorneys should not, in principle, fall below the statutory threshold for legal fees.

As already mentioned, a number of specific rules are applicable in criminal cases, in order to account for the particularities of the criminal law and procedure, and the need to secure access to a lawyer at all stages of the proceedings. Accused persons in need of legal aid may seek advisory assistance on how to benefit from the scheme from the prosecutor on duty or from the prosecutor in charge of overseeing the detention facility where they are being detained. The accused must generally follow the application procedure described earlier. However, this process does not apply at the pre-trial stage of the proceedings where the accused is providing their official statement or is in any way questioned by the authorities (article 100 CCP), where a decision is being made on their admission to a psychiatric facility (article 200 CCP), and, generally, in all cases concerning a felony charge (article 376 CCP). The aforementioned process is, also, not applicable during trial for felonies or *in flagrante* misdemeanours. In these cases, a simplified application process is followed, whereby the accused may submit their request in any suitable manner to have a lawyer appointed to them *ex officio* and, crucially, the conditions stipulated in article 1 L. 3226/2004 in terms of the ordinary legal aid procedure, namely low income and lawful residence in Greece, do not apply in this case. Competent to decide on the *ex officio* appointment is the Judge presiding at the court where the case is pending. The appointment is valid for the duration of the process, until the trial is concluded in first instance, as well as for the submission of an appeal. The accused must accept the lawyer appointed to him/her. It follows that in all hearings for PTD, with the exception of those conducted for the crime of misdemeanour serial manslaughter when it is not caught *in flagrante*, the accused is entitled to have a lawyer present, appointed to them *ex officio* without the need to satisfy any further conditions.

Access to the case files

According to article 101 CCP, the investigating judge communicates to the accused the contents of the investigative documents when he or she appears before them to provide

their official statement. The accused has the right to study the documents and have copies made at their own expense. The same rights apply when the accused is called to provide an additional statement, prior to it being delivered to the prosecutor. If the investigation lasts more than a month following this statement, the accused may exercise this right once a month. In exceptional cases, and provided that fair trial rights are not infringed, the competent authorities may deny access to parts of the case material if such access may put at risk a third person's life or the fundamental rights or if such restriction is absolutely necessary for the protection of public interests. In this case, the relevant information is summarized in a report. The accused and their lawyer may file a complaint against the omission of the competent authorities to grant them access to this information.

Interpretation and translation

According to article 233 CCP, if at any stage of the criminal proceedings, a suspect, accused, civilly liable person or witness is being examined, who does not speak or does not adequately comprehend the Greek language, they are immediately provided with an interpreter. If necessary, interpretation services should also be made available for the purposes of communication with their lawyers at all stages of the procedure. The right to an interpreter encompasses the assistance provided to persons with hearing or speech impediments.

The need for interpretation is assessed by all means necessary, throughout the course of the proceedings. If so required, the interpretation may be provided via communication technologies, such as teleconference, phone, or the internet, unless the physical presence of the interpreter is deemed indispensable by the investigating authority. The interpreter is appointed through a list composed by the judicial council to the court. In particularly urgent cases and if appointing a listed interpreter is not possible, non-listed interpreters may be engaged as well.

Suspects and accused persons who don't understand the language of the proceedings are also provided, within a reasonable time frame, with a written translation of the all the material procedural documents or extracts thereof (article 36A CCP). Material documents include any decision resulting in a deprivation of liberty, any document containing criminal charges, and any judicial decision relevant to the charges. The accused or their lawyers may submit a reasoned request to classify documents of excerpts of documents as material to the case, but do not have a right to the written translation of documents which do not add to the understanding of the content of the charges against them. In extremely urgent circumstances written translation may be substituted for interpretation of the relevant documents or of a summary of their content.

The suspect or the accused may waive their right to a written translation, insofar as they have consulted with a lawyer or have otherwise been fully informed of the consequences of this waiver. The decision must be a product of their own volition and should not be subject to any terms or conditions.

The suspect or the accused have the right to submit written objections before the prosecutor or the judicial council, in order to quash the decision that interpretation or translation services were not required in their case, or when the quality of these services was sub-par. Interpretation costs, as well as the costs required to translate material

documents, as defined by law, are assumed by the State, irrespective of the outcome of the case, unless the suspect or the accused is demonstrably in a position to cover them.

Pre-trial detention

Pre-trial detention is established as a legal ground for the deprivation of a person's liberty in article 6(4) of the Greek Constitution, which also determines its maximum duration, and is regulated exhaustively in the Code of Criminal Procedure. According to article 282(4) CCP, it constitutes a measure of last resort to be imposed only if other, less strict conditions (e.g. bail or obligation to report to a police station or prohibition to stay in or to leave a certain place) do not suffice to ensure that the accused will be present in their trial or to deter the commitment of further crimes.

Pre-trial detention may be imposed only if the accused is charged with a felony or, if exceptional circumstances so dictate, in the case of misdemeanour serial manslaughter, if there is a risk of absconding. Specifically, the grounds for pre-trial detention are a) the risk of absconding, as evidenced by the lack of a known residence in the country, the fact that the accused is engaging in preparatory acts to facilitate his absconding, or that he had evaded sentencing or trial in the past, or that he was found guilty of escaping prison or violating a measure restricting their residence rights, and b) the risk that the accused will commit further crimes if released, as evidenced by a reasoned judgement based on previous similar final convictions. In particularly serious cases, where the crime for which the charges were brought before the court is punishable by a life in prison sentence or by a 20-year maximum prison sentence, pre-trial detention may be imposed where, based on the particular features of the act committed, it is reasonably expected that if the accused is released it is highly likely that they will be committing further crimes, regardless of having previously been convicted of such crimes. The severity of the crime does not constitute a ground for pre-trial detention. PTD can also be ordered in the event of violation of an alternative to detention measure, unless the accused person is a minor.

Article 282 further contains favourable provisions to be applied in the cases of vulnerable individuals, namely persons with disabilities and minors. Accused persons with disabilities are either exempt from pre-trial detention or are held in detention only in exceptional cases, and taking into account the impact their placement in detention may have, especially due to their limited ability to self-care. Juveniles are held in pre-trial detention only if the acts for which they are accused are felonies incurring a life-in-prison sentence, or if they are accused of raping a person younger than 15 years of age.

Law 4139/2013[6] contains special provisions on the pre-trial treatment of accused persons who are found to suffer from an illegal substance dependence. According to article 31 of the Law, a person accused of drug-related offences or of an offence committed for the purpose of enabling them to use drugs, and who is diagnosed as suffering from psychological and/or physical addiction to illegal substances may request to follow a physical/ psychological rehabilitation programme. In this case, the investigating judge with the concurring opinion of the prosecutor may decide to order them to follow the rehabilitation programme as an alternative to PTD. In addition, in accordance with

[6] *Official Government Gazette Issue No A' 74/20-03-2013.*

articles 31 (b) and 34 of the Law, any person in PTD who is diagnosed as being dependent on illegal substances, regardless of the crime of which they are being accused of, may request that they follow a rehabilitation programme administered within the detention centre or in a special rehabilitation facility. The diagnosis is made on the basis of a special 1-3 week diagnostic and/or detoxification programme and confirmed by a committee comprising the prison council and the person responsible for administering the aforementioned programme. Any time spent in rehabilitation programmes is considered as time spent in detention and is deducted from the total detention time.

Statutory maximum length of pre-trial detention

Article 6 par. 4 of the Constitution provides that the maximum duration of detention pending trial is specified by law. It sets however maximum limits: it cannot exceed a period of one year in the case of felonies or six months in the case of misdemeanours. In exceptional cases, these maximum limits can be extended by six or three months respectively, by decision of the competent judicial council (art. 282 CPC). The Constitution also precludes exceeding these maximum limits by successively applying this measure to separate acts of the same case (art. 6. Par. 4 Constitution).

The Code of Criminal Procedure regulates these limits exhaustively in articles 282(4), 282(6), and 287. According to article 287, pre-trial detention for the same charge may not, in principle, exceed one year in duration. In wholly exceptional circumstances, this time may be extended for a maximum of 6 months, following a reasoned decision by the judicial council. In the case of serial manslaughter, the maximum duration the accused may be held in pre-trial detention is 6 months, without the option of extension. The same time frame of 6 months applies also to juvenile offenders. The length of the detention is calculated starting from the date the accused is transferred to the detention facilities, unless they were previously held in police custody, in which case detention time is calculated form the date they were thusly deprived of their liberty, as specified in particular in the arrest warrant, if one was issued.

Pre-trial detention procedures

Immediately after the accused delivers their statement, the investigating judge, with written consent by the prosecutor, and after concluding ad hoc that alternative measures will not be effective, issues a specifically and comprehensively reasoned warrant for the placement of the accused in pre-trial detention. In cases of disagreement between the investigating judge and the prosecutor, this decision lies with the judicial council, in which case a warrant is not required. In this case, the prosecutor submits their opinion within 3 days, and the council decides within 5. In the meantime, the accused is held in house arrest, his passport or other travel documents are confiscated and he is prohibited from exiting the country by order of the investigating judge.

The council convenes in camera without the presence of the prosecutor or the accused. In exceptional cases, where it is deemed necessary, it may call for all parties to appear before it, in which case the prosecutor is also present. The parties or their lawyers are also called when new material documents or other evidence has been submitted to the council following the conclusion of the interrogation, in order to exercise their rights to

information and to submit their relevant observations within the time frames set by the council (article 284 CCP).

The accused for whom a pre-trial detention warrant has been issued, is escorted to the special detention facilities for prisoners in remand and is delivered to their director, along with the PTD warrant. The director may not admit anyone to the facilities unless such warrant, or the judicial council's decision, is handed to them.

Challenging the pre-trial detention warrant

Article 285 CCP determines the procedure in place for the accused to challenge a pre-trial detention arrest warrant. If such warrant has been issued by order of the investigating judge, the accused may lodge an appeal against it before the judicial council within five days from the beginning of pre-trial detention. The same applies for decisions imposing alternative to detention measures. The appeal does not have a suspensive effect. The accused does not have a right to appeal a warrant issued following a decision by the judicial council in the case of disagreement between the investigating judge and the prosecutor. Furthermore, no remedy is available against the council's decision to place the accused in pre-trial detention, when no warrant is issued at all.

The appeal procedure is regulated in article 474 CCP. The registrar for the court of misdemeanours or the detention facility's director draft a report on the lodging of the appeal, while the latter is forwarded to the prosecutor who then submits it to the judicial council along with their opinion. The council's decision is final and may result in the detention being upheld, lifted altogether or replaced with alternative measures.

Ad hoc review procedures

Pre-trial detention may be lifted or replaced with less intrusive, alternative measures at any time during the proceedings, when the reasons necessitating it no longer apply. This can be done either ex officio or following a successful challenge of the detention or alternative measures regime by the accused. This procedure is regulated in article 286 CCP.

The ex officio process is initiated by the investigating judge on their own accord or at the prosecutor's suggestion. The judge, then, has the following options: a) to lift the detention or the alternative measures entirely, b) to submit a request to the council to lift the measures, if the case is pending before it, c) to replace pre-trial detention with alternative measures with the prosecutor's consent, and, d) to replace alternative measures with pre-trial detention, provided that the conditions laid down in article 298 CCP are met, and that the prosecutor consents.

Article 298 CCP lists the grounds on the basis of which non-custodial measures may be replaced with detention at the pre-trial stage. These are: a) the accused did not appear before the investigating judge or before the court in order to be tried, and did not have a compelling reason to justify their absence, b) the accused has absconded or has demonstrated a will to abscond, c) the accused violated non-custodial restrictive measures imposed on them, or they did not declare a change of address as mandated, and, d) if there is reasonable suspicion that they committed another crime for which pre-trial detention may be ordered.

The accused may appeal the decision on lifting the detention or the alternative measures altogether before the court of appeals' judicial council. However, in the case of a decision to replace the detention with alternatives measures, or these measures with pre-trial detention, as described above, an appeal may be lodged by both the accused and the prosecutor before the misdemeanours judicial council within 10 days from the day the decision was issued, if the appeal is lodged by the prosecutor, or 10 days from the day the accused was notified of the decision, when they lodged the appeal.

As noted earlier, apart from the ex officio process, the person in pre-trial detention and the person with respect to whom alternative measures have been ordered may also appeal to the investigating judge to have these measures lifted, or to replace pre-trial detention with non-custodial measures, or to replace certain alternative to detention measures with others. There are no limitations as to how many such appeals the accused may lodge. The person lodging the initial appeal may challenge the decision issued on it within five days from the time it was delivered to them.

Regular review procedures

The need for continued detention, as well as the need to substitute detention with alternative, non-custodial measures, or to lift it altogether and release the accused unconditionally is periodically reviewed by the judicial council through the article 287 CCP procedure. The council must convene 6 months following the date the accused was detained, or 3 months in the exceptional case of serial manslaughter. The council's decision is specifically reasoned and final.

To ensure the effectiveness of this review procedure, the investigating judge reports to the court of appeals' prosecutor five days before the above time frames are reached, citing the reasons due to which the investigation is prolonged, and forwards the case files to the misdemeanours prosecutor who then introduces the case to the judicial council, along with his reasoned opinion on the matter. The case is introduced to the court of appeals' judicial council if the investigating judge is serving there. The council convenes in camera and only calls the prosecutor and the parties in exceptional cases. Nonetheless, the accused and their lawyer are notified of the procedure by any means available, in order to submit their written observations within a deadline set by the judge presiding the council. The accused is also entitled to receive a copy of the prosecutor's opinion.

30 days after the time frames of 6 or 3 months elapse, and if the judicial council decides not to extend the length of the pre-trial detention, the warrant or the decision upon which PTD is based cease to produce their effects and the competent prosecutor must order the release of the detained person. The same process applies after the period of extension ordered by the council elapses. Any disputes or doubts as regards the extension or the completion of the maximum duration for pre-trial detention is resolved by the council.

Redress for unlawful detention

Persons held in pre-trial detention who have subsequently been found not guilty by final decision of the court or the judicial council, or who have been acquitted because, even though they have committed the act they were accused of, no sentence has been imposed on them for whatever reason, may apply for damages and receive compensation by the

state, unless they were complicit to their detention (articles 533(1a), 533(2), 535 CCP). Any persons who can claim to have a legal right to be subsisted by the unlawfully detained person also have an autonomous right to compensation (article 534 CCP).

The court issuing the final decision on the case also decides on the obligation of the State to provide compensation in a procedure taking place immediately after the trial, following a written or oral request by the unlawfully detained. Both the person requesting compensation and the prosecutor are heard before the decision is made (article 536 CCP). Such request may also be filed at a later time within a deadline of ten days starting on the date the court's judgement was pronounced or on the date the unlawfully detained was notified of the judgement, delivered in absentia, or of the judicial council's decision to acquit them. If possible the composition of the court is the same as in the original decision (article 537 CCP).If the request is granted, the unlawfully detained receives a lump sum compensation of no less than Euro 8,804 and no more than Euro 29,347 per day of detention. The final amount is calculated taking into account the financial and family status of the person entitled to it.

If the court recognises the unlawfulness of the pre-trial detention and the obligation of the state to provide compensation but either fails to set an amount for it or the amount it set is deemed insufficient to cover the total damages incurred by the unlawful detention, the person who was detained may file a suit for damages before the civil courts in order for them to determine the sum finally owed. The civil courts are not competent to adjudicate anew on the existence of the state's obligation. The damages may be pecuniary and/or "moral", i.e. for pain and suffering. For the purposes of calculating the amount of damages, any time of detention prior to the warrant issued by the investigating judge, for instance, detention in police custody, is factored in (article 540 CCP). The same conditions apply with regards to redress for non-nationals and stateless persons (article 543 CCP).

If the acquittal is reversed by a later decision following a petition to review proceedings, those who have received compensation must return the amount to the state (article 545 CCP).

Non-custodial alternatives to detention

Restrictive conditions may be ordered at the pre-trial stage of the criminal proceedings if there are serious indications of guilt for a felony or misdemeanour charge incurring a minimum sentence of three months in prison, and only if such order is deemed absolutely necessary to prevent the risk of new crimes being committed and/or to ensure that the accused will be present during the investigation or at the trial, and that any sentence potentially imposed on them will be executed. The investigating judge must examine the option of ordering alternative measures and dismiss it as ineffective before moving on to contemplate pre-trial detention.

The Code of Criminal Procedure lists, in a non-restrictive manner, five such measures which the investigating judge may order, prosecutor consenting. These are:

- bail,
- reporting at regular intervals to the investigating judge or other authority,

- prohibition to reside in or access a specific area within the Greek territory or to exit the country,
- prohibition to meet or associate with certain persons and
- house arrest using electronic monitoring (introduced in the CCP in 2013[7]).

The investigating judge and the prosecutor may order any other measures they deem appropriate in each particular case (art. 282 and art. 296 CCP). The accused may request that these measures be lifted or replaced with others at any time during the pre-trial proceedings. The court may also proceed to lift or replace them ex officio.

Electronic monitoring was introduced into Greek law relatively recently as a restrictive measure suited to more serious charges, for which pre-trial detention may also be imposed. Specifically, the investigating judge may order the measure when the charges concern felonies or, in wholly exceptional circumstances, the misdemeanour of serial manslaughter, and only following a specific request by the accused, if other restrictive measures are deemed insufficient to prevent the commitment of new crimes and to secure the defendant's presence during the interrogation and in court.

The grounds for electronic monitoring are similar to those for pre-trial detention, namely, the accused has engaged in preparatory acts to facilitate his absconding or it is reasonably expected that, if released, it is highly likely that he will commit further crimes. A special condition to make house arrest possible is that the accused has a known residence in Greece. If the crime he is accused of committing is punishable by a life in prison sentence or by a 20-year maximum prison sentence, or if it is a serial crime or had a large number of victims, electronic monitoring may be ordered if, based on the specific characteristics of the act committed and the character of the accused, it is reasonably expected that the measure will serve to preclude the commitment of further crimes, regardless of whether there is a risk of absconding.

Article 283A CCP defines house arrest using electronic monitoring as an obligation imposed on the accused not to exit the premises strictly specified by order of the investigating judge, which have been proven to constitute his legal residence or domicile. For this purpose, the accused is surveillanced via electronic means, while a specialised agency monitors and registers his geographic position using GPS technology and keeps record. The accused must refrain from any interference with the equipment and the data relating to his surveillance. If he does not comply, electronic monitoring may be replaced with pre-trial detention. As regards the time frames set for the duration of electronic monitoring as well as the procedure to lift, replace or extend the measure, the same provisions are applicable as in the case of pre-trial detention.

The accused bears the financial burden for the use of the technological equipment required to implement the monitoring and has to pre-pay the relevant expenses for six months' worth of use. If the measure is extended, additional costs are levied by decision of the judicial council, whereas if it is lifted before the designated period for which expenses have been pre-paid, the difference is refunded. Until the accused deposits the amount specified in the relevant decision, or if he does not deposit the amount within the

[7]Art. 2 par A of Law 4205/2013 (OG A 242/6.11.2013)

deadline set by the investigating judge, he is placed in pre-trial detention, unless it is found in a specifically reasoned decision that he does not possess the means necessary to cover the costs of electronic monitoring, in which case these are assumed by the State.

European arrest warrant

Provisions on the implementation of the EAW were first introduced into the Greek legal order in 2004. Article 15 of law 3251/2004, subsequently amended to include access to a lawyer and other procedural guarantees, details the procedure to be followed during the arrest of the requested person, as well as their rights, when Greece is the executing state.

When a person is arrested on the basis of an EAW against them, they are to be immediately provided with a document containing information on their rights and are escorted without undue delay before the court of appeals prosecutor. The prosecutor then proceeds to verify their identity, and informs them of the content of the warrant against them, of their right to engage the services of a lawyer and an interpreter both in the executing and the issuing state, of their right to have a third party informed of their situation and to communicate with third persons and with the consular authorities of their state of nationality, as well as of their right to consent to their surrender to the issuing state. A report is drafted to confirm that the above information has been given to the requested person. The person arrested on the basis of an EAW may request and receive copies of all the documents contained in his file at his own expense. As regards material documents, the same provisions apply as with national proceedings.

When a person is placed in detention following arrest on the basis that an EAW has been issued against them, their detention may last no longer that 15 days, during which time the Greek authorities must receive the relevant warrant from the issuing state. Under extenuating circumstances, the prosecutor may order the extension of this deadline, and inform the authorities of the issuing state of their decision to do so. In any case, the requested person is released after 30 days in detention. If the arrested individual wishes to challenge their identification as the requested person, they may appeal to the court of appeals judicial council within 24 hours from the time they are brought before the prosecutor. Their case is heard within 10 days of the appeal and the council reaches its final decision within another 5 days from the conclusion of this procedure, after hearing the arrested person and their lawyer. The arrested person may also appeal orally before the prosecutor, in which case a report of that fact is drafted.

Articles 99B CCP on the right to have a third party or consular authorities informed of the detention, 99C CCP on the right to communicate with a third person or with consular authorities, 233(1) CCP on the right to interpretation, and article 236A CCP on the right to written translation also apply to the EAW procedure.

Case law

European Court of Human Rights

The European Court of Human Rights has found Greece in violation of the right to a fair trial and of personal liberty multiple times, especially with regards to the excessive duration of proceedings and of pre-trial detention in particular, as well as due to the inhuman detention conditions in Greek detention facilities.

The case of *Dimitrios Dimopoulos v. Greece* (App. No 49658/09, Judgment of 9/1/2013) concerned inhuman and degrading conditions of detention and unjustified delay in the decision-making process in the proceedings instituted by the applicant to challenge his pre-trial detention. The Court found Greece in violation of articles 3 and 5(4) ECHR due to inhuman detention conditions, failure to secure the applicant's presence in the hearing regarding his release from PTD, and for delaying more than 100 days to reach a decision in the relevant proceedings.

The case of *Christodoulou and others v. Greece* (App No 80452/12, Judgement of 5/6/2014) concerns detention conditions, speediness and equality of arms. Mr Christodoulou was registered as 90% disabled and suffering from numerous medical conditions including kidney failure, which obliged him to go to a public hospital outside the prison three to four times a week for haemodialysis. He was charged with a number of offences related to white-collar crime and placed on PTD. The indictments division deliberated in his absence and dismissed his appeal on the PTD regime, without referring to his request to appear in person. The Court found two violations of Article 5(4), as regards the requirements of speediness and equality of arms and adversarial principle.

The case of *Stergiopoulos v. Greece* (App. No 29049/12, Judgement of 7/3/2018) concerns the obligation for a speedy review of the lawfulness of detention, as well as equality of arms in terms of the right to be heard in the hearing reviewing the pre-trial detention. Mr Stergiopoulos appealed against the order for his pre-trial detention before the Indictment Division of the Athens Criminal Court and specifically requested that his appeal be examined "speedily". The Indictment Division rejected the appeal and ruled that the applicant should continue to be held in pre-trial detention. It observed in particular that there was strong evidence that the applicant was guilty, that he had previously been convicted of fraud and theft and that the health problems he referred to could be treated in detention. Mr Stergiopoulos subsequently lodged an application for the detention order to be lifted and replaced with alternative measures. His request was granted and he was subsequently released. The Court found Greece in violation of Article 5 § 4, specifically as regards the speediness of the process and equality of arms.

In the case of *Pouliou v. Greece* (App. no. 39726/10, Judgement of 8/5/2018), the European Court of Human Rights held, unanimously, that there had been a violation of Article 5 § 4 (right to speedy review of the lawfulness of detention) of the European Convention on Human Rights. The case concerned the placement in pre-trial detention of Ms Pouliou, a lawyer by profession, on suspicion of membership of a criminal organisation. The Court found in particular that the length of time – 35 days – that had elapsed between Ms Pouliou's application for release on bail and the investigating judge's refusal was incompatible with the requirement of speedy review under Article 5 § 4 of the

Convention. The Court, however, found that the period of detention, which had been less than six months, was not incompatible with the requirement of promptness under the provision of Article 5 § 3 of the Convention. The reasons given by the investigating judge for Ms Pouliou's continued detention had been relevant and sufficient in view of the substantial evidence pointing to her guilt and that of the other members of the criminal organisation, and given the complexity of the case. They had ceased to be so in the meantime, a fact that the Indictment Division had taken into account in ordering the applicant's release.

Recent national case law

Supreme Civil and Criminal Court (Arios Pagos) 2/2018: the time spent in PTD is not deducted from the time in house arrest with electronic monitoring subsequently ordered in replacement of PTD; the time spent in house arrest is not dedusted form the final sentence imposed.

Appellate Court of Piraeus, Judicial Council Decision (PTD periodic review) 63/2016: the judicial council may issue its decision following periodic review of the PTD within a 30day period after the 6-month time limit has expired; reasons provided for the continuation of the PTD included 1) serious indications of guilt, and 2) likelihood that the accused person will commit further rimes and poses a risk of absconding.

Appellate Court of Patras 88/2015: when issuing an order for pre-trial detention the overarching principles of human dignity, personal freedom, and the presumption of innocence, as well as the principle of proportionality, as enshrined in the Greek Constitution, the ECHR, and the ICCPR, must always take priority. In particular, the competent judicial council must always take into account all elements indicating that the accused individual is suffering from a dependence on illegal substances. In this case, maintaining PTD is not justified unless the person is deemed highly likely to abscond on the basis of him engaging in preparatory acts, or having violated alternative measures imposed on him.

Appellate Court of Athens 1633/2015: in cases of real and ideal concurrence of crimes which are constituents of the same criminal case PTD orders are executed concurrently. However, PTD orders may be executed consecutively if imposed for different crimes which are simply tried jointly. In order to conclude on whether it is possible to order consecutive PTD it is crucial to determine, as a matter of fact, whether the charges form part of the same case or of different cases which are tried jointly merely due to similarities between them. In the former case, outstanding PTD orders are executed concurrently, while in the latter they may be executed consecutively, even if detention thus exceeds the statutory limit for PTD.

Legislation reform

Several legislative changes related to pre-trial detention have taken place in the last few decades. Law 1128/1981 moved from pre-imprisonment to pre-trial detention, Law 1897/1990, Law 1941/1991, N. 2172/1993, Law 2207/1994 highlighted the exceptional nature of pre-trial detention, law 2298/1995, law 2408/1996 applied provisional detention only for felonies, Law 3160/2003, Law 3346/2005 extended provisional

detention to the misdemeanour of manslaughter, Law 3727/2008, Law 3811/2009 specified the conditions for provisional detention and required a reasoned judgment on the inadequacy of restrictive orders, Law 3860/2010 increased the age limit for the pre-trial detention of minors, Law 3943/2011, Law 4055/2012 introduced a solution in cases where the investigating judge and the prosecutor do not agree and the three member court of misdemeanour, deciding as a judicial council, makes a decision. Law 4139/2013 introduced changes in the treatment of suspects and accused persons who are dependent on illegal substances, including as regards their placement in PTD and the option of ordering rehabilitation measures as alternatives to detention. With law 4264/2014 in case of disagreement between the investigating judge and the prosecutor, restrictive orders are imposed until the issuance of the decision of the judicial council. Law 4478/2017[8], which transposed into the Greek legal order, with some delay, Directive 2013/48/EU[9] on the right of access to a lawyer, entered into force on 23/06/2017. The new law introduced further safeguards strengthening the procedural rights of persons in pre-trial detention, as described in the previous sections of this report.

[8]Available in Greek at http://www.et.gr/index.php/nomoi-proedrika-diatagmata.
[9]Available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013L0048.

V. Statistical data

General statistical data on detainees paint an overall bleak picture of the situation in Greece. The main reasons for an explosive prison situation include overcrowding, high percentage of people in remand, large number of detainees of foreign nationality and high number of detained persons for abuse of the law on drugs[10]. The overall picture of detainees in Greek prisons is presented in the table below:

Table 1: General Statistical Table of Detainees – sentences (2013-2017) (January 1st of each year)

A/A		1/1/2013	1/1/2014	1/1/2015	1/1/2016	1/1/2017
1	Number of persons detained	12475	12693	11798	9611	9560
2	Number of persons detained awaiting trial	4325	2861	2470	2510	2829
3	Number of detainees of foreign nationality	7875	7623	6882	5289	5195
4	Number of female detainees	557	648	572	486	527
5	Number of minors	600	452	358	245	250
6	Number of offenders of the law on drugs	4267	3384	2872	1827	2034
7	Convicts with a death penalty	0	0	0	0	0
8	Convicts with a life sentence	1025	1041	982	960	941
9	Convicts with temporary imprisonment					
	a) 5-10 years	2535	3557	2887	2013	1798
	b) 10-15 years	1728	1979	1827	1360	1150
	c) 15 years and more	3200	2055	2244	2093	2142
10	Convicts with imprisonment					
	a) Up to 6 months	282	75	66	63	46
	b) From 6 months to 1 year	248	116	126	78	84
	c) 1-2 years	271	206	178	137	150
	d) 2-5 years	835	540	446	326	366
11	Persons detained for debts	47	27	23	56	10
12	Guests		236	549	15	44

Source: Ministry of Justice, Transparency and Human Rights

No data is available regarding the use of alternatives to detention.

[10] These conditions were described in an introductory report to a draft law amending the Penal Code in 1996 and remain valid since.

Duration of PTD. Regarding the duration of pre-trial detention, the Ministry of Justice did not provide recent data. According to data from*ECBA- European Criminal Bar Association*[11] the average duration of pretrial detention ranges from 6-12 months (data from 2009).

Table 2: Duration of pre-trial detention

Duration of pre-trial detention	1998	1999	2000	2001	2005	2006
Less than 1 month(detainees in %)	7.9	8.2	7.4	8.2	8.1	8.2
1-3 months	19.6	17.5	19.4	20.8	19.1	17.6
3-6 months	26.2	22.9	22.6	22.6	23.9	22.1
6-12 months	36.7	37.1	33.1	30.6	38.9	37.9
12-18 months	9.5	14.2	17.4	17.7	10.0	14.2

According to micro-data from the Korydallos prison for 2007[12], in 7 out of 32 cases the accused were detained pre-trial for the maximum duration allowed by legislation. It was also reported that 1,54% of pre-trial detainees were found innocent or their prosecution was paused.

Proportion of pre-trial detention detainees, who are non-citizens

The rising number of foreign prisoners is a major feature of the Greek prison system. While before the 1990s, less than 3% of the prison population consisted of foreigners around the year 2000, the Greek prison system contained over 40% of foreigners[13]. In 2006 more than half of the detainees were aliens, out of which 24% was detained pre-trial[14]. In 2012, the number of detainees of foreign nationality raised to 63,20%[15] and but decreased in 2013 to 60,4%[16].

Table 3: General Statistical Table of Detainees - sentences (2003-2012) (January 1st of each year)

A/A		1/1/2013	1/1/2014	1/1/2015	1/1/2016	1/1/2017
1	**Number of persons detained**	**12475**	**12693**	**11798**	**9611**	9560
2	**Number of detainees of foreign nationality**	**7875**	**7623**	**6882**	**5289**	5195

Source: Ministry of Justice, Transparency and Human Rights

[11] "*An analysis of minimum standards in pre-trial detention and the grounds for regular review in the Member States of the EU*" JLS/D3/2007/01, http://www.ecba.org/extdocserv/projects/JusticeForum/Greece180309.pdf

[12]*The art of crime, Έρευνα για την προσωρινή κράτηση στη Δικαστική Φυλακή του Κορυδαλλού το έτος 2007, http://www.the artofcrime.gr/index.php?pgtp=1&aid=1385901544*

[13]*An analysis of minimum standards in pre-trial detention and the grounds for regular review in the Member States of the EU*" JLS/D3/2007/01, http://www.ecba.org/extdocserv/projects/JusticeForum/Greece180309.pdf

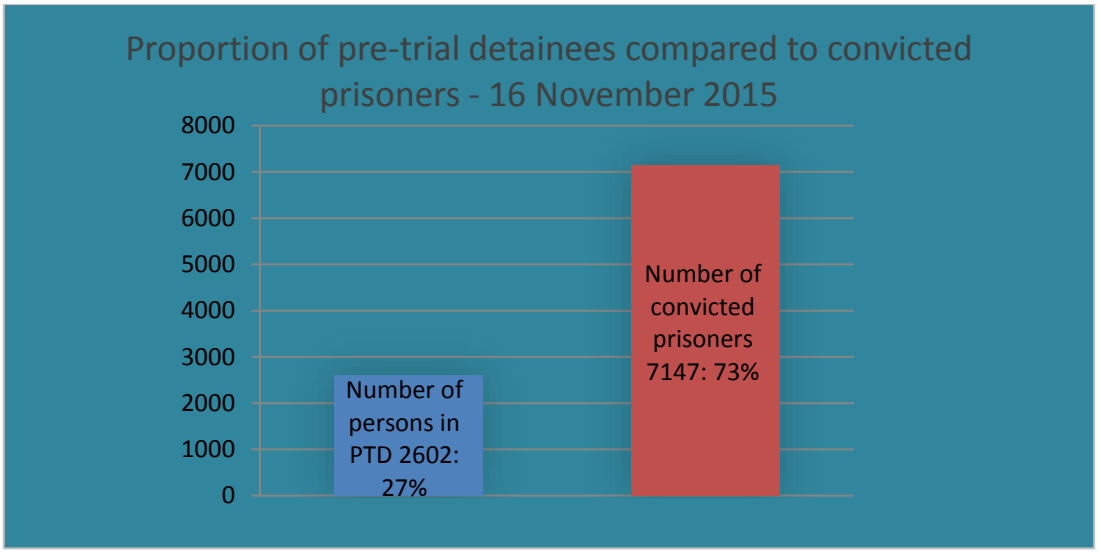
[14]*An analysis of minimum standards in pre-trial detention and the grounds for regular review in the Member States of the EU*" JLS/D3/2007/01, http://www.ecba.org/extdocserv/projects/JusticeForum/Greece180309.pdf

[15]Source: Ministry of Justice, Transparency and Human Rights, see table 1 above.

[16] Source: http://www.prisonstudies.org/country/greece#further_info_field_pre_trial_detainees

Proportion of pre-trial detainees compared to convicted prisoners. Based on existing data, pre-trial detainees are approximately 1/3 of the prison population. In 2010, pre-trial detainees made up 31.15% of the prison population, in 2011 they amounted to 32.79%, in 2012 to 34.08%, in 2013 to 34.66% and in 2014 to 22.53%. Other sources report[17] for November 2014 a number of 2.517pre-trial detainees that corresponds to 21% of the total prison population and 23% per 100.000 of the national population. A notable decrease is noted from previous years but no data is available to account for this. In terms of total numbers, the existing official data is presented in the diagram below:

Diagram 1: Proportion of pre-trail detainees compared to convicted prisoners



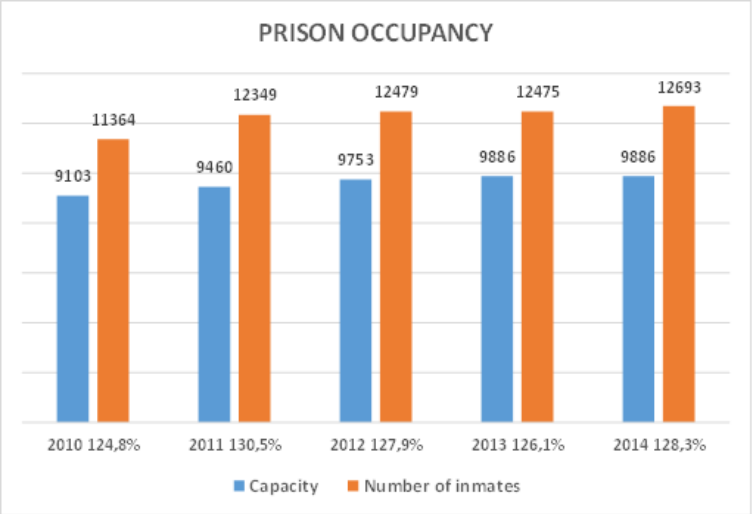
Source: Ministry of Justice, Transparency and Human Rights

Prison occupancy level

Prison occupancy is a burning issue and one that dates back several years. The Council of Europe CPT Committee in a 2010 report (based on visits conducted in 2009 in five Greek prisons) referred to a 'chronic overcrowding' of Greek prisons with increasing numbers of detainees than exceed the capacity of prison institutions. In the last four years (2010-2014), overcrowding ranged from 124,8% (2010) to 130,5% (2011) to a percentage of 128,3% for 2014[18]. Prison occupancy rates are shown in the following diagram.

[17] Source: http://www.prisonstudies.org/country/greece#further_info_field_pre_trial_detainees
[18] Compare the figures at http://www.prisonstudies.org/country/greece which present slight differences to the official data provided.

Diagram 2: Prison occupancy 2010-2014



Source: Ministry of Justice, Transparency and Human Rights

The US State Department Human Rights Report for 2012 – 2013 reported that in 2012«… *pretrial detainees made up approximately 41 percent of those incarcerated and contributed to prison overcrowding, according to figures provided by the Ministry of Justice*"… and… «… (in 2013)… *Pretrial detainees made up approximately 35 percent of those incarcerated*". On the physical conditions in prisons the report states that in 2012 "In January the prison system contained 12,479 inmates while its capacity was only 9,700. The Tripolis prison had a capacity of 85, but held 180 inmates. In the same month, the Korydallos and the Halkida prisons rejected additional inmates due to serious overcrowding. The Korydallos prison had room for 800 inmates but held 2,345. According to January 1 statistics, the country's 12,479 prisoners included 562 women and 587 juveniles»…[19]. For 2013, the report states the following: «*According to Council of Europe regulations, endorsed by the EU, the maximum capacity allowed in Greek prisons was 9,886 inmates; the prison population in September totaled 13,139 according to the Ministry of Justice. Authorities kept another 1,000 individuals in police stations and holding cells while awaiting transfer to prisons. Prisons detained women and minors separately from adult males, although there were reports that authorities detained underage migrants incorrectly registered as adults in the same quarters with adults. The guard to inmate ratio in prisons was relatively low; for example, Korydallos maintained 95 guards for 2,300 inmates, or an approximate ratio of 1 to 25*"[20].

[19]Source: Greece 2012- US State Department Human Rights Country Report.

[20]Source: Greece 2013- US State Department Human Rights Country Report.

Table 4: Prison occupancy 2018

Total surface area available	**43520,45**
Total Number of places	**9935**
Number of places for male detainees	**7632**
Number of places for young detainees	**325**
Number of places for women detainees	**769**
Number of places for detainees with drug-related needs	**180**
Total number of detainees	**10069**

Source: Ministry of Justice, Transparency and Human Rights

Arrests per 100,000 of the general population. According to data from the Ministry of Public order, the Hellenic Police arrested in the period from 2009 to 2012 635.173 persons. On average, 158.793 persons were arrested per year. Further data was not available. Data should be collected systematically to allow a thorough analysis of the situation and its underlying problems and for the design of evidence-based solutions.

Table 5: Number of arrests 2008-2012

Year	Number of persons	Percentage of arrests per 100.000 citizens
2009	189.333	1.731,583.321
2010	178.021	1.628,127.133
2011	151.956	1.405,022.951
2012	115.863	1071,2981

Source: Ministry of Public Order and Citizen Protection, Headquarters of the Hellenic Police, Security Section, response to request for data on 3/12/2014

VI. Research findings

Pre-trial detention is a measure which severely restricts personal freedom. Correct and fair procedures are fundamental to ensure that PTD is applied exceptionally and that the rights of the pre-trial detainee are respected. To that effect it is of pivotal importance to ensure that legal representation is available from the very outset of the criminal proceedings and that procedural and substantive safeguards laid down in EU law, as well as the case law of the European Court of Human Rights are respected. Research conducted in the context of several different projects indicates that, although the legal tools for the protection of the rights of suspects and the accused are in place, these do not always infiltrate the practice of PTD decision-making, rendering a re-evaluation of the existing institutional framework necessary.

Findings are mainly sourced from research done in the context of the project titled *"The Practice of Pre-Trial Detention: Monitoring Alternatives and Judicial Decision-Making",* as well as from primary qualitative research, comprising interviews with three highly experienced defence attorneys and two investigating judges.

Procedure of pre-trial detention decision-making

Access to a lawyer while in police custody

Two of the lawyers interviewed in the context of the present project reported facing serious generalised obstacles when attempting to contact and communicate with their clients immediately upon arrest, while the third lawyer interviewed said she usually faces issues only in the context of mass arrests, usually occurring in the case of riots. One lawyer mentioned that whether or not he is able to access and communicate with their client generally depends on the police station they are being held at and on the discretion of the officers handling the case, and noted that he usually is not granted such access. The second lawyer mentioned that it is sometimes "impossible" to contact her clients while in police custody, and that police officers often devise obstacles to prohibit her from seeing them, such as having her wait for hours without informing her as to the reasons necessitating the wait. Communication over the phone is also challenging, since the one having to initiate it is the suspect or the accused themselves, and they often do not have access to a phone or are not provided with phone cards in order to be able to make the call. One interviewee commented that if their client is able to use the phone this usually means they are kept in a "good" police station, and they will be able to have access to their lawyer in any case. Two of the interviewees pointed at the Attica General Police Directorate (GADA) as a particularly problematic facility.

These issues cause alarm to the defence practitioners. As one of them noted, this is a crucial stage in the proceedings, where a large part of the case file is formed, on the basis of which the investigating judge and the prosecutor will form their opinion on whether to place the accused in PTD or not. It must also be noted that these issues are not recorded in any way and that there practically is no redress for them.

Provision of information

The lawyers interviewed reported serious infractions with regards to the obligation to inform the suspect or the accused of their right to have their lawyer present and of their right to remain silent. One lawyer described a situation where her client has not spoken to the police without her being present as "ideal", and said that a lot of times their right to have their lawyer present while questioned is not properly explained to the suspects and accused persons. She also reported that police do not adequately explain to persons held in police stations that everything they say from the moment they are in custody is part of their file and can be used against them in the proceedings.

Another lawyer reported that suspects and accused persons are often pressured by the police, who may take advantage of the fact that they do not fully understand the process, especially if they are non-nationals, to waive their right to an attorney at that stage of the proceedings. For example, police officers conducting the questioning may tell them that if they forfeit that right, their interrogation will be completed sooner, that they don't really need a lawyer, or that it will "look bad" later on in the procedure if they insist on having legal representation. So, unbeknownst to them, they are providing an official statement without legal assistance.

Legal aid

All lawyers interviewed reported very few to no instances where they have been appointed via legal aid at the pre-trial stage. According to them, legal aid is rarely made use of at the pre-trial stage. They also reported that police rarely inform suspects or accused persons of their rights to legal aid while they are in police custody. One of the interviewees does not participate in legal aid in general because she believes that the way it is regulated is faulty and does not allow for the lawyer to properly do their job.

The situation is different when it comes to the *ex officio* appointment of a lawyer by the investigating judge. In fact, judges noted that this is a very common procedure and that they frequently use this option to appoint a defence attorney to accused persons liable to be placed on PTD. However, this type of assistance is first made available when the accused is brought before the investigating judge to provide their official statement and does not apply while they are in police custody immediately upon arrest.

The limited recourse to legal aid, and in particular the limited information provided to persons in police custody is highly problematic and a major bottleneck as regards the goal of legal representation from the very outset of the criminal proceedings. Furthermore, it should be noted that the cost of the pre-trial procedure is not negligible, especially in light of the financial difficulties associated with the aftermath of the economic crisis in Greece (the minimum attorney fee is Euro 556,00 plus VAT 24%). In the large majority of cases reviewed in the context of the *"The Practice of Pre-Trial Detention: Monitoring Alternatives and Judicial Decision-Making"* project (75%) attorneys were appointed by their clients and only 25% were appointed by the court through legal aid.

Privacy and confidentiality

All lawyers interviewed agreed on the complete lack of privacy in the consultations with their clients, both while in police custody and while in PTD, and attributed this both to a

problem with infrastructure and the lack of suitable facilities, as well as to the attitudes or persons involved in the procedure.

One of the lawyers interviewed described the consultation with her clients as follows: *"the time frame to appear before the investigating judge is 2-3 days following the person's arrest, during which in most cases they would remain detained in the police station. In this situation there are no guarantees of privacy and confidentiality, and it is very difficult for the lawyer to do their job. Detainees at this stage are mostly concerned with detention conditions and everyday matters, and usually their communication with their lawyer is about getting some clean clothes and underwear, getting a prepaid phone card to use in order to communicate with people close to them, even making sure that they get food and water. The lawyer often has to act as their "psychologist" at this stage, having to explain basic things about their situation"*. After all this is settled they try to collect information about the case. If the person concerned has no family ties, or other people outside the detention facility to assist this is generally a "lost case", since it is rather impossible for the person who is detained to be able to produce any sort of evidence on their case, and they must rely on the assistance of third persons.

She further noted that if she wishes to communicate with her clients she will normally have to plead with the police in order for the latter to provide a suitable space, and even then, she would be subject to their discretion as regards the time afforded for the consultation. She reported that a common response would be: *"ok, here's your space, you now have 5 minutes".* The spaces provided are either empty offices, or, most of the time, an empty corridor, with absolutely no safeguards for privacy and confidentiality. This is corroborated by the other interviewees, one of whom noted that *"there are no conditions of privacy/confidentiality. Usually the lawyer sees their client through the cell's window, with a police officer and other detainees present",* and added that, having visited many police stations throughout the Attica region, he has never seen a private room for client-lawyer consultations, and even if these do exist, they are probably being used as storage spaces and not for the purpose they may have been intended for. He also observed that the time he has for consultation with his client depends on the police station they are being held at.

The third lawyer interviewed stressed the fact that lack of privacy extends to the stage of pre-trial detention. She said that the spaces provided are essentially "public spaces", often without doors, where many detainees are consulting with their lawyers at the same time and everyone can hear what the others say. She also described police attitudes on the matter as "flippant" and commented that she would probably be made fun of if she insisted on having access to secluded facilities.

Interpretation

In Greece, the rates of non-nationals being arrested and placed in PTD is relatively high and this makes the availability of interpretation and translation services a prominent issue.

In the cases reviewed in the context of the *"The Practice of Pre-Trial Detention: Monitoring Alternatives and Judicial Decision-Making"* project, 57% of the accused were of Greek nationality and 43% were foreigners yet the majority of the accused (69%) spoke or

understood the Greek language (29% did not – in 2% of the cases this information was not available). In 92% of the cases where the accused did not speak or understand the Greek language interpretation was available (in 8% of the case files this information was not available). According to the assessment of the lawyers that handled the cases, the quality of interpretation was sufficient in 37% of the cases and insufficient in 27% of the cases (for 36% no such information was available). In none of the cases where interpretation was available (29%) were the file documents translated. Defense practitioners in their responses (2 comments) noted that the rights of foreigners or immigrants who are accused are often challenged due to the lack of infrastructure and facilities especially interpretation and translation and due to non-sufficient information on their rights. This refers especially to the fact that foreigners are often not aware of the possibility to have a lawyer appointed by the court.

In the interviews conducted in the context of this project, defence practitioners unanimously agreed that interpretation is available in all judicial proceedings, including PTD hearings, but they also reported that the quality of the interpretation is doubtful to very poor. This is evident in cases where the attorneys happen to understand the language spoken by the accused, but also based on a simple comparison between the length of the responses provided by the accused and the length of the interpretation. However, there is not much that they can do in this case, unless their client is willing and able to pay for their own interpreter.

The picture is very different when it comes to suspects or accused persons in need of interpretation services while in police custody or while held in pre-trial detention. The defence attorneys reported that despite the law providing for it, they regularly encounter extreme difficulties to access interpretation services in police stations, noting that, where the suspect or the accused does not understand Greek, police questioning is almost always conducted in English. For prisoners in remand, held in pre-trial detention facilities, things are even harder. Lawyers described a complete lack of interpretation services available and also great bureaucratic obstacles when attempting to use privately contracted professionals, who need a special permit to enter the prison premises. Two of the attorneys interviewed mentioned the Koridallos facilities as a particularly challenging example. One attorney said that usually in these cases a fellow prisoner serves as the interpreter for the purposes of client-lawyer communications.

The combined analysis of this evidence shows that while legislative consolidation is in place, limited infrastructure and facilities and lack of organization e.g. in how and by whom translation is provided might often result in challenges for the rights of the accused, especially those most vulnerable such as foreigners or immigrants. More effort needs to be placed in ensuring application in practice of a) good quality translation and b) monitoring mechanisms for the effective implementation of art 3 of the Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings that introduces the obligation of member states to provide written translation of all essential documents for suspected or accused individuals who do not speak the language of the court, in order to safeguard their right of defence and the fairness of the proceedings.

Effective preparation for the hearing by defence lawyers, access to case file and timely notification.

Defense attorneys play an important role in the pre-trial phase. Despite the inquisitorial character of the pre-trial phase the existing procedural provisions give them the opportunity to bring forth arguments and influence the proceedings, for example by explaining the personal situation of the suspect and therefore his/her incentives of absconding or reoffending.

According to the survey done in the context of the *"The Practice of Pre-Trial Detention: Monitoring Alternatives and Judicial Decision-Making"* project, the defense attorney is present in the proceedings that can lead to PTD both before the investigating judge and the prosecutor[21]. In a total of 93 responses to this specific question of the survey, 78,5% of the respondents reported that the defense attorney is always present. Clarifications provided showed that a lawyer was not present mostly in cases where the accused was not informed on the possibility to obtain representation through legal aid and he lacked financial resources, and cases where PTD is ordered in absentia. Most of these cases however concerned crimes caught in the act.

These results highlight the fact that often, especially in cases of crimes caught in the act, suspects might not be adequately aware of their rights, including the right to have their defence attorney present, or that infromation on these rights might often come too late. The standards set by the Right to Information Directive would have to be closely monitored with regard to their effectiveness.

In the large majority of cases reviewed (75%) attorneys were appointed by their clients and only 25% were appointed by the court through legal aid. In the majority of cases (75%), defense attorneys met with their clients before the PTD hearing. In almost half of the cases (48%) the attorney was present throughout the pre-trial phase proceedings. As reported in the case file review questionnaires, in the large majority of cases reviewed (77%) the defense had access to the case file (in 2% of the cases no access to the file was reported, in 16% this was not applicable, in 5% this information was not available)[22].

According to the defence practitioners interviewed for this project, legal aid is rarely made use of during the pre-trial stage, which is problematic since the cost of the procedure is not negligible, especially in light of the financial difficulties associated with the economic crisis (the minimum attorney fee is Euro 556,00 plus VAT 24%). Despite the fact that the legal framework has changed, there are many cases in practice where the suspect is not informed of their right to legal counsel or to legal aid while in police custody. One lawyer reported that suspects and accused persons are often subject to pressure from the police, who may take advantage of the fact that they do not fully understand the

[21]Representation patterns differed with regard to hearings where the extension or substitution of PTD was discussed. The attorney can be present before the investigating judge but in practice often represents his/her client through written submissions. The CPC does not provide for the presence of the defense attorney when a disagreement between the investigating judge and the prosecutor is resolved by the judicial council. The attorney is present through a written submission. Some practitioners noted that the deadline is too short especially if combined with the objective difficulties in communication with the accused. The defence attorney can be present before the council, if the presence of the accused is explicitly requested.

[22] The case file review questionnaires were completed by the defence practitioners who handled the particular cases.

process, especially if they are non-nationals. For example, police officers conducting their questioning may tell them that if they waive their right to an attorney their interrogation will be completed sooner. So, unbeknownst to them, they enter the stage of providing a statement without having their lawyer present. In any case, none of the lawyers interviewed have been called to provide their services via legal aid at the pre-trial stage, but are instead normally called by their clients, if they are permitted to access a phone, or by their clients' friends and relatives, which highlights the importance of having the right to communicate or have third parties informed in cases of detention.

On the contrary, access to the case files was unanimously considered very satisfactory. This is mainly attributed to judicial practice. In fact, one of the participants mentioned that the first exception to uninhibited access to the case files was introduced by Law 4236/2014 which transposed Directive 2012/13/EU on the right to information in criminal proceedings, so, in that regard, the introduction of EU law signified a step back. This option however is not, to his knowledge, utilised in practice, and judges still allow unhindered access to all the materials. The situation is quite different in other stages of the proceedings, however, and access to files is very difficult when the accused is still in police custody. A lot of times police will claim that they have not yet transcribed the proceedings. Also, in order to access files from different government agencies a mandate is required, which is not always easy to secure due to issues with communicating with their client. One interviewee mentioned that this situation can be exacerbated by Greek geography, in particular with regards to the islands, as someone may, for example, be detained in Mykonos while the court is in Syros. This makes securing the mandate as well as access to, or even locating the relevant files, in such a short time frame particularly challenging. This process is not facilitated in any way by the police, for instance with the use of technological means, such as sending the necessary mandate via fax. Accessing the files while they are at the prosecutor's office is also near impossible.

With regard to the **time available for preparation**, it needs to be noted that this strongly varies depending on the type of proceedings. For crimes caught in the act, there is a statutory deadline of three days within which the accused must appear before the investigating judge. During this 3-day period, with the option of requesting a two-day extension, the accused (and his/her attorney) can prepare their defence. When there is no arrest, but instead the accused appears directly before the investigating judge, a longer deadline for the hearing is usually provided, depending on the accusation and the specificities of the case[23].

According to the practictioners survey conducted in the context of the *"The Practice of Pre-Trial Detention: Monitoring Alternatives and Judicial Decision-Making"* project, the defense had access to the case file and its contents before the procedings in the majority of cases (95,5%). 35,6% of the respondents reported in the survey having more than 1 hour to prepare themselves on the pre-trial hearing, up to 1 hour (13,3%), up to 30 minutes (8,9%) or less than 10 minutes[24]. 34,5% of respondents were informed more

[23]18,4% oftherespondents in the practitioners survey confirmed that the time available to prepare largely dependsonthe type of procedure ie whether it is a crime caught in the act or a regular criminal investigation.
[24] These cases often relate to court appointed lawyers for crimes caught in the act where the suspect is brought before the authorities and an attorney is appointed on the spot.

than 24 hours before the proceedings; 12-24 hours before the proceedings (21,8%), 6-12 hours before (8%) or 2 hours before (12,6%). Overall, attorneysconsideredthissufficientfortheir preparation: 70,93% of the respondents considered the time available sufficient for effective preparation before the hearing, 17,44% of the respondents considered this absolutely sufficient while 11,63% considered it not at all sufficient.

Judges and prosecutors also reported in the interviews that the time to prepare for PTD hearings is sufficient[25]. Differentiations were mentioned however with regard to the type of cases. While case files of 'regular' crimes caught in the act (violence, bodily harm, robbery etc) are often restricted in size and straightforward, the files of crimes such as corruption, fraud or economic crime might be voluminous and include evidence that is complex and difficult to process. One investigating judge dealing with economic crimes noted that experience is a crucial factor for identifying critical evidence and focussing on it during the pre-trial stage (when time is limited), while in the later stage, more time is available to analyse everything in more detail. In the case of regular investigations, time is ample as there is no restrictive time limit for the hearing of the accused.

Respect for statutory time limits for PTD

As regards the duration of pre-trial detention, no official data from the Ministry of Justice is currently available. Data from *ECBA- European Criminal Bar Association*[26] for the period from 1998 to 2006 shows that the average duration of pretrial detention ranged from 6-12 months (from 30,6% - 38,9%) and 3-6 months (22,1%-23,9%) (See Table 2, above).

This data is supported by the research findings of the *"The Practice of Pre-Trial Detention: Monitoring Alternatives and Judicial Decision-Making"* project and by the sample of cases reviewed in the course of that project. The case file reviews showed that a) no case where pre-trial detention was ordered exceeded the maximum limits defined in legislation b) in the majority of cases the duration of PTD ranged between 6 months -1 year (21 cases), while the number of cases where PTD lasted less than 6 months was significantly lower (7 cases)[27] and c) that in in almost half of the cases (21) the duration of detention exceeded six months. Therefore, while the maximum duration of PTD is always respected, the average duration of PTD differs substantially. Given that PTD may be ordered for 'serious offences' only (felonies or serious misdemeanours), an assessment on whether the duration of PTD is excessive would require, as the ECHR has pointed out, a consideration of the individual facts of each case. The sample of cases examined concerned 'serious' crime: 91% of the accusations concerned felonies and 9% concerned both felonies and misdemeanors. The offences were fraud and crimes against property

[25] In the case of crimes caught in the act, there is a statutory limit of three + two days before the hearing of the accused during which the investigating judge must study the file and prepare for the hearing of the accused. In regular criminal investigations, there is time for the investigating judge to study the file at his/her own pace as no specific time limits exist.

[26] "*An analysis of minimum standards in pre-trial detention and the grounds for regular review in the Member States of the EU*" JLS/D3/2007/01,
http://www.ecba.org/extdocserv/projects/JusticeForum/Greece180309.pdf

[27] In the sample of 44 cases reviewed in the course of the research, in 13 the duration of PTD ranged from 6 months to 1 year, in 8 cases it lasted more than 8 months, in 4 cases 3 - 6 months and in 3 cases 1-3 months or less than one month.

(13 cases), theft and robbery (9), drugs (6), bodily harm (6), arson (3), manslaughter (2), transportation of irregular immigrants (2), forgery (1) corruption (1) and kidnapping (1). 93% of the cases reviewed, the offences were punishable with over 10 years imprisonment and the remaining 7% with imprisonment between 5 - 10 years.

As regards statutory limits, personal interviews with defence practitioners revealed two opposing views. Specifically, one of the defence attorneys interviewed mentioned the statutory limits, as established in the CCP and the Constitution, to be one of the overall positive aspects of the Greek penal system. She stressed the importance of having these limits enshrined in law and considered 18 months to be reasonable upper limit, allowing for both quality in the investigation and respect for the temporal aspects of fair trial rights. On the other hand, another defence attorney cited current statutory limits as a particularly problematic issue. She considered 18 months to be excessive, especially in a system notorious for delays in the delivery of justice, and proposed narrower margins, limiting judicial discretion in that regard. According to her, the overuse of the measure, and the fact that the upper statutory limits are often reached, reinforces the use of pre-trial detention as a type of pre-sentencing. One of the investigating judges interviewed seemed to share the latter sentiment, proposing an amendment of the statutory limits, modeled after the UK system, introducing time frames for pre-trial detention as short as four months.

As regards cases involving an EAW, the situation is better due to the fact that statutory limits are much shorter (15 or, exceptionally, 30 days). However, one of the lawyers interviewed, who has experience handling EAW cases, reported that placement in detention is almost automatic following arrest. A complaint process does exist, but is rarely effective and, in practice, it is more common to wait for the requested person to be released due to the statutory limits expiring.

Reasons for lengthy PTD.

The majority of defence practitioners participating in the *"The Practice of Pre-Trial Detention: Monitoring Alternatives and Judicial Decision-Making"* surveys (63,2% in a total of 76 answers to this question) reported that there is no valid explanation for the long duration of PTD. According to them, long periods of PTD are due to a) no substantive change in the evidence that led to a detention order and reasons related to the severity of the crime, security and the risk of new crimes (5 comments), b) delays in the investigation (e.g., because of the need for expert opinions or due to the workload of the courts, the lack of staff and resources) and c) delays in the delivery of justice (5 comments).

This seemed to hold true for the defence practitioners interviewed in the context of the current project, who also provided some interesting insights on some other factors which may contribute to delays. Specifically, one defence attorney mentioned the court's local jurisdiction, mainly determined by the location where the criminal act was committed, which often is indicative of the types of crimes prosecuted in that court and can be revelatory of the treatment of certain categories of accused persons, especially non-nationals. She also cited overcriminalisation and the rather perfunctory character of the review procedure. Another attorney stated that deficiencies in the legal aid system mean that many prisoners in remand, who depend on legal aid for their defence, are not able to

secure a lawyer to assist them with the preparation of their petitions to lift or replace pre-trial detention with alternative measures. As noted earlier, these written submissions constitute the only means for the accused to be heard in the review procedure in the vast majority of cases. The attorney mentioned at this point that legal aid is essentially readily available only for the initial statement provided by the accused in the process of first placing him in pre-trial detention, and then for the actual trial.

The Investigating Judges interviewed on the other hand, did not approach the duration of PTD as excessive or problematic as long as it remained within the statutory limits. All judges interviewed (seven in total for both projects) reported that if substantive evidence is available that proves there is no need for detention, the detainee would be released or placed under restrictive measures. One investigating judge mentioned that when the main reason for ordering pre-trial detention no longer existed (i.e. the danger of destroying evidence in a corruption case), the substitution of PTD by restrictive conditions on her own initiative was ordered. However, investigating judges considered it reasonable to prolong detention if new evidence is not available and there is no change in the circumstances and the conditions on the basis of which PTD was ordered. However, all judges interviewed admitted that delays are due to heavy caseloads and difficult working conditions. They reported a large number of incoming cases, poor infrastructure and logistics support (paperwork, lack of online tools and interconnectivity between government agencies) and mentioned that bureaucratic requirements often consume a lot of their time and delay the progress of the investigation (2 interviews). Additionally, evidence from the police or specialised criminological laboratories might take a long time to become available, thus delaying the investigation (2 judges). One judge mentioned that most of the time he would just be waiting for some piece of case material. Yet, investigating judges did not appear to consider the prolongation of the pre-trial detention to be undue.

The evidence collected through the research strongly suggests that long periods of PTD are mainly due to structural deficiencies in the justice system: poor infrastructure, extremely limited use of ICTs, in general, underdeveloped e-justice tools, including methods of interconnectivity with other government agencies and private actors.

Impact of PTD on the speed of the proceedings

The statutory limit of pre-trial detention appears to have a positive impact on the speed of the trial. The majority of defence practitioners participating in the *"The Practice of Pre-Trial Detention: Monitoring Alternatives and Judicial Decision-Making"* surveys(56%) responded in the survey that pre-trial detainees are prosecuted more rapidly and effectively compared to other cases that do not involve pre-trial detention and may take a very long time. However, a large percentage (44%) held the opposite view. The need to respect strict time limits does not necessarily define the framework for effective proceedings.

Defence practitioners interviewed in the context of the present project seemed to overwhelmingly agree that accused persons held in pre-trial detention are in a better position, in terms of the overall duration of the proceedings against them, than the accused subject to alternative measures or released unconditionally. Although in rare,

and usually very complex cases (the ongoing trial against the Golden Dawn political party was cited as an example), the investigation may carry on after the accused is released due to statutory limits being reached, in the vast majority of cases when that time approaches the case is put on the docket and should be prioritised. On the contrary, when no pre-trial detention was imposed, or when it was subsequently lifted or replaced with alternative measures through a review procedure, practitioners mentioned overly excessive waiting periods of five to seven years before a criminal case is tried, and one practitioner even mentioned a case still pending after fifteen years, while the accused has to regularly appear to the police station.

All judges and prosecutors interviewed agreed that they must and in fact do prioritise cases where PTD is ordered in order to ensure that the time limits are respected. One judge explained that in general he considers it preferable to have the accused escorted directly from the detention facility to their trial than to have them released due to the 18-month deadline expiring and then wonder if they are going to appear in court. He also mentioned that often times proceedings will be delayed by defence attorneys for that specific purpose, i.e. to have the accused released before trial in order to avoid any negative connotations.

Physical presence of the accused and their lawyer in PTD hearings

Defence practitioners participating in the survey conducted for *"The Practice of Pre-Trial Detention: Monitoring Alternatives and Judicial Decision-Making"* project confirmed that the accused is physically present in the intitial hearing when the decision on placing them in pre-trial detention is made. There they can present their views and argue against pre-trial detention or restrictive orders. If the acused does not appear before the investigating judge and the prosecutor to provide his statement, that may constitute a ground to issue a PTD warrant to consider them a fugitive. The majority of respondents (90,43%) to the defence practitioner survey reported that the defendant was present and only in 9,57% of the responses the accused was not present[28]. Along the same lines, in the cases reviewed, the accused was present in the hearing in 93% of the cases (5% the accused was not present, in 2% of the cases this information was not available).

Pre-trial detention hearings are not recorded on video and there is no possibility for teleconferencing (97,9% of defense practitioners responses). None of the respondents in the defense practitioner survey had attended hearings with the use of teleconferencing.

These findings are confirmed by the interviews conducted in the context of the present project. All defence attorneys interviewed said that the accused is always present in the initial hearing, albeit almost never in review hearings, while one interviewee mentioned that she was even aware of cases where the judge visited the accused at the hospital to

[28]The opposite is the case in the process of reexamination or extnesion of PTD when the accused is not present in the majority of cases (59.6% responded that the accused was not present, 40.4% present). According to the provisions in force (L 4055/2012) the request for reexamination is submitted to the investigating judge within 5 days from the imposition of the restrictive condition or before the judicial council. The process before the judicial council is not public and the presence of the accused is exceptional (art. 309 par. 2 CPC) and can be requested by the Council in case it is considered necessary but this rarely happens (comment from practitioners). The accused is never present when the application is placed before the investigating judge. Other reasons include the fact that the accused is detained in prisons in another location and are not transferred.

ensure that he was heard in person before he reached his initial decision. This appears to be more a result of judicial practice than of black letter law, which in some cases does allow for the accused to be represented solely by their lawyer. Investigating judges interviewed confirmed that it is very important for them to hear the accused in person and form their own opinion on his individual circumstances. One judge mentioned the importance of non-verbal queues by the accused in PTD decision-making.

As regards the presence of the defence attorney in this procedure, this is always granted if requested by the accused, and the court is obligated to appoint a lawyer ex officio, following a relevant request. However, the lawyer's participation is often limited to preparing the written statement, which is indeed crucial, but does not extend to being able to interrupt the examination of the accused with questions, comments, or arguments. One investigating judge described the procedure as follows: when the accused is brought before him, he asks them questions pertaining to their statement, which is usually already available to them in written form. After this is done, he then asks the defence attorney if there are any issues which have not been sufficiently elucidated, and if they wish for the judge to pose any additional questions.

In sum, the presence of the suspect in the initial PTD hearing is in practice respected. Although no major problems were detected, the challenges identified pertain mainly to the lack of facilities to allow the remote participation of the accused in the proceedings. Further improvements can be introduced through the use of teleconference when the suspect is held far away from the place of the court.

Cooperation between investigating judge and the prosecution.

In Greek legislation the investigating judge is the authority that orders pre-trial detention of the accused, while the consent of the prosecutor is required (art. 246 CCP). In 66% of the cases reviewed for the *"The Practice of Pre-Trial Detention: Monitoring Alternatives and Judicial Decision-Making"* project, the investigating judge issued an order for pre-trial detention; in 18% the accused were released conditionally and in 14% of the cases the accused were released without conditions. In 62% of the cases examined, the prosecutor agreed to pre-trial detention, in 16% they requested restrictive measures and in 18% they considered that the accused should be released. Overall, a high percentage of agreement between the investigating judge and the prosecutor was reported. This was confirmed through the interviews with judges and prosecutors. All investigating judges and prosecutors interviewed stressed that this cooperation is important for making a balanced decision.

However, the two parties have a different role in the procedure. All investigating judges and prosecutors agreed that the former have a better knowledge of the case having heard the accused, while the prosecutor has to act mainly based on the evidence included in the case file[29]. They all considered it important to discuss the case and have a good cooperation as a key to making a reasoned decision. One investigating judge mentioned in the interview that prosecutors often do not have sufficient knowledge of the case and tend to be 'strict' based only on the features of the offence (especially for violent crimes)

[29] The prosecutor who would hear the accused and the one whose consent is required are different persons.

and therefore demonstrate an increased bias to ask for PTD. This was not confirmed however by other interviewees (judges or prosecutors).

It is important to note that the criminal system in Greece inquisitorial in principle. Hence, the prosecutor is a member of the court, not a party to the case, and is obligated to seek evidence for both the innocence and the guilt of the accused. This also means that the arguments made by the prosecutor and by the defence are not heard in an adversarial manner.

Equality of arms: influence of the prosecutor and the defence lawyer

Overall, defense practitioners have the right and the possibility to be present in all phases of the pre-trial hearing but complain that their arguments do not weigh as much as those of the prosecutor. The prosecutor participates in the decision-making by providing his/her consent to the proposal of the investigating judge while defense practitioners are in the position of trying to provide credible counter-arguments to the reasons that might lead to pre-trial detention.

93% of the defense attorneys who participated in the survey forthe *"The Practice of Pre-Trial Detention: Monitoring Alternatives and Judicial Decision-Making"* project(in a total of 92 responses) reported that they may be able to bring forth arguments in the hearing before the investigating judge orally but more often present their arguments through written submissions. In the case file reviews, in 64% of the 44 cases reviewed the defence made written submission in the proceedings (in 32% no written submissions were made, in 4% of the cases this information was not available). In 68% of the cases, arguments were submitted both orally and in writing (18% only orally, 11% only in writing).

However, the majority of respondents in the survey (67,03%) believes that the evidence proposed by the defense is not taken into account in the same way as the prosecution (32,97% held the opposite view). Practitioners surveyed noted that, while in theory the evidence has the same validity, in practice, the equality of arms does not apply as far as the prosecutor is part of the decision-making.

An important issue that was raised was the fact that the defence usually has access to the arguments of the prosecutor only after a PTD order is issued. Practitioners reported that in practice, judicial authorities appear to have more confidence in the arguments of the prosecution while there is some prejudice against the honesty of the arguments and evidence of the defence. As an example, it was noted that not even witnesses proposed by the accused are examined. Further, many cases with similar characteristics are treated on the grounds of generalised assumptions. Taking this into account, it is not surprising that 63% of defense practitioners surveyed considered PTD orders unjustified.

All judges interviewed on the other hand stressed during the interviews that they pay a lot of attention to the arguments of the defense when they bring forward information that can shed light on the case or the personality of the accused, as this can help them make a balanced decision. One investigating judge reported however that they do not find helpful general arguments or claims on whether the conditions of the law are fulfilled when there is no specific evidence and documents to prove otherwise. The same judge reported that

often the attorneys are not prepared to bring forward convincing evidence and restrict themselves to general arguments which are of limited use.

Substance of pre-trial detention decision-making

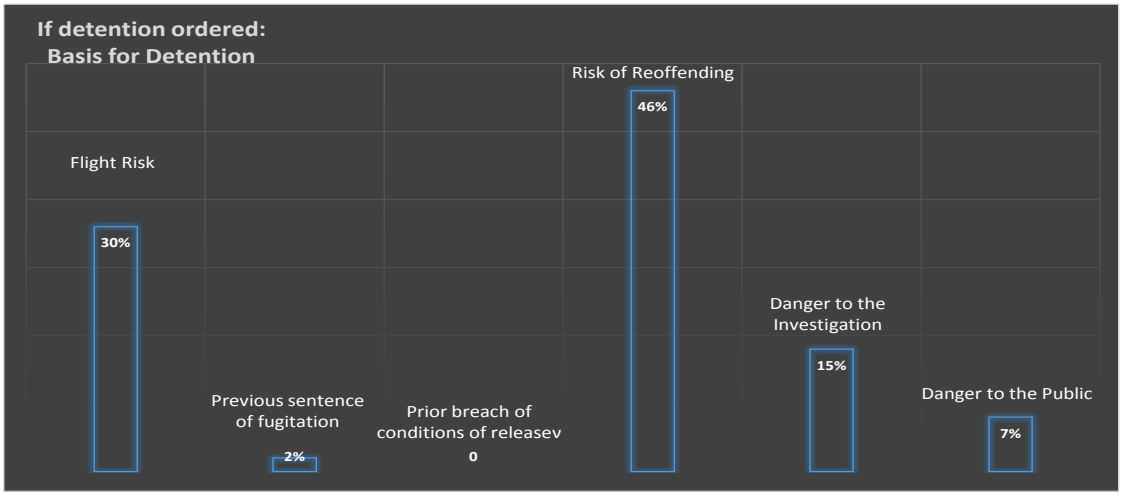
In Greece, pre-trial detention is a measure of last resort with a double purpose: to prevent the risk of new crimes and to ensure that the accused will be present at the investigation or trial and will be subjected to the execution of the judgement. PTD can be imposed only if restrictive conditions are not sufficient to ensure the above purposes (art. 282 CCP) and requires a double reasoning on a) the inadequacy of restrictive conditions and b) the satisfaction of the legal prerequisites stipulated by law in each specific case. Restrictive conditions or PTD are also ordered in conjunction with the existence of serious indications of guilt.

Under the European Court of Human Rights (ECtHR) case-law, in every decision ordering PTD, justification needs to be convincingly demonstrated, while all facts arguing for or against the existence of a genuine requirement for detention need to be examined and relevant arguments need to be elaborated in the court's order. The content of PTD decisions and their reasoning are important in the effort to assess compliance with ECHR standards.

Most common ground for PTD orders.

In the majority of the 44 cases (66%) reviewed in the course of the *"The Practice of Pre-Trial Detention: Monitoring Alternatives and Judicial Decision-Making"*project, pre-trial detention was ordered. In 18% of the cases the accused was released with restrictive conditions and in 14% he/she were released unconditionally (in the remaining 2% none of the above applied). Where pre-trial detention was ordered, the most common ground referred to was the risk of reoffending (46%), the risk of fleeing (30%), the risk of hindering the investigation (15%), being a danger to the public (7%) and previous attempts to flee (2%).

Diagram 3: Most common ground for PTD orders



Source: Case file reviews conducted in the course of the"The Practice of Pre-Trial Detention: Monitoring Alternatives and Judicial Decision-Making" project

Where the risk of reoffending was the main ground for PTD (28 cases) this was substantiated on the severity of the offence (17 cases, 34%), the risk of fleeing (6%) and the fact that the accused was a public danger (4%). In cases where the accused was detained pre-trial on the grounds of the risk to flee, the main reasons were: the lack of permanent residence (27%), the severity of potential penalties (18%), the fact that the accused was unemployed or working irregularly (4%), the fact that the accused resided in a different part of the country (3%). In cases where the danger of hindering the investigation was the main ground for the PTD, this was substantiated on threat to witnesses and the danger of altering their witness statements (34% each) and the threat of tampering with evidence (30%). This points to potential deviations from ECtHR standards especially with regard to the special weight of the risk of reoffending and the severity of the crime as grounds for ordering PTD[30] and the impact of the lack of fixed residence on the decisions[31].

According to all the investigating judges interviewed, the requirements defined in legislation are their concern when considering whether pre-trial detention needs to be ordered. All investigating judges mentioned that factors that play an important role are the nature of the crime and the risk of re-offending, the dangerousness of the accused and his/her personality i.e. whether he/she has previously committed offences, whether they are dangerous etc. For offences caught in the act, the serious indications of guilt required in legislation are usually in place (as one investigating judge mentioned). Further, the nature of flagrante delicti as violent and anti-social crimes (theft, robbery, manslaughter etc) which fall within the criteria mentioned in art. 282 CCP in fact links them closer to PTD (1 investigating judge).

[30] *Tomasi v France,* App 12850/87, 27 August 1992, para 102, available at: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57796.
[31] *Sulaoja v Estonia,* App 55939/00, 15 February 2005, para 64, available at: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-68229.

All investigating judges agreed in the interviews on the factors they consider when having to decide on PTD or restrictive measures: a first criterion is the type and nature of the offence, especially if it is violent or if it addresses vulnerable groups such as children, old people etc. all investigating judges reported that the severity of the offence and the way it was executed are taken into account as they show a lot about the offender and about whether he would be a danger for others or prone to reoffend. Although the law clearly states that the severity of the act is not per se sufficient to lead to pre-trial detention, almost all judges and prosecutors reported that it cannot be ignored, especially in case of dangerous or violent crimes or crimes committed against children etc. A second criterion mentioned by all investigating judges referred to the personality of the accused, his/her situation and socio-economic condition (this is provided for in article 79 CCP). The existence of permanent residence, a family environment and employment are taken into account when forming an opinion about the personality of the accused. All investigating judges (and prosecutors) agreed that the personal impression formed through the hearing of the accused is a resolute factor for forming an opinion on whether the legal requirements are fulfilled. A third criterion is the criminal record of the offender, whether other acts have been committed, the types of these acts as these might be indicative of the risk of reoffending. An additional criterion mentioned by one investigating judge referred to the number of victims[32].

All prosecutors reported that the criteria in the law in combination with the evidence available in the case file and the criminal past of the offender are, in principle, sufficient to show whether pre-trial detention or restrictive measures are necessary. Overall, they confirmed the views of investigating judges as no divergence in opinions was noted.

Although data shows a large number of pre-trial detainees in Greek prisons[33], the majority of investigating judges interviewed (4 out of five) did not support the opinion that the measure is over-used, but that PTD is applied when there is a need and the conditions defined in legislation are in place. For several judges and prosecutors (3 judges, 3 prosecutors) the high number of pre-trial detainees is not irrelevant to the big number of irregular immigrants present in Greece who, when engaged in criminal activities, might need to be detained (although restrictive measures would suffice) in order to appear in trial because of the lack of permanent or known residence. Few interviewees (1 investigating judge, 1 prosecutor) accepted that pre-trial detention is over-used and attributed this to the lack of credible alternative measures. None of the judges interviewed in the context of the present project considered pre-trail detention to be ordered excessively.

All investigating judges and all prosecutors interviewed denied the existence of external pressure in the process of decision-making in relation to PTD. All interviewees reported that they never experienced pressure from superiors or politicians, even though they had

[32] One judge said in the interview that it is important to look at the entire picture. She referred to a case of an alien with no permanent residence where she was warned by her superior that he would probably not appear in trial if released. However, her considerations took into account that, based on the act and the existing evidence, he would either be acquitted or would get a very low penalty on probation and that there was no reason to order PTD.

[33] See the statistical data in Section II. 5

to deal with 'high-profile' crimes that received a lot of public attention. All of them agreed that pressure from the press can be intense and disturbing and they find themselves obliged to 'close their ears' and their televisions when dealing with a high-profile case. In no case however was this pressure considered to have an impact on their decision. Several investigating judges however (3 out of 5) mentioned that they might consult with their colleagues or superiors in the process of decision making, although they are the ones making the final decision. The majority of investigating judges interviewed (4 out of five), did not report any consequences for judges who do not order PTD in case the accused would reoffend or would not appear in trial. However, one case was reported where disciplinary proceedings were initiated on the grounds of the decision of a judge. In the context of the present project, interviewed judges noted that the fact that the decision on whether to place an accused person in pre-trial detention or not is never taken by one person, but requires a joint decision by the investigating judge and the prosecutor or, in case of a disagreement between the two, by a council of judges, diffuses responsibility and renders any pressures or allocation of blame for potential mishaps on solely one person highly unlikely.

The data collected points to some important deviations in decision making on PTD from the standards that the ECtHR has set with regard to the lawfulness of PTD decisions. Specifically, the research findings highlight deviations in relation to the presumption in favour of release[34], the risk of reoffending and the severity of the crime as grounds for ordering PTD[35] (they appear to bear an important weight in the minds of the investigating judges) and the need for specific documentation of the risk of reoffending[36]. Further, the purpose of PTD in Greek law to ensure the presence of the accused in trial (combined with the lack of trust in alternative measures and the existence of a high number of irregular immigrants) appear to have negative impact on accused individuals with non-permanent residence (mostly foreign nationals)[37].

The above was fully corroborated by the findings of the interviews conducted for the purposes of the present project.

Link between certain offences and PTD.

Greek legislation links restrictive measures and PTD to 'serious' crime i.e. felonies or, exceptionally, the misdemeanour of serial manslaughter. As one investigating judge mentioned, the nature of these crimes as violent, dangerous or anti-social crimes, 'links' them to PTD. According to another investigating judge, crimes caught in the act where there is a strong indication of guilt may also present a closer link to PTD or restrictive measures.

The findings of the case reviews partly confirm these statements. The majority of cases reviewed (79%) concerned crimes caught in the act and only 18% concerned offences for

[34] *Michalko v. Slovakia*, App 35377/05, 21 December 2010, para 145, available at: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-102473
[35] *Tomasi v France,* App 12850/87, 27 August 1992, para 102, available at: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57796.
[36] *Matznetter v Austria,* App2178/64, 10 November 1969, concurringopinion of JudgeBalladorePallieri, para 1, availableat: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57537.
[37] *Sulaoja v Estonia,* App 55939/00, 15 February 2005, para 64, available at: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-68229.

which an arrest warrant was issued. The main accusations indeed concerned relatively serious or anti-social offences against property rights (13 cases), fraud and extortion (4); theft and robbery (9 cases); crimes related to drugs (6 cases), serious bodily harm (6 cases), arson (3 cases), murder or attempted murder (2 cases), illegal transfer of immigrants (2 cases), forgery and bribery (2 cases), and crimes against personal freedom (seizure – 1 case). The majority of cases involved more than 1 charge. In fact, only 37% of the cases concerned only one charge, 50% concerned 2 or 3, 11% had 4 or 5 and 2% more than five charges. In 91% of the cases, the charges concerned felonies and in 9% the accusations concerned felonies and misdemeanours. In 93% of the cases, the maximum penalty that could be imposed based on the charges was over 10 years imprisonment while 7% were punishable with imprisonment of 5 -10 years.

In the interviews the judges did not connect specific crimes to pre-trial detention. All judges interviewed made clear that the conditions mentioned in the law and the specific circumstances of each case are considered in order to reach a decision on whether PTD is necessary. However, some crimes are, due to their nature, more often associated to pre-trial detention (violent crimes, rape, crimes against minors etc). Specific features of crimes that would lead to PTD were crimes against human life or dignity (manslaughter, rape etc), violent crimes, crimes against children or vulnerable groups (child pornography, rape etc) but also any crime depending on its specific features and the way it was committed. Another feature of acts that might lead to PTD are crimes where the accused is considered dangerous and the judges feel that they need to protect the public. With regard to non-violent crimes eg economic crimes it was mentioned that PTD might be necessary mainly in order to avoid interference with the investigation or reoffending.

Porosecutors on the other hand, in their interviews, referred to the accusation, the way of commitment or the crime, the violence, the penal profile of the accused, his/her dangerousness and the general profile (eg residence) as indicators of whether it is possible to secure the presence at the trial.

In the context of the present project, defence practitioners complained that there is tendency to typecast offenders, and that certain offences will lead with almost mathematical certainty to pre-trial detention. Specifically they mentioned drug-related offences and offences relating to illegal entry into Greek territory, as well as any crime committed by non-nationals in general. As noted earlier, judges maintain that this is due to the demonstrated risk of absconding and not to any other factors, such as implicit prejudice.

Concerns about detention conditions

All lawyers interviewed for this project reported that detention conditions are a serious concern to them, especially as regards the ability of the accused to effectively prepare their defence. One lawyer said that being held in PTD, the accused is essentially helpless, noting that detainees do not even have access to the internet. Detention conditions essentially lead to self-incrimination, in the sense that the defendant is wholly unable to effectively defend themselves. She suggested that judges should be taking this reality into account and order PTD only when absolutely necessary. A second lawyer mentioned the financial strains placed on the person in pre-trial detention, who is not able to work

during his detention, and is therefore less capable of paying for additional investigative acts which may be beneficial to his case, such as a forensic investigation conducted by a privately contracted professional. The third lawyer mentioned the impact of ordering further investigative acts to the duration of the detention, and said that he is always cautious to request any further action that is not strictly necessary.

The investigating judges interviewed do not share this sentiment. They both said that they do not think of detention conditions when deciding upon whether to impose PTD or not. They consider that their job is to assess whether the requirements of PTD provided by law are fulfilled in each case, while the administration is responsible to ensure that detetnion conditions are qdequate and do not violate the rights of the accused. One of the judges mentioned that he doesn't think detention conditions adversely affect the ability of the accused to prepare for their case, in fact, he believes that while in detention they will be able to focus more on their defence.

Training on the jurisprudence of the ECtHR.

All judges and prosecutors interviewed do not consider that PTD affects the preparation for the trial and the outcome of the case negatively, although they do acknowledge that it may affect negatively the person detained. They also mentioned that the case law of European Courts pertains to general features of PTD that are already covered by Greek legislation which is compliant to these standards and is not directly relevant to the everyday cases they handle. However, apart from two investigating judges that had post-graduate studies related to criminal law or ECHR law, the rest reported not having direct knowledge of the ECHR standards that apply to PTD. All judges and prosecutors interviewed reported making an effort to be informed on case law but most of them (3 judges and 4 prosecutors) acknowledged that this is not easy due to the pressure of time, the work load and the fact that access to ECHR case law is not easy. It would be ideal for them to receive in regular intervals information on recent case law and the standards highlighted therein, in a way that could be useful for their work. The belief of judges that their work is aligned to ECtHR standards comes in contrast with the data collected through the research that points to some important deviations from the standards set by the ECtHR in decision making on PTD.

There is no specific training for judges and prosecutors on the jurisprudence of the ECtHR. Although part of this case law is covered by the two-year training received at the School of Judges, there is no continuous training or update on this issue. Two investigating judges reported in the interviews having a specialisation that made them familiar with the case law (in criminal law and ECHR). The majority however, reported being aware of case law on a general basis, but not to an extent to be able to use it on a daily basis. The lack of specialised training, combined with the evidence on breaches of ECtHR standards, makes the need for specific training courses on the case law of the ECtHR on PTD an urgent necessity.

The above was fully corroborated by the findings of the interviews conducted for the purposes of the present project.

Common problems reported

According to defence attorneys interviewed for the present project, most of the problems related to access to a lawyer at the pre-trial stage in cases which may potentially lead to PTD revolve around police custody. Specifically, they stressed the arbitrariness of the process and the fact that whether or not the rights of the suspect or accused person will be respected is largely dependent on luck and the good will of the specific officers involved, and mentioned once more the lack of interpretation services as a major issue.

Another focal point was the treatment of vulnerable individuals, especially persons dependent on illegal substances and sufferers of HIV-AIDS, two conditions often coinciding in criminal proceedings. In that regard, it was mentioned that the process for diagnosing dependence is quite cumbersome and often subject to delays. As a result, the necessary paperwork may not be available to the investigating judge at the time of the decision-making on PTD and the conditions for their favourable treatment due to their dependence are not fulfilled (this was corroborated by investigating judges participating in the national working group). In addition, the type of programmes available are not always suitable for the particular needs of each person, in particular if drug replacement therapy is required in their case. One of the interviewees narrated the specifics of a prominent case she handled, which concerned persons with multiple vulnerabilities, including drug abuse, HIV-AIDS, homelessness and disability, where no compelling grounds were shown to justify detention and in fact a letter was furnished by an accredited organisation providing rehabilitation services, stating that they will exceptionally provide housing for them in order for them not to be placed in PTD. Yet, public order grounds were cited and some of the accused did end up in PTD.

Another major issue is the function of PTD in relation to final sentencing. In that regard, the lawyers interviewed were unanimous in their assessment that it essentially constitutes a form of pre-sentencing, since the time served in PTD is subsequently deducted from the time of imprisonment following conviction. It was submitted that the aims of PTD are often subverted to cover other gaps in the penal system, including overly lenient final sentencing. The lawyers also consider the overall length of the time spent in PTD to often be unwarranted, although they agree that statutory limits are generally respected. One lawyer mentioned that he believes alternatives to detention to be often be imposed unnecessarily in cases where the accused should have been released unconditionally.

On the other hand, the judges interviewed focused on general issues related to the administration of justice, limited use of modern technologies and heavy caseloads, which they consider to be major factors for delays. It was submitted that the overall percentages of pre-trial detainees in relation to the general prison population are also influenced by general policy factors, such as legislation decriminalising or reducing the severity of certain actions, and thus leading to fluctuations in the total number of detainees. Another factor which was stressed related to Greece being at the receiving end of migratory flows and the increased numbers in suspects and accused persons who do not have permanent residence in Greece. In this case, the judges' and prosecutors' hands are essentially tied, as they cannot order the release of a person accused of serious crimes without some proof of residence.

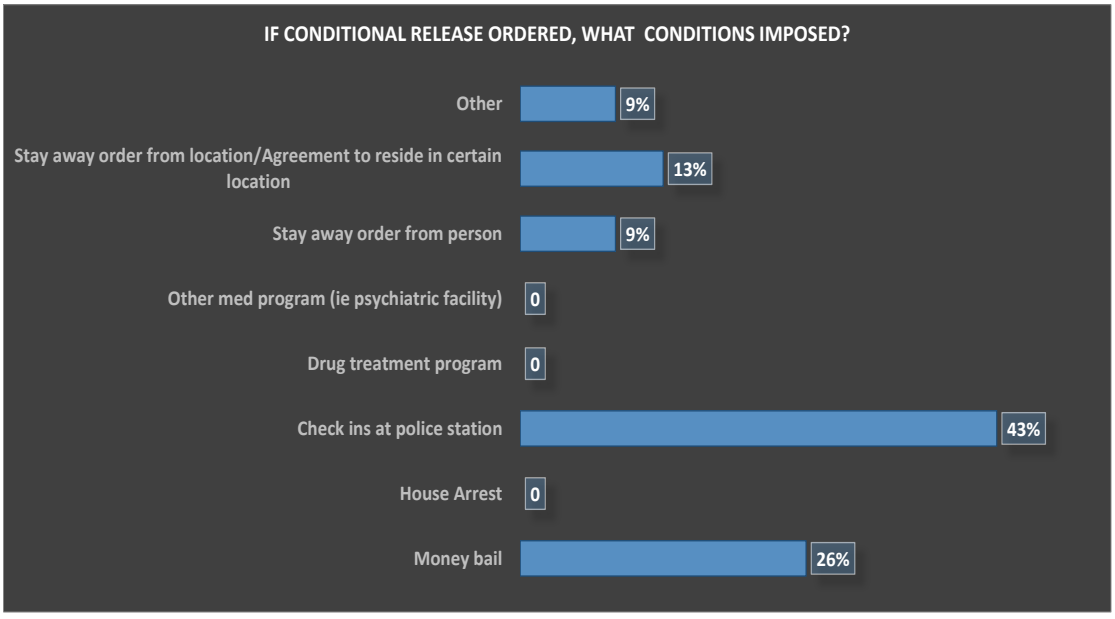
Alternatives to Detention

Pre-trial detention (PTD) imposes severe restrictions on individual liberty and can have severe negative consequences on the detainees' life. The use of alternative, less intrusive measures, is preferable for mitigating adverse effects. Under the European Convention on Human Rights, national courts, when deciding whether a person should be placed in PTD or released, must consider alternative methods of ensuring that the person appears in trial. Under Greek law investigating judges propose alternative measures that are suitable to the specific circumstances of the case and the personal characteristics of the accused and enjoy a certain amount of liberty in devising their own alternative restrictive conditions, if they so deem fit. Furthermore, PTD orders must contain detailed reasoning on why alternative measures are insufficient in each particular case. However, incomplete reasoning on alternatives to detention has been noted as an issue in the case file reviews conducted in the context of the project *"The Practice of Pre-Trial Detention: Monitoring Alternatives and Judicial Decision-Making",* and has been corroborated by the opinions of the defense practitioners interviewed in the context of the present project.

Consideration of alternatives to detention by the judge.

In 66% of the cases reviewed in the *"The Practice of Pre-Trial Detention: Monitoring Alternatives and Judicial Decision-Making"* project, the accused were detained pre-trial, while in 18% of the cases he/she was released with restrictive conditions and 14% was released without restrictive measures (see diagram 1).Where restrictive conditions were imposed these pertained to check in at police station (43%), bail (26%), stay away orders (22%) or other.

Diagram 5: Conditions imposed in case of conditional release



Source: Case file reviews conducted in the course of the project

Defense practitioners (64,6%) considered that the judges do not have trust in restrictive conditions, despite the fact that according to the law, PTD is a measure of last resort. Only 10,1% of the respondents acknowledged that the adequacy of restrictive conditions is

always examined by the investigating judge, while 54,4% replied that it is often, but not always, examined. However, an important number of respondents believed that the possiblity to impose restrictive measures is examined rarely (32,9%) or never (2,5%). Overall, the majority of defense practitioners (72,4%) agreed that restrictive conditions are minimally used. The alternatives used more often used include bail, securing measures, rehabilitation programs and restriction at home. Alternatives are not exhaustively listed and judges are free to select the most appropriate ones for each case.

With regard to the reasons behind the limited use of restrictive conditions, defense practitioners referred to several factors: the fact that some measures are new and there is no way to monitor their application, the fact that judges see pre trial detention as a pre-sentence, the fact that when the accused does not have permanent residence it is difficult to apply restrictive conditions, the fact that restrictive measures are not considered effective, the feeling of judges that they have to protect the public and do not want to risk a breach of restrictive conditions by the accused. Special reference (6 comments) was made to the 'electronic bracelet' (electronic surveillance) which is the latest option provided for in legislation and is still in a pilot phase. It was acknowledged that this measure could solve a number of problems, however, the conditions for its application are not yet clear enough, the cost has to be borne by the accused and is substantive (it raises to approximately 3.000€ for six months), while there is a lack of resources and infrastructure from the part of the state.

All judges and prosecutors stated in the interviews that ordering pre-trial detention is a difficult decision and one that they do not make lightly. They stressed the fact that everything needs to be examined on an individualised and case by case basis taking into account the specific circumstances and examining whether restrictive measures are necessary and which would be appropriate in each case. All investigating judges mentioned that if no restrictive measures are considered necessary the accused would be released.

According to all the investigating judges interviewed, when considering restrictive measures, critical factors that determine possible solutions are the nature of the crime and the personality and circumstances of the accused. For one matter, all judges stressed in the interviews that not all restrictive measures are suitable for all types of cases and offenders. For example, bail or electronic surveillance appear to be more appropriate for economic crimes, while check ins at police stations combined with ban of exit would look more appropriate for other type of crimes. Electronic surveillance for example would not be effective for an offender who commited illegal acts by using the internet, as it is not possible to ensure that he/she does not have access to the internet. Through the interviews, all judges considered **restrictive measures effective, if they can prevent reoffending.** In this sense, imposing bail to an individual accussed for manlasughter or to someone with a big fortune, or to someone accused for fraud or who has been using fraud to gain money were not considered effective in preventing new criminal acts.

A common feeling of justice is a consideration that 3 investigating judges referred to when explaining how they consider restrictive measures. One investigating judge, referred to a case where a young woman accidentally killed her fiancee. The crime was commited in a remote island and it caused a lot of turnoil in the press and the local society. The accused

did not fulfil any of the criteria set in the law for pre-trial detention: she was not dangerous, she had no means of leaving the island and nowehre to go, she would not reoffend. However, PTD was ordered on the basis of two main considerations: firstly, that given the specifics of the case, even if she was convicted she would never spend any time in prison; and that given the severity of the act (manlaughter) and the method she used to commit it (she broke a glass and fatally injured her fiancee with it), it was necessary, for herself and for the local society, to show that she received some 'punishment'. The investigating judge said that no other alternative would make any sense in this case. Detention was substituted after six months with less restrictive measures. Another example often mentioned by the interviewees concerned manslaughter and violent crimes, where several judges considered that it is not easy to release individuals accused of such acts and where PTD might appear to be a one way solution (4 investigating judges). Special emphasis was placed on the responsibility of the judge to protect the public from dangerous offenders.

Several prosecutors (three) commented on the fact that, for some reason, people react strongly to bail, even if it concerns a relatively small amount of money and immediately request substitution with other measures. Overall, investigating judges and prosecutors (3+3) agreed that for some reason, bail is not effective in the Greek legal system.

All investigating judges were concerned over the lack of effective alternatives to detention that could limit its use. Electronic surveillance at home is a measure recently introduced in legislation that has not yet been fully operational and was met with controversy by most interviewees (4 out of 5). At the time of the interviews, the measure was still in a pilot phase, but could solve a number of problems, including limiting the use of pre-trial detention. All judges interviewed were very concerned about how it would be applied. On the one hand, this measure is less restrictive than detention and could serve the purpose of ensuring the presence of the accused in trial while reducing significantly PTD. One the other hand, all judges expressed in the interviews several concerns with regard to this measure, its application and its effectiveness. Several gray areas in the law, in application measures and follow up and monitoring of the accused were detected that made them feel insecure and did not make judges feel that this was a reliable alternative. Further, according to the interviewees, the cost of the measure (the accused needs to bear the cost of the bracelet) excludes from its application a number of groups that might often be detained due to lack of permanent or known residence. One judge raised the concern that, although this might be a solution for cases where pre-trial detention would be ordered, if used extensively, it might be used instead of less restrictive measures (check ins at police stations for example).

Overall there was a concern that restrictive measures are not effective and often pre-trial detention might appear to be the only solution to avoid reoffending, protect the public and ensure that the accused appears in trial. Conducting more research on restrictive measures, finding means to enhance their effectiveness and discussing with judges on their use could have a clear impact in using PTD only as a measure of last resort.

In the interviews conducted in the context of the present project, defence attorneys seem to be conflicted. They agreed that judges in general seem to trust alternative measures and order them regularly. However, they also noted that they do not order them instead

of detention but use them as a safety measure in cases where there should have been unconditional release. This is particularly evident in cases where there are several accused persons, and some are charged with felonies, while others with misdemeanours. In that case they all go through the same felony procedure and it is likely that they will all receive some form of restrictive measure. Judges, on the other hand, maintain that they do trust alternatives to detention and order them when the circumstances of the case allow it. Nevertheless, a quote from one of the judges interviewed is indicative in that regard. He said: "if I conclude that the defendant does not fulfil the conditions to be placed in PTD, I will order a restrictive condition", denoting a reversal of the order in which PTD and alternatives should be examined by the investigators.

As regards the use of electronic monitoring, this remains limited to date. According to the lawyers interviewed this is due to many reasons. The fact that investigating judges are unfamiliar with it and are apprehensive to order it was mentioned. One of the lawyers described it as a rather impractical measure, and blamed its limited use on its specific characteristics and requirements, namely the fact that the accused must have a known address, sufficient means to be able to afford it, no need to work for the duration that the measure is implemented, as well a person available to assist them with everyday needs, since they would be unable to leave the premises. All these limit the number of actual cases where electronic monitoring can be applicable, and render it a rather exceptional alternative to encounter in practice.

Access to professional services to assess possibility of alternatives to PTD

Professional services to assist judges and prosecutors to assess the possibility of alternatives to pre-trial detention are not available. Defence practitioners acknowledged that judges do not have access to professional services in order to examine the risk of new crimes by the accused and facilitate and document their decision on the necessity of pre-trial detention (84,8% replied negatively). The evaluation by the judge on whether the conditions are met for the imposition of pre-trial detention (whether conditions are sufficient to ensure the presence of the accused in the trial, the integrity of the investigation and the non commitment of new crimes) is done on the basis of their opinion, their personal assessment, their experience and not on the basis of professional services or special risk assessment tools.

All investigating judges interviewed confirmed that no professional services are available and they were not aware that such services existed in other countries. Their decision is made on the basis of the evidence included in the file and the hearing of the accused. The personality of the accused was mentioned as a prevalent factor that severely influences the decision on whether alternatives would be effective or not. Judges and prosecutors also noted that they do not have easy access to objective data e.g. data on other pending offenses of the accused (such data is available but not online and takes time to access) that would allow them to judge in a more objective way the risks associated to a particular offender.

The above is corroborated by the research findings in the context of the present project. In fact, most of the participants in the interviews were confused by this question and explanations had to be provided in order for them to understand the concept of risk-

assessment services. Only one lawyer was vaguely aware that similar services exist in other jurisdictions.

Frequency of ordering alternatives to PTD

There is no official data on the frequency of alternatives to detention orders. The opinions of judges and prosecutors on the matter differ: some of them report that alternatives are not used sufficiently while others consider that they are used whenever there is an option to do so. Defense practitioners, on the other hand, believe that there is a lack of trust in alternatives to PTD and this is the main reason why they are not used as often as they should. The qualitative data collected through case file reviews for the *"The Practice of Pre-Trial Detention: Monitoring Alternatives and Judicial Decision-Making"* project partly confirm this statement: in 66% of the cases reviewed, the accused were detained pre-trial and only in 18% of the cases they were released on restrictive conditions, while in 14% of the cases they were released without restrictive conditions. Investigating judges reported that they use PTD only when necessary and that restrictive measures are applied whenever possible. Overall judges raised concerns with regard to the effectiveness of restrictive measures in deterring the accused from reoffending and make him/her appear in court.

Proposal of alternatives by defence practitioners

Investigating judges are the ones who have the competence to propose restrictive conditions or PTD if appropriate. Defense practitioners have the option, through their role in the pre-trial phase, to argue against pre-trial detention and in favour of less restrictive alternatives or unconditional release. Defense practitioners submit a written note (υπόμνημα) in the pre-trial hearing and can bring forward arguments and evidence on the adequacy of restrictive conditions, especially information that might not be included in the case file.

96,2% of respondents in the defense practitioner survey (in a total of 79 answers) confirmed the possibility of submitting proposals. Practitioners reported (in a total of 40 comments) that their proposals are well received and considered but the degree to which they are accepted depends on the type and importance of the case, the reasoning, the strength of the evidence and the investigating judge. A smaller number of respondents (approx. 10) mentioned that proposals from the defense are never or almost never accepted. Defense practitioners stated in the survey however their impression (67,03%) that the information brought forward by them is not taken into account in the same way as the arguments of the prosecution (32,97% had the opposite view). According to the practitioners, judicial authorities often refer to the prosecutor's opinion and demonstrate their 'trust' in the arguments of the prosecuting authority. In the cases reviewed, the defense presented arguments to fight against PTD or restrictive orders (25 cases). Alternatives to detention proposed were check-ins at police stations (8 references), bail (6 references), prohibition of access to specific places (4 references), inclusion in rehabilitation (2 references) or other medical programs (1 references), the request for an expert assessment (5 references), expert examinations and laboratory exams or tests.

All judges reported in the interviews that they always take into account the proposals of the defense, especially when they bring forward new information or perspectives that the

judge had not considered or that illuminate aspects of the case or the personality of the accused that are not included in the case file. It was stressed especially from one investigating judge (and confirmed by all others) that when the arguments and information are substantive they are always taken into account. When it is purely formal or pertains to attempts to interpret the law, it is not as useful for the judge. In fact, all judges welcomed any assistance from the defense in helping them make a justified decision.

The above is corroborated by the findings in the present research. Lawyers reported that whether or not and to what degree their recommendations will be heard depends on the investigating judge and their personality. They may receive the defence's comments well and take them into account, or they may not address them at all. Judges maintain that they are open to reasonable suggestions and that they want alternatives to be successful. One of the judges interviewed described his process as follows: after hearing the defendant's statement and forming an opinion on the applicability of alternative measures to their case, they would share their thoughts with the defendant and their lawyer, saying for instance, "I am thinking to impose a Euro 10.000 bail, what do you think of that?" if he is convinced by the defendant's answer that he is unable to cover that cost, he will move on to another alternative, such as reporting to a police station.

Achievability of the alternatives ordered.

No official data is available regarding the extent to which the alternatives ordered are achievable for the suspect. From the cases where restrictive conditions were imposed on the accused, in the majority these were respected (89%) and were breached only in 11% of the cases. Breach refers to the non-appearance before the court.

Impact of alternatives to PTD on length of procedures.

While PTD appears to positively shorten the time of the trial in a way to respect the statutory limits (12 or exceptionally 18 months), this is not the case with alternative measures. According to defense practitioners (64,6%) when restrictive conditions are applied, the trial date will probably be determined much later compared to cases where PTD is ordered. An important number of defence practitioners (56%) believed that defendants in PTD are prosecuted more effectively or quickly compared to others. The above is corroborated by the research findings in the context of the present project.

Review of pre-trial detention

A review procedure for PTD is essential for ensuring the lawfulness of prolonged detention and assessing whether grounds to continue the restriction of individual liberty are in place. According to the European Convention on Human Rights as interpreted by the European Court of Human Rights (ECtHR), pre-trial detention must be subject to regular judicial review, all stakeholders must have the possibility to initiate, review hearings must be adversarial and oral, access to case files should be ensured, a decision must be taken speedily and reasons must be given for the need for continued detention, without a simple reproduction of previous decisions. During reviews the court should be mindful that a presumption in favour of release remains[38] and continued detention "can

[38]See above, note 12, para 145.

be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty laid down in Article 5 of the Convention".[39] The authorities remain under an ongoing duty to consider whether alternative measures could be used.[40]

Standard of scrutiny applied during reviews, new evidence and compliance with ECtHR

Based on the data from the case file reviews, out of 44 cases, 25 cases were reviewed once, 4 cases were reviewed twice, 2 cases were reviewed three times, and 1 case was reviewed 4 times[41]. For 1 case, the review was pending. In 11 cases there was no review (PTD ended before the review). In almost half of the cases (49%), the review was made on the grounds of existing legislation (automatic review after 6 months). In 28% of the cases reviews were initiated with a request of the defence. In the review of the cases before the judicial council, the accused and his/her attorney were not present in the review process, as proceedings before the judicial council are not public.

In half of the cases in which a review took place the 1st review led to a continuation of detention. In 22% of the cases, detention was replaced by alternative conditions, while in 3% the accused was released unconditionally (in 25% this was not applicable). In 54% of the cases reviewed for the first time, the reasoning of the decision mentioned no change in the evidence that led to detention and no new evidence was presented to document the need to continue detention. Only in 5% of the cases new evidence was made available by the parties. The defence presented arguments against detention or restrictive conditions in 19% of the cases reviewed.

In 71% ofthecases, asecondreviewwasinitiatedwitharequestofthedefenseand 29% basedontheexistingstatutoryrequirements. In 100% of cases reviewed a second time, the decision prolonged the duration of pre-trial detention. In 57% of the cases reviewed a second time, the decision was duly reasoned, while in 43% no specific reasoning was provided. Judicial authorities did not present new evidence to support the necessity of detention and only in 29% of the cases reviewed new evidence was presented by the investigating judge or the prosecution. The defence presented counterarguments to end detention or restrictive conditions in 28% of the cases reviewed.

For cases reviewed a third time, the initiative came from the defence. In 67% of the cases reviewed a 3rd time, the detention was prolonged, while in 33% the accused was released with less restrictive conditions. In the majority of cases (67%) the decision was considered justified and duly reasoned. However, new evidence was not presented by any party. For the cases reviewed a 3rd time, 33% presented counterarguments. 33% were subjected to appeal against the decision to prolong detention.

[39] *McKay v UK,* App 543/03, 3 October 2006, para 42.
[40] *Darvas v Hungary,* App 19574/07, 11 January 2011, para 27.
[41] Review srefer to both the automatic review that takes place every six months and the request for substitution of pre-trial detention or restrictive conditions.

Only 1 case was subjected to a 4th review. In this case neither the accused nor the prosecutor were physically present. The decision prolonged pretrial detention without specific reasoning or new evidence.

Defense practitioners in the survey were divided in their responses with regard to whether judges take into account all relevant conditions in the process of reviewing pre-trial detention. 44% of the respondents stated that these are rarely taken into account, 44 % stated that these are often taken into account but only 4 % stated that these are *always* taken into account. 8% of the participants chose the response *other* and explained that this depends on the accusation and the profile of the accused, that there is a lack of trust towards the reasons brought forward during reviews, that requests for substitution of PTD with restrictive measures are rarely accepted, that it depends on changes in circumstances and legislative changes that have taken place in the meanwhile. Based on the data from the case file reviews, the defense brought forward counter arguments in order to document the need to replace pre-trial detention or release the accused. However, the effectiveness of the arguments presented cannot be clearly established as their impact on the final decision cannot be deducted (when it concerned release or replacement of PTD). Overall, defense practitioners are rather dissatisfied with the reasoning that they consider formalistic and repetitive and not focused on the specific circumstances of each case.

All investigating judges, however, claim paying due attention to the arguments brought forward by the defense especially when it concerns information that is not available in the case file and can shed additional light to the conditions of the accused or his/her personality. One investigating judge reported in the interviews that she did not hesitate to substitute PTD on her own initiative when the conditions for PTD were no longer fulfilled.

The above was fully corroborated by the findings of the interviews conducted for the purposes of the present project.

Effective access to the review process by the suspect/defence practitioner and practical obstacles to effective review

Defense practitioners in the survey were skeptical with regard to the effectiveness of the review process. The majority of respondents (62,5% - 88 responses) in the defense practitioners survey reported the existence of barriers in the effective review of decisions imposing pretrial detention. Several barriers were reported in the review process (most of them apply in PTD decisions more broadly) including the fact that detention is decided on the basis of the accusation and the crime committed and not the specific conditions brought forward by the defendant (eg addiction, aliens etc), automatisms in judicial practice, the reluctance of judges and prosecutors to question their decisions or decisions made by their colleagues, a negative bias towards less restrictive means than detention, time pressure, excessive work load, lack of experience from the part of investigating judges, poor communication between the investigating judge and the prosecutor. It was also highlighted in the survey by lawyers as a problem that in reviews requested by the defendant the same actors are involved (investigating judge and prosecutor) who made

the initial decision. It was also mentioned as a barrier that the judicial council does not review the entire case file but makes a decision based on the written submissions.

Research conducted in the context of the present project reveals that defence attorneys in general consider the automatic review process to be wholly perfunctory. They are skeptical as to whether the investigating judges go into the substance of the case, truly re-examining if the conditions for PTD still apply, unless very compelling new evidence is presented to them. This means that the burden of proof lies, essentially, with the accused in the context of the review procedure. As a whole, they stress the importance of having legal assistance available in order to submit written observations, otherwise theirs is pretty much a "lost case", and PTD is basically "automatically" renewed.

On the other hand, judges interviewed stressed the substantive nature of the reviews, submitting that they thoroughly examine petitions for release from PTD and do not "copy-paste" decisions. The also stressed the possibility for the defence to request unlimited reviews of the PTD regime as a particularly positive aspect of the procedure.

Timing of the review in relation to the initial PTD-order -compliance with national law.

Based on the data from the case file reviews, 25 cases were reviewed once, 4 were reviewed twice, 2 cases were reviewed 3 times and 1 case was reviewed four times (1 review was pending and 11 cases were not reviewed). The timing of the 1st review is presented in the following table:

Table 5: Timing of first review of PTD

1st review					
Time	2 months	3 months	4 months	5 months	6 months
Number of cases	2	2	3	1	17

Source: Case file reviews conducted in the course of the project

Reviews held at 6 months were automatic based on the existing legislation, while in the remaining cases based on an application by the defendant before the investigating judge.

VII. Research Conclusions

The research results indicate that Greek law is generally compliant with EU and fundamental rights standards in the area of PTD. However, serious infractions are observed in practice, in particular as regards access to a lawyer at the stage of police custody. As regards judicial decision-making, standards are generally upheld, although some undue weight may at times be placed on the seriousness of the offence committed, as well as the publicity the case has received. Judges could generally benefit from better infrastructure and support services, which would facilitate and render more efficient the decision-making process. The review process of PTD should move towards a more substantive direction.

More specifically:

1. **Arbitrariness while in police custody.** Legal standards on the treatment of persons in police custody are generally compliant with the standards of the access to a lawyer directive and other applicable instruments, with the exception of the right to privacy during consultations, enshrined in article 3 (3) (a) of the access to a lawyer directive, which has not been properly transposed. However, severe infractions are observed in practice, especially as regards the provision of information, the right to contact a third party or a lawyer, and the right to translation and interpretation. This has led to significant differences in the treatment of suspects and accused persons dependent on whether they are directly called before the investigating judge or whether they are first apprehended by the police on the basis of an arrest warrant against them, or because they were caught in the act of committing an offence. This essentially creates a two-tier system, where some accused persons are liable to be subjected to severe violations of their fundamental fair trial rights.
2. **Privacy and confidentiality in consultations** are not sufficiently ensured, as the requirement of privacy has not been transposed does not constitute an obligation under Greek law. Furthermore, the lack of private, specialised facilities for consultations, both in police precincts and detention facilities, renders any semblance of privacy simply unobtainable. In addition, although no reports were made of instances where confidentiality of consultations was in fact breeched, the lack of any guarantees to that effect remains troubling.
3. **Translation and interpretation** services have been reported to be severely lacking. Access to interpretation while in police custody is doubtful and communications with persons who don't understand the Greek language are mostly done in English if at all. Serious obstacles also exist as regards access to an interpreter in detention facilities, while the option of hiring a private interpreter is impeded by bureaucratic obstacles. Although translation and interpretation are available for proceedings conducted in the courts, there quality is dubious and no mechanisms are in place for the accreditation of listed interpreters.
4. **Legal aid** is insufficiently made use of at the pre-trial stage, and most practitioners report that that have rarely, if at all, encountered cases where the

defence lawyer was appointed via the legal aid scheme at this stage in the proceedings. Far more common is for the investigating judge to appoint a lawyer *ex officio* when the suspect is brought before them to provide their statement. This procedure ensures that no one is unwillingly left without legal representation during the hearing which determines if they are going to be placed in PTD.

5. **Grounds for PTD** are generally compliant with EU standards, however, there are indications that decision-making may be influenced by other factors, including, most notably the severity and "moral disapprobation" of the act committed. Lawyers tend to consider that PTD is imposed as a form of "pre-sentencing" and that it can assume a quasi-punitive character. Although no reliable data exist to that effect, there are indications that PTD is sometimes used to compensate for lenient sentencing.
6. **Alternatives to detention:** judges generally submit that they do trust alternatives to detention and order them whenever suitable to the case at hand, with the exception perhaps of house arrest using electronic monitoring which is a newly introduced measure and has not been adequately tested. However, lawyers have stated their concern that alternative measures are often used as a precaution where unconditional release should have been ordered.
7. **The numbers of third-country nationals in PTD** are relatively high. This is explained by the rise in migratory flows directed towards Greece, and the legal obligation to require proof of residence in order to consider alternatives instead of PTD.
8. **Persons dependent on illegal substances** enjoy some guarantees of favourable treatment in law. However, in practice bureaucratic obstacles often cause them to be deprived of essential treatment and can lead to a severe exacerbation of their health.
9. **Good practices** include broad access to case files, which is generally only subject to temporal restrictions, respect statutory time limits, and the option for unlimited requests for PTD reviews**.** Another positive feature of the process is the possibility to appoint an attorney *ex officio* for all offences capable of leading to an order for PTD, without any additional requirements, financial or otherwise. This option, however, does not extend to the stage of police custody.

VIII. Proposed solutions

The national working group established for the implementation of this project has discussed the above conclusions and formulated a number of suggestions to tackle the problems identified. These are summarised in the following solutions:

1. **Arbitrariness while in police custody** should be the subject of further research in a separate project which will provide insight into police practices through primary research and offer targeted capacity building, as well as policy interventions.
2. **Legal aid** can be improved through policy changes aimed at engaging more lawyers in the relevant scheme. These should include improvements in the compensation process, which is currently riddled with bureaucratic obstacles and significant delays. Furthermore, accreditation mechanisms should be in place for lawyers admitted in the legal aid lists for criminal law cases, which should include competence tests. Trainings on the legal framework and judicial practice on pre-trial detention should also be organised in collaboration with Bar Associations state-wide.
3. **Privacy** during the pre-trial proceedings should become a requirement in national law. An amendment of the current legal framework in compliance with the standards of the access to a lawyer directive should, therefore, be proposed and implemented.
4. A national accreditation system for **interpreters** should be established. The criteria for admission to the relevant lists should be strict and ensure the good quality of interpretation for an extended number of languages. At the same time, trainings for interpreters should be organised and implemented, perhaps through a collaboration between the Ministry of Justice and the Bar Associations.
5. **Third-country nationals**, overwhelmingly subjected to PTD orders, should be facilitated when it comes to proving their domicile. Temporary solutions, such as residence in reception centres or refugee camps, should be accepted as legitimate places of residence and appropriate proof intended for use in the PTD decision-making proceedings should be provided.
6. The framework for assessing **dependence on illegal substances** should be simplified and the procedure should be streamlined in order to ensure that dependent individuals are treated in accordance with their specific needs.
7. The use of **house arrest with electronic monitoring** as an alternative to detention should be further investigated in order to identify obstacles in its application, which affect the trust shown to it by investigating judges, prosecutors, lawyers, and accused persons and bolster its use.

These preliminary suggestions should be further examined and elaborated throughout the course of the present or future research projects.

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