



**SUBMISSION TO THE EUROPEAN COURT OF HUMAN RIGHTS  
PURSUANT TO ARTICLE 36 § 2 OF THE EUROPEAN CONVENTION  
ON HUMAN RIGHTS AND RULE 44 OF THE RULES OF THE COURT**

**Third Party Intervention**

**Application no. 2500/22  
P.S. v. Greece**

**European Prison Litigation Network**

Advised by

**Centre for European Constitutional Law – Themistokles & Dimitris Tsatsos  
Foundation**

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## I. Introduction

1. Case no. 2500/22 *P.S. v. Greece*, was communicated by the European Court of Human Rights (“the Court”, “the ECtHR”) to the Government of Greece on 29 August 2023. On 11 January 2024 the President of the Chamber of the Third Section of the Court granted leave, under Article 36 § 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the ECHR”, “the Convention”) Rule 44 § 3 (a) of the Rules of Court, to European Prison Litigation Network (“the Submitting Organisation”, “EPLN”) to submit written comments as a third-party intervener.
2. EPLN is a network of non-governmental organisations active in the protection of prisoners’ rights. It currently brings together 25 national NGOs and bar associations from 18 Council of Europe Member States. EPLN holds participatory status with the Council of Europe.
3. The case of *P.S. v. Greece* primarily concerns the lack of appropriate medical care in prison for an HIV-positive applicant, as well as the lack of and/or dysfunction of the existing domestic remedies for that complaint.
4. The Submitting Organisation believes that this case provides an opportunity for the Court to **harmonise and update its approach to State parties’ obligations on the protection of prisoners’ health (II)** and to **enhance and clarify the requirements addressed to remedies** for complaints about inadequate conditions of detention (III).
5. This third-party intervention was prepared by EPLN in collaboration with the **Centre for European Constitutional Law – Themistokles & Dimitris Tsatsos Foundation**, a public benefit research foundation located in Athens, Greece.

## II. The necessity to clarify standards regarding the quality of care provided to prisoners

### (i) *The lack of clarity in the Court’s case law on health in prisons*

6. As demonstrated below, the principle of equivalence of care in prisons is central to all international standards in this area. The Court itself uses this parameter to determine compliance with the central obligation incumbent on States, which is to “**protect the health and the well-being by providing, among other, the requisite medical assistance**” (*Kudła v. Poland*, [30210/96](#), § 94). According to the Court’s case-law “medical treatment provided within prison facilities must be **appropriate, that is, at a level comparable to that which the State authorities have committed themselves to provide to the population as a whole**. Nevertheless, this **does not mean that every detainee must be guaranteed the same level of medical treatment that is available in the best health establishments outside prison facilities**” (see *Blokhin v. Russia* [GC], no. [47152/06](#), § 137). This last

relaxation is accompanied by a requirement that “[w]here the treatment cannot be provided in the place of detention, **it must be possible to transfer the detainee to hospital or to a specialised unit**” (*Rooman v. Belgium* [GC], no. [18052/11](#), § 148).

7. The Court draws practical implications from this principle: “[w]ith reference to the principle of equivalence of treatment in and outside prisons [...], the Court considers that, **where a certain treatment is generally available outside the prison** and except for extraordinary circumstances, medical treatment required [...] **should not be denied or only partially carried out simply because no such treatment [...] is available in prison or with reference to the scarcity of resources**” (*Cosovan v. Moldova*, no. [13472/18](#), § 83). The principle is also at work when the Court considers that the status of doctors leads to ethical breaches and that the structural shortcomings of prison care are such that the prison care system should be attached to the general Health system (*ibid.*, §§ 85-86). Secondly, it is also the case at the stage of the proceedings before the Court, through the burden placed on the respondent State to “**provide credible and convincing evidence showing that the applicant had received comprehensive and adequate medical care in detention, at a level comparable to that which the State authorities have committed themselves to provide to persons in freedom**” (*Wenner v. Germany*, no. [62303/13](#), § 80).
8. However, these statements **coexist with a line of case-law that explicitly distances itself from the principle of equivalence of care**. This was formulated straightforwardly in the case *Gladkiy v. Russia* (no. [3242/03](#), 2010, (§ 84):

“The CPT proclaimed the principle of the equivalence of health care in prison [...]. **However, the Court does not always adhere to this standard**, at least when it comes to medical assistance for convicted prisoners (as opposed to those in pre-trial detention). While acknowledging that authorities must ensure that the diagnosis and care are prompt and accurate [...], the Court has also held that Article 3 of the Convention **cannot be interpreted as securing for every detained person medical assistance at the same level as ‘in the best civilian clinics’ (...)**. In another case the Court went further, holding that **it was ‘prepared to accept that in principle the resources of medical facilities within the penitentiary system are limited compared to those of civil[ian] clinics’ (...)**.”
9. More generally, apart from this line of case-law, the interpretation and application by the domestic courts of the European requirements is necessarily influenced by the **very casuistic approach put forward by the Court**, which insist that “the ‘adequacy’ of medical assistance remains the most difficult element to determine” and must be **assessed with some “flexibility”** (see *Mamasakhlisi and Others v. Georgia and Russia*, no. [29999/04](#), § 366).
10. EPLN believes that **the Court’s case-law lacks clarity** and that **the changing scope of the requirements blurs States’ understanding of their obligations**. The States Parties have solemnly expressed that “**the quality and in particular the clarity and consistency of the Court’s judgments are important for the**

**authority and effectiveness of the Convention system.** They provide a framework for national authorities to effectively apply and enforce Convention standards at domestic level”.<sup>1</sup>

11. The methodology put forward by the case-law **does not fit well with the obligation of means incumbent on States.** The scope of the obligation of means must normally depend on **the nature of the protected interest at stake**, which in case of Article 3 is one of the highest. Thus, the “**required medical assistance**” must be understood as “all reasonably possible medical measures in a conscientious effort to hinder development of the disease in question” (*Goginashvili v. Georgia* (no. [47729/08](#)), §71). In this respect, the due diligence test necessarily **refers to the state of medical knowledge and the resources available to the national health system**, and not to the prison system.<sup>2</sup> Otherwise, the principle of equivalence of care would be stripped of its substance – and the scope of the obligation under Article 3 would be totally relativised.
12. It should be remembered that **detainees benefit from specific protection in terms of health protection** under Article 3, in contrast to the limited protection afforded to the general population, which results from the very narrow framework of Article 2 (see *Lopes de Sousa Fernandes c. Portugal* [GC], no. [56080/13](#)) and that, subject to a wide margin of appreciation, of Article 8 (*Hristozov and Others v. Bulgaria*, no. [47039/11](#), § 123; *Abdyusheva and Others v. Russia*, no. [58502/11](#), § 124). There is a **contradiction between asserting that the vulnerability of detainees implies that health protection should be guaranteed** under Article 3, developing a dense and precise grid of requirements in this area, **and then concluding, at the stage of application of these requirements, that the lower quality of care is acceptable.** Furthermore, a contradiction the **contradiction is within the case-law must be emphasised**, which, on the one hand, **prohibits States to hide behind their economic situation** to explain poor conditions of detention (see *Ananyev and Others v. Russia*, no. [42525/07](#)) and, on the other hand, **accepts degraded standards of care due to budgetary reasons.**
  - (ii) *A firm affirmation of the principle of equivalence required by public health considerations and a very strong international consensus*
13. The entire public health doctrine on health protection in prisons is built around a series of considerations that militate in favour of a **firmer and more assertive anchoring of European requirements in the principle of equivalence of care.** As defined by the World Health Organisation (WHO), the principle of equivalence embraces the idea that **healthcare services in prisons should be of the “same**

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<sup>1</sup> Council of Europe, Copenhagen Declaration, 2018, available at: <https://rm.coe.int/copenhagen-declaration/16807b915c>

<sup>2</sup> See in this regard: European Charter of Medical Ethics, Principle 7: <https://www.ceom-ecmo.eu/en/european-charter-medical-ethics-67>

**scope and quality as healthcare services in the outside community**". It requires that they are **"based on and respond to the assessed health needs of the population**, as is the case for integrated services in the outside community".<sup>3</sup> Its realisation means "preventive, diagnostic, therapeutic, care, and support interventions"<sup>4</sup> that are **"at least consistent in range and quality** (availability, accessibility and acceptability) [...] in order to achieve **equitable health outcomes**".<sup>5</sup> The principle refers as much to the **technical capabilities** of medical services as to the **ethical principles** governing the work of healthcare professionals. One of the lessons of pandemics such as HIV is that there can be no care without a privileged therapeutic relationship between patient and doctor, which necessarily implies respect for medical confidentiality and strict independence from the prison administration, both in terms of status and day-to-day medical decisions.<sup>6</sup>

14. A twofold public health consideration speaks in favour of an unambiguous affirmation of the principle of equivalence. (1) The **"increased disease burden of prisoners"**:<sup>7</sup> prisoners are indeed in poorer mental and physical health than the general population,<sup>8</sup> and have a high need for care. While this is partly due to the fact that the majority of prisoners come from the least privileged strata of the population, the deleterious effect of imprisonment in itself on health have been demonstrated.<sup>9</sup> (2) From a more general public health perspective, there are

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<sup>3</sup> WHO, *Prison Health Framework. A framework for assessment of prison health system performance*, 2021, p. 17: <https://www.who.int/europe/publications/i/item/9789289055482>

<sup>4</sup> M. Eichelberger *et al.*, "Equivalence of care, confidentiality, and professional independence must underpin the hospital care of individuals experiencing incarceration", *BMC Medical Ethics*, 24:13, 2023: <https://bmcmethics.biomedcentral.com/articles/10.1186/s12910-023-00891-3>

<sup>5</sup> RCGP Secure Environments Group, *Equivalence of care in secure environments in the UK*, 2018: <https://www.rcgp.org.uk/representing-you/policy-areas/care-in-secure-environments>

<sup>6</sup> In order to **prevent managerial logic from encroaching on public health considerations**, a consensus is also emerging in favour of **increasing integration between prison health and the general health system**. See in particular, WHO, *Prisons and Health*, 2014: [https://www.unodc.org/documents/hiv-aids/publications/Prisons\\_and\\_other\\_closed\\_settings/2014\\_WHO\\_UNODC\\_Prisons\\_and\\_Health\\_eng.pdf.pdf](https://www.unodc.org/documents/hiv-aids/publications/Prisons_and_other_closed_settings/2014_WHO_UNODC_Prisons_and_Health_eng.pdf.pdf) ("the complete isolation of prison and remand health services from the principal health authorities of the state is a recipe for trouble", p. 39); and CPT, Report on the periodic visit to Austria carried out from 23 November to 3 December 2021, CPT/Inf (2023) 03, 2023, § 93: <https://rm.coe.int/1680abc16d>

<sup>7</sup> F. Jotterand and T. Wangmo, "The Principle of Equivalence Reconsidered: Assessing the Relevance of the Principle of Equivalence in Prison Medicine", *The American Journal of Bioethics*, 14:7, 2014, quote p. 5: <https://pubmed.ncbi.nlm.nih.gov/24978402/> The authors also underline that imprisonment accelerates the aging process: consequently, "a prisoner who is 50 years old mimics the disease burden of an individual 60 years old in the general population" (p. 5).

<sup>8</sup> *Idem*; see also WHO, *Status report on prison health in the WHO European Region 2022*, 2023: <https://www.who.int/europe/publications/i/item/9789289058674> which indicates that one-third of people in prison in Europe suffer from mental health disorders

<sup>9</sup> See for instance: WHO/ICRC, *Information Sheet on "Mental Health and Prisons"*, 2005: [https://static.prisonpolicy.org/scans/mh\\_in\\_prison.pdf](https://static.prisonpolicy.org/scans/mh_in_prison.pdf) quoted in CMCE, *White Paper regarding the management of persons with mental health disorders by the prisons and probation services*, CM(2023)3-add, 2023: <https://rm.coe.int/white-paper-regarding-the-management-of-persons-with-mental-health-dis/1680abc989>

**constant communication between the prison and the general public** (through entry and exit flows).<sup>10</sup> Consequently, **the principle of equivalence should focus on health outcomes.**<sup>11</sup>

15. The principle of equivalence of care is **firmly entrenched in international law, both at global and regional levels.** The obligation to ensure that healthcare services provided to prisoners are of an equivalent quality to those provided in the general population is central to a number of United Nations instruments.<sup>12</sup> At the Council of Europe level, the importance of this principle is underlined by the CPT<sup>13</sup>, the CMCE's Recommendation concerning the ethical and organisational aspects of health care in prison,<sup>14</sup> as well as the European Prison Rules and the commentary thereto.<sup>15</sup> It is also recalled in the World Medical Association's Edinburgh Declaration.<sup>16</sup>
16. The beneficial effects of the implementation of the principle of equivalence of care extend far beyond the prison population, and its proper reflection in the Court's jurisprudence would certainly give the impulse necessary for its transition from the *lex ferenda* to the *lex lata*.

### **III. Strengthening procedural guarantees attached to remedies**

17. The Court's jurisprudence in prison matters has largely made the requirement of an effective remedy a privileged lever for eliminating structural problems. Over the years, the Court has defined the characteristics of these remedies in increasing details (*Neshkov v. Bulgaria*, no. [36925/10](#), 2015, §§ 180-191).
18. A recent research carried out in nine European countries with the aim of identifying the **factors that increase the effectiveness of these remedies**, and therefore the protection of prisoners' rights, emphasises that **strengthening the procedural**

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<sup>10</sup> WHO/ICRC, *op. cit.*, p. 2

<sup>11</sup> F. Jotterand and T. Wangmo, *art. cit.*; see also D. Ronco. "Health Protection in Prison, Between Equivalence of Care and Less Eligibility", *Research on Humanities and Social Sciences*, 11: 11, 2021, p. 69: <https://pdfs.semanticscholar.org/13fa/1a67e4f1989a05f600fc9aaf64e306f851d0.pdf>

<sup>12</sup> See *Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, General Assembly Resolution 37/194, 1982 ; *Basic Principles for the Treatment of Prisoners*, General Assembly Resolution 45/111, 1990 ; *Nelson Mandela Rules – United Nations Standard Minimum Rules for the Treatment of Prisoners*, General Assembly resolution 70/175, 2015, Rule 24.

<sup>13</sup> CPT, *Health care services in prisons. Extract from the 3rd General Report of the CPT*, CPT/Inf(93)12-part, 1993, § 38

<sup>14</sup> Recommendation no. R (98) 7 of the Committee of Ministers concerning the ethical and organisational aspects of health care in prison, 1998.

<sup>15</sup> European Prison Rules, Rec(2006)2-rev, 2006, §§ 39-40.5 and 43.1; Commentary to R.40.1-40.5, R. 43.

<sup>16</sup> World Medical Association, Declaration of Edinburgh on Prison Conditions and the Spread of Communicable Diseases, 2022: especially the Preamble and Recommendation no. 2.



**guarantees attached to these remedies** plays a decisive role – in particular greater access to **free legal aid** and **fact-finding procedures**.<sup>17</sup>

19. The research shows indeed, against the Court’s tendency to focus on the capacity of prisoners to “avail themselves” of the available remedies (*Neshkov*, § 191), that **intermediaries between detainees and the bodies responsible for examining their complaints** (mainly lawyers and CSOs) play a **crucial role in ensuring the judicial protection of inmates’ rights**.
20. In the first place, the research leads to the observation that, **although generally accompanied by very relaxed requirements, the procedures prove to be complex in practice**, particularly as regards establishing the facts and bringing into play several legal instruments – to the extent that they are often can be carried out only by specialised lawyers. One of the other major conclusions is that, **in the absence of a lawyer, procedures are handled in a highly bureaucratic way** by the courts or competent bodies and the majority of complaints are **declared inadmissible**.
21. The approach taken in some States to rely on the initiative of the prisoners to activate the system and ultimately – to resolve structural problems – **contrasts with the reality of the prison population**. Due to several factors, chiefly the **socio-demographic characteristics of the prison population**, prisoners do not always have the legal skills to interpret their situation in legal terms, which is a first step to initiate a complaint. Should they have a legal background, they often lack access to relevant, comprehensive, and up-to-date legal information (from prison regulations to international law) that would enable them to **substantiate their complaint**. The translation of a given situation into a legal problem requires indeed complex reasonings involving specific tests and a variety of legal sources. Furthermore, there could be several remedies available for prisoners (claim for compensation, summary proceedings, application for annulment, etc.), who should be able to determine the most appropriate one and **the formal requirements** associated with it (e.g. in terms of admissibility or provision of evidence).
22. Beyond the better administration of justice and incomparably greater effectiveness of remedies, broader involvement of lawyers in prison litigation through legal aid was also found to create a **positive dynamic for the protection of prisoners at national level**. The consolidation of prison case-law and its interpretation in legal doctrine contribute to the autonomisation of prison law, enabling it to move away from its marginal status, which increases the visibility of detention conditions in public debate.<sup>18</sup>

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<sup>17</sup> European Prison Litigation Network (EPLN), *Bringing Justice into Prison: For a Common European Approach. White Paper on Access to Justice for Pre-Trial Detainees*, 2019: <https://www.prisonlitigation.org/articles/white-paper-pretrial/> The research covers Bulgaria, Belgium, the Czech Republic, France, Germany, Italy, the Netherlands, Poland and Spain.

<sup>18</sup> EPLN, *op. cit.*, p. 46, with examples from France, Belgium, Spain and the Netherlands.

23. The Court’s case-law takes into account the requirements of legal aid in detention, but in a scattered manner. Thus, with regard to the civil aspects of Article 6 § 1 (*Larin v. Russia*, no. [15034/02](#); *Vasilyev v. Russia*, no. [66543/01](#); *Beresnev v. Russia*, no. [37975/02](#)) and also under Article 13 (*Aden Ahmed v. Malta*, no. [55352/12](#)), the Court observed that “the apparent lack of a proper structured system enabling immigration detainees to have **concrete access to effective legal aid**” (§ 66) **undermined the accessibility of the remedies** available to them. In the area of migration and asylum, the **absence of legal aid was found to negatively impact applicant’s right to an effective remedy**. In *M. S. S. v. Belgium and Greece* (no. [30696/09](#)), the Court found that the “shortage of lawyers on the list drawn up for the legal aid system” rendered the system “ineffective in practice” and may have constituted “an **obstacle hindering access to the [available] remedy**” (§ 319). The importance of the **assistance of a lawyer** was already implicitly highlighted in a case concerning a prisoner with mental disorder complaining of inadequate detention conditions and medical treatment (*Slawomir Musiał v. Poland*, no. [28300/06](#)). The Court argued that “regard being had to his limited capacities as a person with psychiatric problems, **the applicant should not be expected or required to act with the utmost scrupulousness** in availing himself of all the remedies available under the [domestic law]” (§ 73). In other words, instead of using this case to strengthen the procedural rights of detainees so that they can fulfil their procedural obligations, the Court lowered the threshold to compensate for the absence of a lawyer in a case where **the presence of a lawyer was clearly essential, as the applicant was not able to act alone**.
24. From an effectiveness perspective, the **procedural means given to a detainee**, over and above the adjustments to the burden of proof, in order to **establish the facts and obtain technical clarification** (such as medical expert reports or technical observations with regard to the material conditions of detention) are also crucial. Such means **strengthens the effectiveness of domestic remedies**, in that it reduces inequality between prisoners and the prison administration – who is the only party with access to evidence. Indeed, as illustrated by the Greek case analysed below, it is often **illusory to think that relieving prisoners of an “undue evidentiary burden”** (*Atanasov and Apostolov v. Bulgaria*, no. [65540/16](#), § 61), and allowing them to submit allegations based on “readily accessible” evidence that the State is to refute (*Ananyev and Others v. Russia*, no. [42525/07](#), § 228), **would in itself guarantee an equality of arms between the parties of the dispute**. This is especially true in complex cases, such as cases concerning alleged inadequate medical care provided in prison, which often require expert reports to contradict the administration's claims.<sup>19</sup>
25. The Court emphasised the importance for a victim of medical negligence of having access to medical reports, given that their conclusions “may be **determinative in**

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<sup>19</sup> EPLN, *op. cit.*, p. 10



**establishing the correct legal qualification** of the acts committed by the practitioner concerned **and therefore the admissibility of any complaint** against the doctor” (*S. B. v. Romania*, no. [24453/04](#), § 74).

26. Yet fact-findings procedures are often beyond the reach of prisoners, who might be requested to pay for them, especially if it was them who commissioned them rather than the court hearing the case. In the case *Barbotin v. France* (no. [25338/16](#)), the Court found a violation of Article 13 due to cumulative effect of the low compensation awarded by domestic courts and of the fact that the applicant had to pay the expert fees, which had the effect of making him indebted to the State (§§ 56-58).
27. Given prisoners’ vulnerable position, as well as the **high proportion of prisoners with mental health disorders** (1/3 of prisoners on average in Europe) and of **imprisoned foreigners** (1/4 of prisoners on average in Europe),<sup>20</sup> the Court should therefore **systematise the above-mentioned conclusions**, to **explicitly include free access to legal aid and facilitated access to fact-finding procedures into the characteristics of remedies for complaints about detention conditions**. This would enable these remedies to effectively fulfil their role, and therefore enable cases relating to conditions of detention to be resolved at national level. The current absence of any harmonisation at European level causes wide disparities between countries in this area – resulting in a lack of uniform application of the ECHR on the continent.<sup>21</sup>
28. The analysis of the conditions-of-detention **remedy recently introduced in the Greece**<sup>22</sup> shows the extent to which, when these characteristics are lacking, the effectiveness of the remedy itself may be called into question. **First, the new Prison Code remains silent on the question of legal aid** for prisoners making use of the remedy, and to the best of the Submitting Organisation’s knowledge, this still has not been interpreted by courts in any way that could be considered a precedent. This shortcoming is exacerbated by the fact that **the legal aid system suffers from systemic shortcomings** (low compensation awarded years in arrears resulting in a shortage of available lawyers, no requirement related to the specialisation of legal aid lawyers), making it ineffective in practice. The same goes for **access to translation and interpretation services**, which are of crucial importance in the

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<sup>20</sup> See WHO, “One-third of people in prison in Europe suffer from mental health disorders”, 15 February 2023: <https://www.who.int/europe/news/item/15-02-2023-one-third-of-people-in-prison-in-europe-suffer-from-mental-health-disorders> and M. F. Aebi et al., *Prisons and Prisoners in Europe 2022: Key Findings of the SPACE I survey*, 2023, p. 9: [https://wp.unil.ch/space/files/2023/06/230626\\_Key-Findings-SPACE-I-Prisons-and-Prisoners-in-Europe-2022.pdf](https://wp.unil.ch/space/files/2023/06/230626_Key-Findings-SPACE-I-Prisons-and-Prisoners-in-Europe-2022.pdf)

<sup>21</sup> See the case of France, in which the newly introduced remedy on detention conditions is covered by the legal aid scheme by virtue of Decree no. 2023-457 of 12 June 2023: <https://www.legifrance.gouv.fr/eli/decret/2023/6/12/JUST2304799D/jo/texte>

<sup>22</sup> See Article 8 of Law 4985/2022 amending the Law 2776/1999 (Greek Prison Code): [https://www.et.gr/api/DownloadFeksApi/?fek\\_pdf=20220100203](https://www.et.gr/api/DownloadFeksApi/?fek_pdf=20220100203)

Greek context considering that more than 50% of inmates in the country's prisons are foreigners.<sup>23</sup> As a symptom of the general lack of access to interpretation services, it is also common practice to involve fellow inmates of the person concerned as interpreters.

29. In the absence of any clarity on these two crucial elements, it is fair to conclude that **the vast majority of prisoners are virtually excluded from using the new remedy**. The Government's claim that this remedy is "inexpensive",<sup>24</sup> which refers to the absence of court fees, is therefore inaccurate if one takes into account the cost of hiring a lawyer and interpreters, which is beyond the possibility of most prisoners.
30. Second, and similarly, the fact that **the new Prison Code does not contain specific provisions on procedures aiming at establishing facts** (e.g. access to expert reports) does not augur well, as the general provisions leaving it to the discretion of the courts to decide whether an expert assessment is required will apply. Consequently, the expert reports commissioned by the applicants will be carried out at their expense – which is arguably dissuasive for most prisoners. This is a major flaw in the new system, for two main reasons. First, **Greek law awards greater evidential weight to public documents and to affidavits or testimonies of public employees** than it does to private documents and citizens.<sup>25</sup> Second, in cases concerning alleged inadequate medical care in detention, the establishment of facts is particularly difficult and might require expert support since, as pointed out by the CPT, there seem to be **no "single comprehensive multi-disciplinary medical record opened and maintained for each prisoner"**, which makes it difficult to "fully understand the chronology of a person's care given that the information was recorded in a variety of different places".<sup>26</sup>

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<sup>23</sup> As January 2022, 59% of prisoners were foreign nationals, see M. F. Aebi et al., *Prisons and Prisoners in Europe 2022: Key Findings of the SPACE I survey*, 2023, p. 9: [https://wp.unil.ch/space/files/2023/06/230626\\_Key-Findings-SPACE-I-Prisons-and-Prisoners-in-Europe-2022.pdf](https://wp.unil.ch/space/files/2023/06/230626_Key-Findings-SPACE-I-Prisons-and-Prisoners-in-Europe-2022.pdf) More recent statistics indicate that as of January 2023 this proportion was of 57% and 54% as of January 2024: <https://www.ggap.gov.gr/statistika-stoixeia-kratoumenon/>

<sup>24</sup> Communication from Greece concerning the group of cases of *Nisiotis v. Greece* (Application No. 34704/08), Action Plan, DH-DD(2024)44: [https://hudoc.exec.coe.int/eng?i=DH-DD\(2024\)44E](https://hudoc.exec.coe.int/eng?i=DH-DD(2024)44E)

<sup>25</sup> See in particular Articles 438 and 440 of the Code of Civil Procedure on documents drawn up by public officials, as well as Articles 445 and 447 on private documents. Article 438 CCP: "Documents drawn up in accordance with the law by a public official or officer or a person exercising a public office or function shall constitute full proof [...]. Counterproof may be furnished only by challenging the document as being false [...]". Article 445: "Private documents, drawn up in accordance with the law, if their authenticity has been acknowledged or proved, shall constitute full proof that the statement they contain originates from the issuer of the document, but it is permissible to offer counterproof". Article 447: "A private document shall constitute evidence in favour of the issuer only if it was produced by the opposing party".

<sup>26</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report on the ad hoc visit to Greece carried out from 22 November 2021 to 1 December 2021*, CPT/Inf (2022) 16, § 72: <https://rm.coe.int/1680a7ce96>

31. The above-mentioned shortcomings are further reinforced by the fact that the **participation of a prisoner in the proceedings indeed is not a requirement**, but a mere possibility that can be ordered by the competent domestic court, on the applicant's request, should the circumstances of the case so require (compare with *Draniceru v. Moldova* (dec.), no. [31975/15](#), §§ 28-30).
32. Against this background, the recent analysis conducted by the Hellenic League for Human Rights (HLHR) on 300 applications on detention conditions concerning ten different Greek prisons, **shows a rejection rate by courts of nearly 100%**, which should come as no surprise.<sup>27</sup> This figure, suspicious in itself, is all the more surprising given that **prison overcrowding and poor conditions of detention in Greece have been described as a systemic or structural problem** by both the Court and the CPT.<sup>28</sup> The factors explaining this rejection rate are not specified in the HLHR's submission. However, a transposition of the results of the above-mentioned research in the Greek context strongly suggests that the **insufficient procedural guarantees attached to this remedy** play a role and deprive prisoners from the possibility to assert their rights before a court.
33. The HLHR underlines indeed that national courts' decision are often expedient and **lack proper justification**. The prison administration's claims are often taken at face value and are not confronted to specific allegations made by applicants (e.g. on cell occupancy and lack of personal space) or information available in national and international reports on detention conditions in Greek prisons, presumably including CPT reports.
34. Enhancing the effectiveness of this remedy therefore **requires that the procedural rights of prisoners making use of it be strengthened**. The preceding paragraphs have demonstrated the importance of **reinforcing the right to legal aid and to fact-finding procedures**. The Court, which has recognised the importance of these elements in previous cases, should therefore systematise these conclusions in order to include them into the requirements attached to remedies concerning prison conditions.

Respectfully submitted.

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<sup>27</sup> Communication from an NGO (Hellenic League for Human Rights) concerning the group of cases of *Nisiotis v. Greece* (Application No. 34704/08), DH-DD(2024)101: [https://hudoc.exec.coe.int/eng?i=DH-DD\(2024\)101E](https://hudoc.exec.coe.int/eng?i=DH-DD(2024)101E)

<sup>28</sup> *Nisiotis v. Greece*, no. [34704/08](#), 2011, § 29; *Report on the ad hoc visit to Greece*, CPT/Inf (2022) 16, § 8: <https://rm.coe.int/1680a7ce96>



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