

# **The Practice of pre-trial detention in Greece**

## **Research Report**

**December 2015**

Co-funded by the Criminal Justice  
Programme of the European  
Commission



With coordination by:



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This publication has been produced with the financial support of the Criminal Justice Programme of the European Commission. The contents of this publication are the sole responsibility of the Center for European Constitutional Law – Themistokles and Dimitris Tsatsos Foundation and can in no way be taken to reflect the views of the European Commission.

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# Country Report Greece

## I. Executive Summary

The overuse of pre-trial detention ('PTD'), increasing numbers of detainees of foreign nationality and overcrowding of prisons are chronic problems facing the Greek criminal justice system. Pre-trial detention is a measure of last resort according to the Greek Criminal Procedure Code and specific and strict criteria govern its application, where alternatives cannot safeguard the presence of the accused at the trial. Despite the persistent nature of the problem, little research has been conducted on the key factors contributing to the overuse of PTD and the ineffectiveness of alternatives.

In this research, data was gathered through a) desk research b) a survey in which 166 defence practitioners took part c) the review of 44 case files d) interviews with 5 investigating judges and e) interviews with 4 prosecutors. Whilst the size of the research samples was constrained by the available time and resources, the information obtained from them provides some important insights into the way in which PTD is regulated and how that works in practice in Greece, and lays the foundation for a number of significant conclusions and recommendations.

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

**1. Decision-making procedure:** Defendants do generally have legal representation at pre-trial hearings. 30% of the lawyers surveyed stated that in cases that have to be tried within 3 days of arrest ("in flagrante delicto" cases) their ability to prepare for pre-trial detention hearings is limited by limited time of notice of such hearings. In none of the cases analysed during which interpretation was provided was the evidence in the case file translated into the language of the defendant.

**2. The substance of decisions:** The research revealed that PTD is most often ordered in order to address the risk of reoffending and the risk of absconsion and that, in violation of ECtHR-standards, the severity of the crime is often a determining factor. The evidence in case files forms the basis for decision making on PTD. Pre-trial detention orders are often based on general arguments and assumptions, without due attention to the specific circumstances of the case at hand. References to specific evidence or claims of the defence are rarely found in the reasoning provided in pre-trial detention orders.

**3. Use of alternatives to detention:** The research revealed a lack of judicial faith in the effectiveness of alternative measures, especially with regard to their capacity to prevent reoffending and ensure the presence of the accused at the trial. The use of electronic monitoring is very restricted, as the defendant is obliged to purchase the devices necessary. Additionally, the lack of faith in alternatives to detention often leaves the judges no alternative to ordering pre-trial detention as they feel compelled to protect the public.

**4. Review of pre-trial detention and special diligence:** Pre-trial detention orders are rarely reversed unless compelling evidence or changes in the circumstances are proven. The research revealed that organisational issues (workload of judges and courts, delays in investigation) are often responsible for the relatively long duration of PTD (which is on average 6-12 months according to available statistics and supported by the data collated through the research produced through the project). However, the statutory limits (1 years or 18 months) appear to have a positive impact on the overall length of the trial, which is overall shorter for pre-trial detainees compared to others as it is usually concluded before the statutory limits expire.

In light of these findings, the main **recommendations** are that:

- The EU Right to Interpretation and Translation Directive and the EU Right to Information Directive should be implemented effectively so as to guarantee access to the case file and to protect foreign defendants;
- Unified standards on pre-trial detention which comply with ECtHR-standards should be developed in the form of legislative reform, so as to provide clear guidance which judges and prosecutors can rely on in their daily work;
- Specific training/continuous training should be provided to investigating judges and prosecutors who participate in decision making on PTD, especially in relation to ECHR standards and case law;
- Evidence and reasons for ordering PTD, including the inadequacy of alternatives, should be individualised and clearly stated in pre-trial orders and review decisions;
- The use of pre-trial detention and alternative measures should be monitored through comprehensive data collection so as to identify problematic points and positive practices; and
- The effectiveness of alternative measures should be enhanced by increasing accessibility for all defendants and by providing specific training to judges and prosecutors to increase their trust in these measures.

A full list of recommendations will be found at the end of the Country Report.

## **II. Introduction**

### **1. Background and objectives**

This report “The Practice of Pre-trial detention: Monitoring Alternatives and Judicial Decision-making in Greece” is one of 10 country reports outlining the findings of the EU-funded research project that was conducted in 10 different EU Member States in 2014 – 2015.

More than 100,000 suspects are detained pre-trial across the EU. While pre-trial detention has an important part to play in some criminal proceedings, ensuring that certain suspects will be brought to trial, it is being used excessively at huge cost to the national economies. Unjustified and excessive pre-trial detention clearly impacts on the right to liberty and to be presumed innocent until proven guilty. It also affects the ability of the detained person to enjoy fully their right to a fair trial, particularly due to restrictions on their ability to prepare their defence and gain access to a lawyer. Further, prison conditions often endanger the suspect’s well-being.<sup>1</sup> For these reasons, international human rights standards including the European Convention on Human Rights (ECHR) require that pre-trial detention is used as an exceptional measure of last resort.

While there have been numerous studies on the legal framework governing pre-trial detention in EU Member States, limited research into the practice of pre-trial detention decision-making has been carried out to date. This lack of reliable evidence motivated this major project in which NGOs and academics from 10 EU Member States coordinated by Fair Trials International (Fair Trials) researched pre-trial decision-making procedures. The objective of the project is to provide a unique evidence base regarding what, in

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<sup>1</sup> For more detail see: <http://website-pace.net/documents/10643/1264407/pre-trialajdoc1862015-E.pdf/37e1f8c6-ff22-4724-b71e-58106798bad5>.

practice, is causing the use of pre-trial detention. In this research, the procedures of decision-making were reviewed to understand the motivations and incentives of the stakeholders involved (defence practitioners, judges, prosecutors). These findings will be disseminated among policy-makers, judges, prosecutors and defence lawyers, thereby informing the development of future initiatives aiming at reducing the use of pre-trial detention at domestic and EU-level.

This project also complements the current EU-level developments relating to procedural rights. Under the Procedural Rights Roadmap, adopted in 2009, the EU institutions have examined the issues arising from the inadequate protection of procedural rights within the context of mutual recognition, such as the difficulties arising from the application of the European Arrest Warrant. Three procedural rights directives (legal acts which oblige the Member States to adopt domestic provisions that will achieve the aims outlined) have already been adopted: the Interpretation and Translation Directive (2010/64/EU), the Right to Information Directive (2012/13/EU), and the Access to a Lawyer Directive (2013/48/EU). Three further measures are currently under negotiation – on legal aid, safeguards for children and the presumption of innocence and the right to be present at trial.

The Roadmap also included the task of examining issues relating to detention, including pre-trial, through a Green Paper published in 2011. Based on its case work experience and input sought through its Legal Expert Advisory Panel (LEAP<sup>2</sup>) Fair Trials responded to the Green Paper in the report “Detained without trial” and outlined the necessity for EU-legislation as fundamental rights of individuals are violated in the process of ordering and requesting pre-trial detention. Subsequent Expert meetings in 2012 – 2013 in Amsterdam, London, Paris, Poland, Greece and Lithuania affirmed the understanding that problems with decision-making processes might be responsible for the overuse of pre-trial detention and highlighted the need for an evidence base clarifying this presumption. But to date, no legislative action has been taken with regards to strengthening the rights of suspects facing pre-trial detention. However, the European Commission is currently conducting an Impact Assessment for an EU measure on pre-trial detention, which will hopefully be informed by the reports of this research project.

## **2. Regional standards**

The current regional standards on pre-trial detention-decision making are outlined in Article 5 of the European Convention on Human Rights (“ECHR”). Article 5(1)(c) ECHR states that a person’s arrest or detention may be “effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so”. Anyone deprived of liberty under the exceptions set out in Article 5 “shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful” (Article 5(4) ECHR). The European Court of Human Rights (ECtHR) has developed general principles on the implementation of Article 5 that should govern pre-trial decision-making and would strengthen defence rights if applied accordingly. These standards have developed over a large corpus of ever-growing case law.

### ***Procedure***

The ECtHR has ruled that a person detained on the grounds of being suspected of an offence must be brought promptly<sup>3</sup> or “speedily”<sup>4</sup> before a judicial authority, and the

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<sup>2</sup> <http://www.fairtrials.org/fair-trials-defenders/legal-experts/>.

<sup>3</sup> *Rehbock v Slovenia*, App. 29462/95, 28 November 2000, para 84.

“scope for flexibility in interpreting and applying the notion of promptness is very limited”.<sup>5</sup> The trial must take place within “reasonable” time according to Article 5(3) ECHR and generally the proceedings involving a pre-trial detainee must be conducted with special diligence and speed.<sup>6</sup> Whether this has happened must be determined by considering the individual facts of the case.<sup>7</sup> The ECtHR has found periods of pre-trial detention lasting between 2.5 and 5 years to be excessive.<sup>8</sup>

According to the ECtHR, the court taking the pre-trial decision, must have the authority to release the suspect<sup>9</sup> and be a body independent from the executive and both parties of the proceedings.<sup>10</sup> The detention hearing must be an oral and adversarial hearing, in which the defence must be given the opportunity to effectively participate.<sup>11</sup>

### **Substance**

The ECtHR has repeatedly emphasised the presumption in favour of release<sup>12</sup> and clarified that the state bears the burden of proof on showing that a less intrusive alternative to detention would not serve the respective purpose.<sup>13</sup> The detention decision must be sufficiently reasoned and should not use “stereotyped”<sup>14</sup> forms of words. The arguments for and against pre-trial detention must not be “general and abstract”.<sup>15</sup> The court must engage with the reasons for pre-trial detention and for dismissing the application for release.<sup>16</sup>

The ECtHR has also outlined the lawful grounds for ordering pre-trial detention to be: (1) the risk that the suspect will fail to appear for trial;<sup>17</sup> (2) the risk the suspect will spoil evidence or intimidate witnesses;<sup>18</sup> (3) the risk that the suspect will commit further offences;<sup>19</sup> (4) the risk that the release will cause public disorder;<sup>20</sup> or (5) the need to protect the safety of a person under investigation in exceptional cases.<sup>21</sup> Committing an offence is insufficient as a reason for ordering pre-trial detention, no matter how serious the offence and the strength of the evidence against the suspect.<sup>22</sup> Pre-trial detention based on “the need to preserve public order from the disturbance caused by the offence”<sup>23</sup> can only be legitimate if the public order actually remains threatened. Pre-trial detention cannot be extended just because the judge expects a custodial sentence at trial.<sup>24</sup>

With regards to flight risk, the ECtHR has clarified that merely the lack of fixed residence<sup>25</sup> or the risk of facing long term imprisonment if convicted does not justify ordering pre-

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<sup>4</sup> The limit of acceptable preliminary detention has not been defined by the ECtHR, however in *Brogan and others v UK*, App. 11209/84; 11234/84; 11266/84; 11386/85, 29 November 1988, the court held that periods of preliminary detention ranging from four to six days violated Article 5(3).

<sup>5</sup> *ibid* para 62.

<sup>6</sup> *Stogmuller v Austria*, App 1602/62, 10 November 1969, para 5.

<sup>7</sup> *Buzadj v. Moldova*, App 23755/07, 16 December 2014, para 3.

<sup>8</sup> *PB v France*, App 38781/97, 1 August 2000, para 34.

<sup>9</sup> *Singh v UK*, App 23389/94, 21 February 1996, para 65.

<sup>10</sup> *Neumeister v Austria*, App 1936/63, 27 June 1968, para 24.

<sup>11</sup> *Göç v Turkey, Application No 36590/97, 11 July 2002, para 62.*

<sup>12</sup> *Michalko v. Slovakia*, App 35377/05, 21 December 2010, para 145.

<sup>13</sup> *Ilijkov v Bulgaria*, App 33977/96, 26 July 2001, para 85.

<sup>14</sup> *Yagci and Sargin v Turkey*, App 16419/90, 16426/90, 8 June 1995, para 52.

<sup>15</sup> *Smirnova v Russia*, App 46133/99, 48183/99, 24 July 2003, para 63.

<sup>16</sup> See above, note 7.

<sup>17</sup> See above, note 15, para 59.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Muller v. France*, App 21802/93, 17 March 1997, para 44.

<sup>20</sup> *I.A. v. France*, App 28213/95, 23 September 1988, para 104.

<sup>21</sup> *Ibid* para 108.

<sup>22</sup> *Tomasi v France*, App 12850/87, 27 August 1992, para 102.

<sup>23</sup> See above, note 20.

<sup>24</sup> See above, note 12, para 149.

<sup>25</sup> *Sulaoja v Estonia*, App 55939/00, 15 February 2005, para 64.

trial detention.<sup>26</sup> The risk of reoffending can only justify pre-trial detention if there is actual evidence of the definite risk of reoffending available;<sup>27</sup> merely a lack of job or local family ties would be insufficient.<sup>28</sup>

### ***Alternatives to detention***

The case law of the European Court of Human Rights (ECtHR) has strongly encouraged the use of pre-trial detention as an exceptional measure. In *Ambruszkiewicz v Poland*<sup>29</sup>, the Court stated that the

‘detention of an individual is such a serious measure that it is only justified where other, less stringent measures have been considered and found to be insufficient to safeguard the individual or the public interest which might require that the person concerned be detained. That means that it does not suffice that the deprivation of liberty is in conformity with national law, it also must be necessary in the circumstances.’

Furthermore, the ECtHR has emphasised the use of ‘proportionality’ in decision-making, in that the authorities should consider less stringent alternatives prior to resorting to detention<sup>30</sup>, and the authorities must also consider whether the “accused’s continued detention is indispensable”.<sup>31</sup>

One such alternative is to release the suspect within their state of residence subject to supervision. States may not justify detention in reference to the non-national status of the suspect but must consider whether supervision measures would suffice to guarantee the suspect’s attendance at trial.

### ***Review of pre-trial detention***

Pre-trial detention must be subject to regular judicial review,<sup>32</sup> which all stakeholders (defendant, judicial body, and prosecutor) must be able to initiate.<sup>33</sup> A review hearing has to take the form of an adversarial oral hearing with the equality of arms of the parties ensured.<sup>34</sup> This might require access to the case files<sup>35</sup>, which has now been confirmed in Article 7(1) of the Right to Information Directive. The decision on continuing detention must be taken speedily and reasons must be given for the need for continued detention.<sup>36</sup> Previous decisions should not simply be reproduced.<sup>37</sup>

When reviewing a pre-trial detention decision, the ECtHR demands that the court be mindful that a presumption in favour of release remains<sup>38</sup> and continued detention “can 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”.<sup>39</sup> The

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<sup>26</sup> See above, note 22, para 87.

<sup>27</sup> *Matznetter v Austria*, App 2178/64, 10 November 1969, concurring opinion of Judge Balladore Pallieri, para 1.

<sup>28</sup> See above, note 25.

<sup>29</sup> *Ambruszkiewicz v Poland*, App 38797/03, 4 May 2006, para 31.

<sup>30</sup> *Ladent v Poland*, App 11036/03, 18 March 2008, para 55.

<sup>31</sup> *Ibid*, para 79.

<sup>32</sup> *De Wilde, Ooms and Versyp v Belgium*, App 2832/66, 2835/66, 2899/66, 18 June 1971, para 76.

<sup>33</sup> *Rakevich v Russia*, App 58973/00, 28 October 2003, para 43.

<sup>34</sup> See above, note 11.

<sup>35</sup> *Wloch v Poland*, App 27785/95, 19 October 2000, para 127.

<sup>36</sup> See above, note 3, para 84.

<sup>37</sup> See above, note 13.

<sup>38</sup> See above, note 12, para 145.

<sup>39</sup> *McKay v UK*, App 543/03, 3 October 2006, para 42.



authorities remain under an ongoing duty to consider whether alternative measures could be used.<sup>40</sup>

### **Implementation**

The overuse of pre-trial detention, increasing numbers of detainees of foreign nationality and overcrowding of prisons are chronic problems facing the Greek criminal justice system. Pre-trial detention is a measure of last resort according to the Greek Criminal Procedure Code and specific and strict criteria govern its application, where alternatives cannot safeguard the presence of the accused at the trial. ECHR guidelines are not being upheld in national courts and Greece has been found in violation of Article 5 par. 3 ECHR in several cases (*Koutalidis vs Greece*<sup>41</sup>, *Vafiadis vs Greece*<sup>42</sup>, *Christodoulou and others vs Greece*<sup>43</sup> etc). Despite the persistent nature of the problem, little research has been conducted on the key factors contributing to the overuse of PTD and the ineffectiveness of alternatives.

## **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 in 10 EU Member States. This research was carried out in 10 Member States with different legal systems (common and civil law), legal traditions and heritage (for example Soviet, Roman and Napoleonic influences), differing economical situations, and importantly strongly varying usage of pre-trial detention in criminal proceedings (for example 12.7% of all detainees in Ireland have not yet been convicted<sup>44</sup> whereas in the Netherlands 39.9% of all prisoners have not yet been convicted<sup>45</sup>). The choice of participating countries allows for identifying good and bad practices, and proposing reform at the national level as well as developing recommendations that would ensure enhanced minimum standards across the EU. The individual country reports focusing on the situation in each participating country will provide in-depth input to the regional report which will outline common problems across the region as well as highlighting examples of good practice, and will provide a comprehensive understanding of pan-EU pre-trial decision-making.

Five research elements were 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) assessing similarities and differences across the different jurisdictions, and c) the development of substantial recommendations that can guide policy makers in their reform efforts.

The five-stages of the research were as follows:

- (1) Desk-based research, in which the partners examined the national law and practical procedures 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.

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<sup>40</sup> *Darvas v Hungary*, App 19574/07, 11 January 2011, para 27.

<sup>41</sup> *Koutalidis n. Greece* (App. No 18785/13) 27/11/2014

<sup>42</sup> *Vafiadis v. Greece* (App. No 24981/07) 02/07/2009

<sup>43</sup> *Christodoulou and Others v. Greece* (no. 80452/12).

<sup>44</sup> <http://www.prisonstudies.org/country/ireland-republic>, data provided by International Centre for Prison Studies, 18 June 2015.

<sup>45</sup> <http://www.prisonstudies.org/country/netherlands>, data provided by International Centre for Prison Studies, 18 June 2015.

Based on this research, Fair Trials and the partners drafted research tools which – with small adaptations to specific local conditions – explore practice and motivations of pre-trial decisions and capture the perceptions of the stakeholders in all participating countries.

- (2) A defence practitioner survey, which asked lawyers for their experiences with regards to the procedures and substance of pre-trial detention decisions.
- (3) Monitoring pre-trial detention hearings, thereby gaining a unique insight into the procedures of such hearings, as well as the substance of submissions and arguments provided by lawyers and prosecutors and judicial decisions at initial and review hearings.
- (4) Case file reviews, which enabled researchers to get an understanding of the full life of a pre-trial detention case, as opposed to the snapshot obtained through the hearing monitoring.
- (5) Structured interviews with judges and prosecutors, capturing their intentions and motivation in cases involving pre-trial detention decisions. In addition to the common questions that formed the main part of the interviews, the researchers developed country-specific questions based on the previous findings to follow-up on specific local issues.

In Greece, the research data was collected through

- a) desk research on legislation, academic literature and case law
- b) a survey for defence practitioners conducted from November to December 160 defence practitioners from across the country responded to all or part of the survey questionnaire
- c) the review of 44 case files accessed through the archive of 3 defence attorneys who reviewed them for the purposes of the project
- d) interviews with 5 investigating judges from the Court of First Instance of Athens and
- e) interviews with 4 prosecutors from the Court of Athens who deal with PTD cases.

Access to case files was a major challenge as files are not public and access was not granted by the Hellenic Ministry of Justice. Case files were reviewed through defence practitioners and cases that they had handled. Trial monitoring was not possible as proceedings are not public and access was not granted by the Hellenic Ministry of Justice or the Courts. Although the scope of the research and the data collected is limited and cannot offer a precise representation of the scope of problems associated with PTD, it does highlight some important issues relating to the use of PTD in Greece.

## IV. Context

### *a) Content*

**Background information.** Greece is located in southeastern Europe, covers an area of 131,957 sq. km and has a population of 11.306.183 (2010 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.

Greek law belongs to the civil law tradition. With regard to penal law, 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 penal dimensions, for example the Military Penal Code, legislation on drugs, on antiquities, on the environment etc.

The Greek criminal justice system is based on the Continental tradition and the criminal procedure follows a «mixed» model of inquisitorial and accusatorial system. It is supported that although the procedure is basically inquisitorial, it has also strong adversarial elements<sup>46</sup>. 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 magistrate or by a police officer (misdemeanors); b) an «ordinary» investigation conducted by a judge (felonies and misdemeanors); or c) direct reference of the case to trial for petty violations or violations apprehended in the act. Pre-trial procedures are conducted in writing, non-public and non-adversarial (art. 33, 34, 241 CPC) and the investigating judge or police officer collects the evidence. The procedure has some accusatorial features, since the parties can influence the proceedings by submitting applications, bringing in evidence, lodging appeals against the decisions of the investigating judge or the p.p. etc. The pre-trial phase ends when the proceedings before the judicial councils end and the summon to trial is served upon the accused<sup>47</sup>.

In the last years (especially since 2010) Greece is experiencing large flows of irregular immigrants from the sea borders with Turkey and lately massive inflows of refugees from war torn countries like Syria, Iraq, Afghanistan etc. At the same time, the economic crisis and the painful readjustment programmes have left limited funds for reception and humanitarian assistance and have exasperated social solidarity and tolerance leading to increasing criminality and incidents of violence and hostility directed at foreigners.

Detention is an issue regularly raised by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in its reports on Greece. The latest report (2014) highlights once more the systemic deficiencies of the prison system, especially severe overcrowding and shortage of staff as the underlying reasons behind the poor material conditions (lack of hygiene and insufficient medical care) and inter-prisoner violence in Greek prisons<sup>48</sup>. Academics on the other hand, highlight practical and operational issues (rather than legal ones) as the reasons behind the increased use and duration of PTD and its close interrelation to technical, infrastructural and managerial deficiencies of the law enforcement system, changes in the profile of crime, the rise in serious criminality and the increased representation of foreigners<sup>49</sup>. However, PTD rarely appears as an issue in the media.

**Arrest and presence before a judicial authority.** Article 6 par. 1 of the Constitution provides that «no person 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, except of the cases of art. 275 (offender caught «in the act») no person shall be arrested without a specially and sufficiently reasoned warrant of

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<sup>46</sup> D. Spinellis, C. Spinellis, *The Criminal Justice System of Greece*, 1999

<sup>47</sup> Ibid.

<sup>48</sup> Council of Europe, Report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 4 to 16 April 2013, accessible at: <http://www.cpt.coe.int/documents/grc/2014-26-inf-eng.pdf>

<sup>49</sup> Effie Lambropoulou, Pre-Trial Detention in Greece: the Achilles heel of the prison system, in: P.H. van Kempen (ed), *International Penal and Penitentiary Foundation, Pre-trial detention, Human Rights, criminal procedural law and penitentiary law, comparative law*, (2012) Vol 44, Intersentia, Cambridge-Antwerp-Portland 2012, 9. 415-462.

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 examining magistrate within 24 hours of his/her arrest at the latest or within the shortest time required to transfer the person before a magistrate should the arrest be made outside the seat of the examining magistrate (art. 6 par. 2 Constitution). The examining magistrate must decide on release of the detainee or issue a warrant of imprisonment at the latest within three days from the day the person was brought before him/her (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 decision of the competent judicial council. If these time-limits elapse without action, the Constitution obliges any competent person to release the arrested person immediately (art. 6. Par. 3 Constitution), subject to punishment for illegal detention and liable to restoration of damages (art. 6. Par. 3 Constitution).

**Grounds for PTD.** Pre-trial detention is provided for in art. 282 par. 3 CCP, as a measure of last resort if restrictive conditions (e.g. bail or obligation to report every day to the 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 the trial or investigation. It can be imposed if a person is accused of a felony, there are serious indications of guilt that the crime was committed, the person does not have known residence in the country or has made preparations to flee, has been a fugitive or has violated restrictions in the past or might commit other crimes. During the pre-trial stage, if there are serious indications of guilt of the accused for felony or misdemeanour punished with imprisonment of at least three months, it is possible to order restrictive conditions (art. 282 CCP) in order to prevent the risk of new crimes and to ensure that the accused will be present at the investigation or trial and subjected to the execution of the decision (art. 296 CCC). Pre-trial detention is possible instead of restrictive conditions only when it can be decided, based on founded grounds, that restrictive conditions do not suffice or cannot be imposed (art. 282 CPC).

Pre-trial detention thus requires a double reasoning from the part of the investigating judge<sup>50</sup> (with the consent of the prosecutor or by decision of judicial council in case of disagreement between the two) a) on the inadequacy of restrictive conditions and b) how the legal prerequisites stipulated by law apply in the specific case.

**Non-custodial alternatives to detention.** Restrictive conditions can be imposed during the pre-trial stage if there are serious indications of guilt of the accused for felony or misdemeanour punished with imprisonment of at least three months, if this is considered absolutely necessary to prevent the risk of commitment 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 decision (art. 282 and 296 CPC) (both reasons have to be fulfilled).

The restrictive conditions in the CCP are indicative and include bail, reporting before the investigating judge or other authority, prohibition to live or access specific place or exit ban from the country, prohibition to meet or associate with specific persons and restriction at home with electronic surveillance (art. 292 par. 2 CPC). The latter alternatives was added in 2013<sup>51</sup>. Other restrictive conditions can be applied by the judge (with the consent of the prosecutor) that serve the overall purpose of preventing new crimes and ensuring the presence of the accused at the investigation and trial (art. 282 and art. 296 CCP).

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<sup>50</sup> The investigating judge is the person that conducts the investigation following an order from the prosecutor (art. 246 CCP)

<sup>51</sup> Art. 2 par A of Law 4205/2013 (OG A 242/6.11.2013)

Restriction at home with electronic surveillance is the most recent addition to the possibilities offered by the law on alternatives to detention (art. 282 par. 3 and art. 283 A CCP). It can be imposed when the accused is charged with a felony, has known residence in the country, has made preparations to flee in the past and might commit further crimes if left free. Further, other restrictive conditions must be clearly insufficient to prevent new crimes and ensure his/her presence at the trial or investigation. If the act is punished with life sentence or imprisonment for a maximum of 20 years or if the crime was committed repeatedly or if the act had a big number of victims, electronic surveillance at home can be imposed taking into account the features of the act and the personality of the accused. These provisions do not apply to people with disability of 80% or more. In exceptional circumstances, restriction at home with electronic surveillance can be imposed also for specific misdemeanours (negligent manslaughter) if the intention to flee can be reasoned. In this case the maximum duration of the restrictive order is six months. Only the severity of the act is not sufficient basis for imposing home restriction with electronic surveillance. Further, this restrictive condition cannot be imposed without a relevant request from the accused (art. 282 par. 3 d). However, non-submission of such a request does not make him/her suspect to flee or to commit further crimes. If the accused does not comply with the obligations imposed to him/her on home restriction with electronic surveillance, these can be replaced with pre-trial detention according to art. 298.

**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 misdemeanors. 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). It is prohibited to exceed these maximum limits of detention pending trial, by successively applying this measure to separate acts of the same case (art. 6. Par. 4 Constitution).

Article 287 of the Code of Criminal Procedure regulates the duration of pre-trial detention. If detention lasts six months (or three months for the respective criminal acts) the judicial council needs to make a reasoned decision on the release or the continuation of the detention (automatic review). If the investigation is still ongoing, the investigating judge informs the prosecutor of the court of appeal of the reasons for the ongoing investigation and transmits the file to the prosecutor of the court of misdemeanors who introduces the case to the related council. The accused is informed in order to present his/her opinions in writing within the deadline defined by the president of the council and can be represented by an attorney. The accused has the right to be informed and receive a copy of the proposal of the prosecutor on the continuation or not of PTD. The prosecutor, the accused and his/her lawyer do not appear before the council. The council can, if it considers is necessary, request the presence of the accused, in which case the prosecutor is also invited. Following this, the council decides whether the accused should be released or whether detention should continue. If the investigation has been completed, the prosecutor of the court where the case will be tried introduces the file to the competent council.

Pre-trial detention for the same crime cannot exceed 1 year. In exceptional circumstances, pre-trial detention can be extended for a maximum of six months with a specially reasoned decision documenting the need for such an exception. If pre-trial detention is not extended within thirty days following the completion of three or six months, the decision imposing it ceases to be valid and the competent prosecutor asks for the release of the detainee.

Every doubt or disagreement with regard to the extension or the completion of the maximum limits of pre-trial detention is solved by the competent judicial council. All conditions related to the hearing of the accused and the prosecutor apply. The prosecutor

and the accused have the right to exercise the legal remedy of cassation against the decision.

**Offences for which pre-trial detention is mandatory.** Article 282 CCP determines the conditions for ordering pre-trial detention or restrictive conditions. Restrictive conditions or, if these are not sufficient, pre-trial detention can be ordered for felonies or misdemeanors punished with imprisonment of at least three months (art. 282 CCP) if this is absolutely necessary to avoid new crimes and ensure that the accused will be present in the investigation and the trial (art. 296 CCP). If the offence in question is punished with life sentence or imprisonment with a maximum limit of twenty years or if the act is committed serially or in the context of a criminal or terrorist organization or if the offence has resulted in a high number of victims, pre-trial detention can be imposed when, based on the specific features of the act, it can reasonably be expected that if left free the person might commit further crimes (art. 282 par. 4 CCP). The law specifically stipulates that the severity of the act is not in itself sufficient to justify pre-trial detention (art. 282 par. 4 CCP). In extremely exceptional circumstances, and if it can be established that restrictive conditions are not sufficient, pre-trial detention can be imposed also for the misdemeanour of serial negligent manslaughter, if the accused is likely to flee. In this case, the maximum limit of detention is six months.

These provisions do not apply to accused people with disability of 67% or more and people awaiting trial with a disability of more than 50% if their detention is problematic due to their limited capacity to serve themselves. In these cases, other restrictive conditions can be ordered including home restriction or hospitalisation upon request (art. 557 par. 2 CCP).

**Case law on to pre-trial detention decision-making from national courts.** Greece has been condemned several times from the European Court of Human Rights for excessive duration of pre-trial detention and inhuman conditions of detention. A recent judgment in the case of *Dimitrios Dimopoulos v. Greece* (App. No 49658/09, Judgment from 09/10/2012) concerned inhuman and degrading conditions of detention (art. 3 ECHR) and a non speedy decision on the application challenging provisional detention. The court accepted the violation of art. 3 of the Convention and art. 5 § 4 as regards the applicant's absence from the appeal hearing and the lack of a speedy review of the applicant's appeal. In *Christodoulou and Others v. Greece* (no. 80452/12) Mr Christodoulou was detained on remand in Salonika prison. The case concerns the conditions of his detention (registered as 90% disabled and suffers from numerous medical conditions) and the fact that the indictments division did not examine speedily his appeal against his detention order. Mr Christodoulou was remanded in custody on 2 October 2012 and placed in Salonika prison, charged with a number of offences related to white-collar crime. On 5 October 2012 he lodged an appeal against the detention order, arguing that his 90% disability and his four haemodialysis sessions every week ruled out any risk of his absconding. The indictments division deliberated in his absence on 16 November 2012 then dismissed his appeal, without referring to his request to appear in person. He was released on 4 February 2013 by a decision of the Court of Appeal. On 4 March 2013, Mr Christodoulou was sentenced to eight years' imprisonment for tax fraud with a stay of execution of the sentence subject to a surety payment of EUR 200,000. Mr Christodoulou fled and went into hiding to avoid arrest. He claimed that he could not afford to pay the sum requested and that his family was living on benefits. Relying in particular on Article 5 § 4 (right to a speedy decision on the lawfulness of one's detention), Mr Christodoulou complained that the indictments division had failed to rule speedily on his detention order, and that he had not been allowed to appear in person before the indictments division or to apprise himself of the public prosecutor's submission. The Court observed that the authorities' decision was taken more than a hundred days after the proceedings had been lodged and it considered that there has been a violation of Article 5 § 4 of the Convention because of the national

authorities' failure to decide on the lawfulness of the applicant's detention "speedily". In the case *Vafiadis vs Greece*, the Court noted that the evidence taken into account in 2007 that resulted in the release of Vafiadis was known to the court when decisions to prolong detention were made (known residence, clear penal record, participation in rehabilitation programme). Even if the authorities were afraid of reoffending, the Court noted that the judicial council did not assess the impact of this information on alternative measures. The Court also noted that Vafiadis suffered from a neurologic condition and was a drug addict and had provided medical evidence certifying that the detention would endanger his health. Neither the prosecutor nor the judicial council make any reference to these arguments. The court accepted a violation of art. 5 § 3 of the Convention. However, the Court rejected that the practice of judicial councils to examine briefly the applications for release without going into the details of each case made applications for release ab initio doomed to fail.

Several decisions of national courts deal with the conditions for imposing pre-trial detention, the conditions for substitution of pre-trial detention with restrictive conditions (Council of Appeal Judges of the Aegean 17/2013, Court of Appeal of Pireus 20/2014), the reasoning required for pre-trial detention (373/2014 Court of Appeal of Thessaloniki) and several others.

**Reforms to legislation on pre-trial detention.** 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. Finally, 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.

**Procedure.** In Greece, criminal proceedings begin with an act of prosecution and end with a decision of a court or judicial council. They can include a pre-trial and the trial stage. The principles that guide the criminal procedure include the search for the substantive truth *ex officio* (art. 239 par. 2 CCP). Pre-trial procedures are conducted in an inquisitorial, written, non-public and non-adversarial (art. 241 CCP) fashion. The investigating judge can order the pre-trial detention of the accused with the consent of the prosecutor. In case of disagreement between the two, the case is presented before the judicial council that decides. Before expressing his opinion, the prosecutor must hear the accused and his/her counsel (art. 283 CCP). Procedures before judicial councils are not public (art. 306 CCP). Decisions are made by majority after hearing the prosecutor who has to leave the room (art. 138 CCP). The decision is written in a note on the proposal by the prosecutor, timed and signed by the judges.

**Access to case materials.** The accused enjoys several rights during the pre-trial phase including the right to be heard (art. 20 of the Constitution), the right to be informed by the investigating judge or other investigating officials of the charges brought against him and of his rights before being called to address them (art. 101 and 273 CCP) and the right to be informed and receive copies of all the evidence in the case file and to ask for adequate time (48 hours) for the preparation of defense (art. 101 and 102 CCP). According to art. 101 the investigating judge, when the accused presents himself/herself, announces the charges and the other documents of the investigation. The accused can study the charges

and the documents. With a written application and at his expense copies of the charges and the investigation documents are provided (art. 101 par.1 CCP). The same rights apply when the accused is invited for an additional deposition and before the file is transmitted to the prosecutor. If the investigation lasts longer than a month after the first or every subsequent deposition, the accused can exercise this right once per month (art. 101 par. 2). In exceptional cases and provided this does not affect the right to a fair trial, the competent authorities can prohibit the access to part of the material if this might endanger the life or rights of another person or if this is necessary for the public interest (art. 101 par. 3).

**Interpretation and translation.** According to art. 233 (1) of the Code of Criminal Procedure<sup>52</sup>, “[a]t any stage of the criminal proceedings the inquiring authority verifies in any appropriate manner whether the suspected or accused person speaks and understands the Greek language and whether he/she needs the assistance of an interpreter”. The need for interpretation needs to be determined by the investigating officers or prosecutor<sup>53</sup> in the case of a preliminary examination, the investigating officer, the prosecutor<sup>54</sup> or the investigating magistrate<sup>55</sup> (for preliminary criminal investigation) and the investigating magistrate<sup>56</sup> during the criminal investigation. Article 1 (2) of Law 4236/2014 provides that the right to interpretation in criminal proceeding applies to persons suspected or accused of having committed a criminal offence “from the time that they are made aware of it by the competent authorities, by official notification or otherwise, and during the whole criminal proceedings”. The Greek law provides that interpretation should be provided “without delay” but does not set a strict timeframe. In practice, it looks that interpretation is indeed provided without delay<sup>57</sup>. There is no data however on the quality of translation made available.

**Formal procedures for requesting pre-trial release.** The accused has two procedural options for appealing against the order for pre-trial detention: a) to appeal against the warrant or the act of the investigating judge (art. 285 CCP) and b) to request the release or the substitution of pre-trial detention or restrictive orders (art. 286 CCP).

Article 286 CPC provides for the repeal or substitution of pre-trial detention and other restrictive orders if during the investigation it arises that the specific reason for which detention or restrictive orders were imposed no longer exists. The investigating judge can ex officio or upon proposal from the prosecutor raise these measures or submit a request to the council for their repeal. The pre-trial detainee can apply on his/her own initiative for the substitution of PTD to the investigating judge. This can take place at any time during the investigation without any limitation (eg on how often this can happen). Against the order of the investigating judge deciding on the continuation, repeal or replacement of pre-trial decision, the defendant can appeal to the Judicial Council within five days from the day the order was promulgated. The application of the accused can request the repeal of restrictive measures, the replacement of pre-trial detention with restrictive measures or the replacement of the restrictive measures imposed with others.

The investigating judge, with a written opinion of the prosecutor, can with a reasoned order replace pre-trial detention with less restrictive conditions or the latter with pre-trial detention (art. 298 CCP). In the latter case the investigating judge issues an arrest

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<sup>52</sup> As amended by Art. 2 (1) of Law No. 4236/2014 ‘On the transposition of the Directives 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (L280) and 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right of information in criminal proceedings (L142) and other provisions’ (OG A’ 33/11.2.2014), available at: <http://www.ministryofjustice.gr/site/LinkClick.aspx?fileticket=i1hgLkXSvp8%3D&tabid=132>.

<sup>53</sup> Art. 31 (1) (a) in combination with Art. 33 (1), 34, 43 (1) (b)-(c) and 47 (2) CCP.

<sup>54</sup> Art. 31 (1) (b) CCP.

<sup>55</sup> Art. 243 (1) CCP.

<sup>56</sup> Art. 246 (1) CCP.

<sup>57</sup> Information provided by practitioners.



warrant. The investigating judge can, with the same procedures, change the conditions imposed. Against this order the prosecutor and the accused can appeal before the council of misdemeanour judges within ten days from the issue of the order (for the prosecutor) and from the service (for the defendant). The appeal does not suspend execution of the order.

The replacement of restrictive conditions with pre-trial detention is possible a) if the accused, despite being invited, does not appear before the court or the investigating judge and there are no justified reasons that make his/her appearance impossible b) if he/she flees or expresses the intention to flee c) if he/she does not respect the conditions imposed or does not announce a change of residence d) if serious suspicions arise for other felonies against which pre-trial detention is possible (art. 298 CCP).

**Proposal of alternatives to detention.** The investigating judge is required to consider restrictive conditions before imposing pre-trial detention and give reasons why these were not sufficient (art. 282 CCP). Further, the accused can demand the repeal or substitution of restrictive conditions and the prosecutor can consider this ex officio.

**Formal procedures for challenging decisions to detain pre-trial.** The procedure for challenging decisions on pre-trial detention is stipulated in article 285 CPC. When detention is based on a warrant from the investigating judge, the accused can challenge the decision imposing restrictive conditions or pre-trial detention before the council of misdemeanor judges within five days from the start of the pre-trial detention. The appeal does not suspend the execution of the order. If the decision on pre-trial detention was issued by the judicial council upon disagreement between the investigating judge and the prosecutor, no appeal is possible.

A report is drafted by the secretary of the court of misdemeanors or the prison director (the procedure for the appeal is provided for in article 474 par. 1 CCP). The appeal is transmitted to the prosecutor of the court of misdemeanors and is introduced by him without delay with his proposal to the judicial council that decides irrevocably.

The council of misdemeanor judges when examining the appeal can repeal the pre-trial detention or replace it with restrictive conditions.

**Review of pre-trial detention.** The CCP provides a procedure for automatic review of pre-trial detention. According to art. 287 CCP, when the pre-trial detention has lasted six months (or three months for specific acts) the judicial council decides whether the accused must be released or further detained.

If investigation is still ongoing, the investigating judge informs the prosecutor of the court of appeal on the reasons and transmits the file to the prosecutor of the court of misdemeanors who introduces the case to the related council. The accused is informed in order to present his/her opinions in writing within the deadline defined by the president of the council. The accused has the right to be informed and receive a copy of the proposal of the prosecutor. The prosecutor, the accused and his/her lawyer do not appear before the council. The council can, if it considers is necessary, request the presence of the accused, in which case the prosecutor is also invited. Following this, the council decides whether the accused should be temporarily released or whether detention should continue.

If investigation has been completed, the prosecutor of the court where the case will be tried introduces the file before the competent council. The same applies with regard to the notification of the accused for the submission of a note, the receipt of a copy of the prosecutorial proposal, non-appearance before the council and the decision of the latter.

If detention is prolonged, it will be reviewed ex officio after six months according to the same procedure. Against the decision of the judicial council to prolong pre-trial the defendant and the prosecutor can exercise a cassation (art. 287 par. 5 CCP).

**Legal representation in pre-trial detention hearings.** According to article 100 CCP the accused has the right to have a legal council in his deposition and every examination. The investigating judge has the obligation to appoint ex officio a council if the defendant explicitly requests it. The communication between the council and the defendant cannot be banned under any conditions. The law 3226/2004 on legal aid determines the conditions for the appointment of defence counsels free of charge. The law addresses individuals with low income who are citizens of EU member states or third countries provided they have legal residence in the EU. Low income is determined in relation to the National Collective Labour Agreement and beneficiaries must have a family income lower than 2/3 of the lowest annual income provided in the National Collective Labour Agreement. For intra-family problems income is not relevant.

The parties can be present with a defence counsel in every investigation act (art. 97 CCP), can address questions and submit notes that are included in the report (art. 99 CCP). The suspect or the accused are immediately informed on the following: a) the right to have a lawyer b) the right and the conditions for free legal aid c) the right to be informed with respect to the charges d) the right to interpretation and translation and e) the right to remain silent (art. 99A CCP).

## V. Statistical data on criminal justice/PTD system

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<sup>58</sup>. The overall picture of detainees in Greek prisons is presented in the table below:

**Table 1: General Statistical Table of Detainees – sentences (2003-2012) (on January 1<sup>st</sup> of every year)**

A/A		1/1/03	1/1/04	1/1/05	1/1/06	1/1/07	1/1/08	1/1/09	1/1/10	1/1/11	1/1/12
1	Number of persons detained	8418	8726	8722	9964	10370	11645	11736	11364	12349	12479
2	Number of persons detained awaiting trial	2084	2570	2481	3104	3065	3045	3218	3541	4050	4254
3	Number of detainees of foreign nationality	3858	3708	3704	4281	4695	5622	6078	6307	7210	7887
4	Number of female detainees	394	506	594	592	582	559	695	554	577	562
5	Number of minors	449	543	445	420	376	446	520	510	568	587
6	Number of offenders of the law on drugs	3386	3562	3465	4346	4640	4912	4937	4345	4303	4136
7	Convicts with a death penalty	2	1	1	1	-	-	-	-	-	-
8	Convicts with a life sentence	599	618	594	654	715	776	742	823	807	977
9	Convicts with temporary imprisonment:	1767	1642	1552	2000	2300	2720	2737	2594	2385	2511
	a) 5-10 years	1214	1139	1220	1171	1333	1549	1671	1564	1584	1665
	b) 10-15 years	944	898	989	1003	1041	1108	1109	1090	1173	3100
	c) 15 years and more										

<sup>58</sup> These conditions were described in an introductory report to a draft law amending the Penal Code in 1996 and remain valid since.

	Convicts with imprisonment:										
	a) up to 6 months	211	249	359	223	125	316	182	260	261	290
10	b) from 6 months to 1 year	271	313	300	287	257	301	254	229	222	252
	c) 1-2 years	270	303	300	355	306	453	309	288	253	260
	d) 2-5 years	842	854	839	1063	1102	1303	1310	765	701	727
11	Persons detained for debts	17	30	27	24	23	4	66	43	29	36
12	Guests	122	66	40	35	63	44	92	116	237	121

Source: Ministry of Justice, Transparency and Human Rights

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

**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*<sup>59</sup> 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<sup>60</sup>, 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<sup>61</sup>. In 2006 more than half of the detainees were aliens, out of which 24% was detained pre-trial<sup>62</sup>. In 2012, the number of detainees of foreign nationality raised to 63,20%<sup>63</sup> and but decreased in 2013 to 60,4%<sup>64</sup>.

**Table 3: General Statistical Table of Detainees - sentences (2003-2012) (on January 1<sup>st</sup> of every year)**

A/A		1/1/2003	1/1/2004	1/1/2005	1/1/2006	1/1/2007	1/1/2008	1/1/2009	1/1/2010	1/1/2011	1/1/2012
1	Number of persons	8418	8726	8722	9964	10370	11645	11736	11364	12349	12479

<sup>59</sup> "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>

<sup>60</sup> *The art of crime, Έρευνα για την προσωρινή κράτηση στη Δικαστική Φυλακή του Κορυδαλλού το έτος 2007*, <http://www.theartofcrime.gr/index.php?pgtp=1&aid=1385901544>

<sup>61</sup> "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>

<sup>62</sup> "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>

<sup>63</sup> Source: Ministry of Justice, Transparency and Human Rights, see table 1 above.

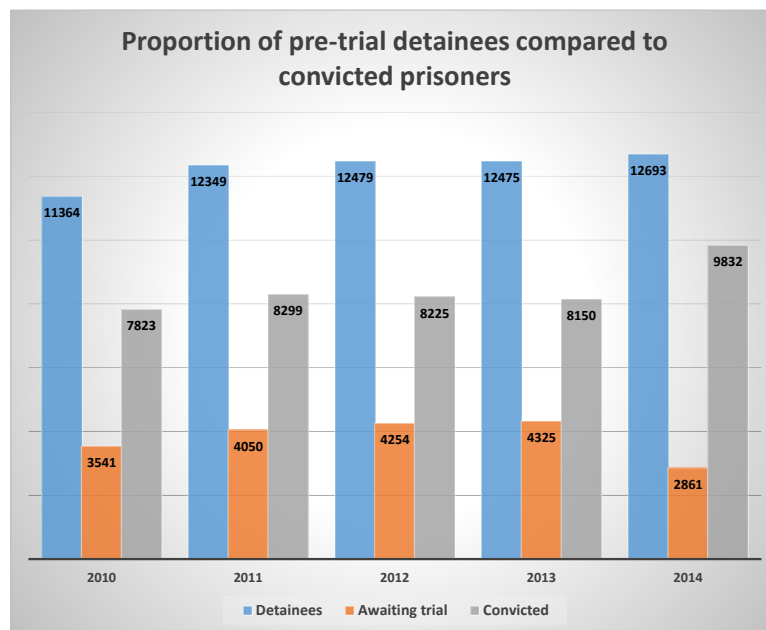
<sup>64</sup> Source: [http://www.prisonstudies.org/country/greece#further\\_info\\_field\\_pre\\_trial\\_detainees](http://www.prisonstudies.org/country/greece#further_info_field_pre_trial_detainees)

	detained										
2	Number of detainees of foreign nationality	3858	3708	3704	4281	4695	5622	6078	6307	7210	7887

Source: Ministry of Justice, Transparency and Human Rights

**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<sup>65</sup> for November 2014 a number of 2.517 pre-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-trial detainees compared to convicted prisoners**



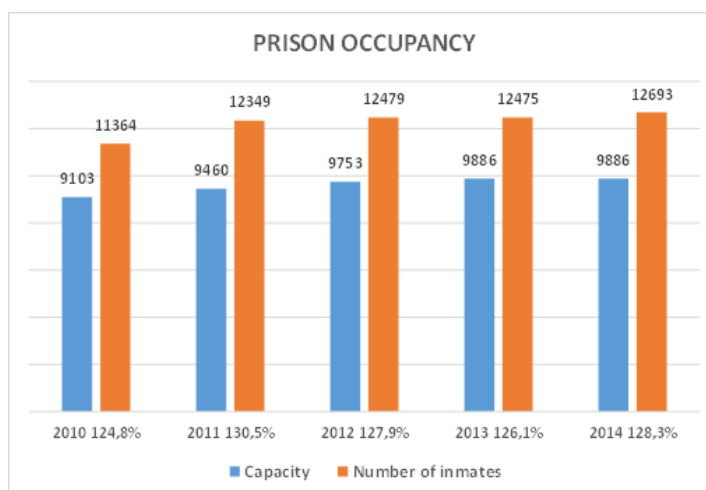
Source: Ministry of Justice, Transparency and Human Rights

**Prison occupancy level over the past five years.** 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<sup>66</sup>. Prison occupancy rates are shown in the following diagram.

<sup>65</sup> Source: [http://www.prisonstudies.org/country/greece#further\\_info\\_field\\_pre\\_trial\\_detainees](http://www.prisonstudies.org/country/greece#further_info_field_pre_trial_detainees)

<sup>66</sup> 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»...<sup>67</sup>. 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”<sup>68</sup>.

**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.

<sup>67</sup> Source: Greece 2012- US State Department Human Rights Country Report.

<sup>68</sup> Source: Greece 2013- US State Department Human Rights Country Report.

**Table 4: 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. Procedure of pre-trial detention decision-making

Pre trial detention is a measure which severely restricts personal freedom. Correct and fair procedures are fundamental to ensuring that PTD is used lawfully and that the rights of the pre-trial detainee are respected. The case law of the European Court of Human Rights sets out general standards in relation to the speed of the proceedings, the reasonable time for the trial and the hearing.

### Average duration of PTD.

The maximum duration of PTD (art. 6 par. 4 of the Greek Constitution) cannot exceed a period of one year in the case of felonies or six months in the case of misdemeanors. In exceptional cases, these maximum limits can be extended by six or three months respectively, by decision of the competent judicial council. Article 287 of the Code of Criminal Procedure regulates the duration of pre-trial detention as follows: if detention lasts six months (or three months for the respective criminal acts) the judicial council needs to make a reasoned decision on the release or the continuation of the detention. If investigation is still ongoing, the investigating judge informs the prosecutor of the court of appeal on the reasons and transmits the file to the prosecutor of the court of misdemeanors who introduces the case to the related council. If investigation has been completed, the prosecutor of the court where the case will be tried introduces the file before the competent council. In any case, until the issuance of a final decision, pre-trial detention for the same crime cannot exceed 1 year. In exceptional circumstances, pre-trial detention can be extended for a maximum of six months with a specially reasoned decision. In extremely exceptional circumstances and if the accusation related to crimes punished with life sentence or imprisonment of maximum twenty years, pre-trial detention can be extended for a maximum of six months with a specially reasoned decision.

Regarding the duration of pre-trial detention, official data was not provided by the Ministry of Justice. Data from *ECBA- European Criminal Bar Association*<sup>69</sup> for the period from 1998-2006 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 picture is confirmed by the sample of cases reviewed in the course of the project. The case file reviews show 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

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<sup>69</sup> "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>

less than 6 months was significantly lower (7 cases)<sup>70</sup> and c) that 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 substantively. Given that PTD can be ordered for 'serious offences' (felonies or misdemeanors punishable with imprisonment of at least three months), 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 (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.

### **Reasons for long periods of PTD.**

The majority of defence practitioners (63,2% in a total of 76 answers to this question) reported that there is no justification 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 commitment of new crimes (5 comments) and b) delays in the investigation (eg because of expert reports or due to the workload of the courts, the lack of staff and resources and delays in the delivery of justice (5 comments).

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 (five) 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 (ie 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 work load and difficult working conditions. They are working under very demanding deadlines, heavy workloads (large number of incoming cases), poor infrastructure and support (paper files, lack of online facilities) while 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). Yet, investigating judges did not appear to consider that the duration of PTD was excessive.

The evidence collected through the research strongly suggests that large periods of PTD are often due to the poor organization and the ineffective operation of the justice system rather than severe gaps in the legislative framework on PTD. This should be addressed through the ongoing efforts for e-justice and improvement of the efficiency of justice.

### **Impact of PTD on the speed of the procedures.**

The statutory limit of pre-trial detention appears to have a positive impact on the speed of the trial. The majority of defence practitioners (56%) responded in the survey that pre-

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<sup>70</sup> 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.

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. All judges and prosecutors interviewed explained that they have to and in fact do prioritise cases where PTD is ordered in order to ensure that the time limits are respected.

### **Length of time period between arrest and first judicial hearing.**

The time between the arrest and the first judicial hearing deciding on PTD depends on the nature of the offence. In the case of crimes caught in the act, the accused needs to be present before a judicial authority within 3 days. In regular investigations there are no strict time limits. In all cases examined the 3-day deadline was respected. With regard to the first hearing before a court, no statutory limits are set and no relevant statistics are available. In the cases reviewed, the time between the arrest and the trial varied strongly. The earliest trial took place in a period of 7 months following arrest, in other cases it took place after 9 years. Defense practitioners surveyed mentioned several reasons as a cause of the delays. These referred to the general problem of speedy delivery of justice, the big number of cases and the small number of judges, the lack of staff, infrastructure and support, the difficulties in processing case material, delays from the defense, delays in the evidence needed (eg ballistic examinations, reports from experts etc) delays in court (suspension of trial, delays in getting trial dates, strikes of judges or lawyers etc). However, no detailed data or research exists to analyse the way these problems interact to impact the long duration between arrest and judicial hearing. More in depth research should be conducted on this point.

### **Presence of the suspect in PTD hearings.**

According to the Greek Code of Criminal Procedure, the accused is present in the hearing that may result in pre-trial detention or restrictive measures. Before the investigating judge, the accused is obligatorily present and cannot be represented only by an attorney.

Defence practitioners participating in the survey confirmed the presence of the accused in the hearing before the decision on pre-trial detention where he/she can present his/her views and argue against pre-trial detention or restrictive orders. Non-presence can be a reason for the issuance of a PTD warrant and for considering the accused 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<sup>71</sup>. 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.

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<sup>71</sup> The opposite is the case in the process of reexamination or extension 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.



The presence of the suspect in PTD hearings 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 in this 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<sup>72</sup>. 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) and therefore demonstrate an increased bias to ask for PTD. This was not confirmed however by other interviewees (judges or prosecutors). In cases where there is a disagreement between the judge and the prosecutor and the parties are not convinced by each other's arguments, two interviewees reported that it is important that a collective organ (judicial council) intervenes to make the decision.

### **Interpretation during hearings.**

In Greece, the rates of non-nationals being arrested and prosecuted is relatively high and this makes the availability of interpretation and translation a prominent issue. According to art. 233 par. 1 CCP *"[a]t any stage of the criminal proceedings the inquiring authority verifies in any appropriate manner whether the suspected or accused person speaks and understands the Greek language and whether he/she needs the assistance of an interpreter"*. The need for interpretation is determined by the prosecutor or the investigating magistrate for preliminary criminal investigation. The right to interpretation applies to persons suspected or accused of having committed a criminal offence *"from the time that they are made aware of it by the competent authorities, by official notification or otherwise, and during the whole criminal proceedings"*. Interpretation should be provided *"without delay"* but no strict timeframe is set (art. 1 (2) of Law 4236/2014 that transposes the Directive 2010/64 on Interpretation and Translation and the Directive 2012/13 of the Right to Information into Greek law).

In the cases reviewed, 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

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<sup>72</sup> The prosecutor who would hear the accused and the one whose consent is required are different persons.

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.

The combined analysis of this evidence shows that while legislative consolidation is in place, limited infrastructure and facilities and lack of organization eg 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 forward arguments and influence the proceedings for example by explaining the personal situation of the suspect and therefore his/her incentives of absconding or reoffending.

Defence attorneys have the possibility to attend pre-trial hearings with the exception of proceedings before the judicial council, unless explicitly requested by the council. No distinction can be detected in practice in relation to the origin of funding of the defence. The survey shows that the origin of funding affects mostly the point in time of appointment of the defence attorney (it is usually later than other cases) and the time available to work on the case rather than his/her presence in the pre-trial hearings. However, some attorneys mentioned that insufficient information on the right to have a lawyer especially for foreigners might lead to a non-appointment of one.

Defense practitioners reported in the survey that the defense attorney is present in the proceedings that can lead to PTD both before the investigating judge and the prosecutor<sup>73</sup>. 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. According to the explanations provided, non-presence related to cases where the accused did not have an attorney and was not informed on the possibility for representation through legal aid, cases where PTD is ordered in absence of the accused and cases where the accused has no financial resources. Most of these cases however concerned crimes caught in the act.

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<sup>73</sup> 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.

The results highlight the fact that often, especially in cases of crimes caught in the act, suspects might not be adequately informed on their rights and their right to have a defence attorney might come too late or without enough safeguards for an effective defence. 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)<sup>74</sup>.

With regard to the **time available for preparing for the proceedings**, it needs to be noted that the time available 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 present himself/herself before the investigating judge. During this 3-day period the accused (and his/her attorney) can prepare themselves, while they have the possibility to request a two-day extension. When the accused is not arrested, a longer deadline for the hearing is usually provided by the investigating judge depending on the accusation and the specificities of the case<sup>75</sup>. According to the practitioners survey, the defense had access to the case file and its contents before the proceedings 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<sup>76</sup>. 34,5% of respondents were informed more 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, attorneys considered this sufficient for their 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<sup>77</sup>. 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 more ample as there is no restrictive time limit for the hearing of the accused.

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

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<sup>74</sup> The case file review questionnaires were completed by the defence practitioners who handled the particular cases.

<sup>75</sup> 18,4% of the respondents in the practitioners survey confirmed that the time available to prepare largely depends on the type of procedure ie whether it is a crime caught in the act or a regular criminal investigation.

<sup>76</sup> 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.

<sup>77</sup> 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.

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 (in a total of 92 responses) that participated in the survey reported that they bring forward arguments in the hearing before the investigating judge orally but most usually 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.

### **Evidence used in decision-making.**

Pre-trial proceedings in the Greek criminal system are written, non-public and non-adversarial (art. 33, 34, 241 CPC) and the investigating judge or police officer have to collect evidence upon which to base their decisions. Therefore, the investigating judge is responsible for looking for the substantive truth through all necessary investigating acts.

All investigating judges interviewed reported that in principle they have enough evidence to decide on the necessity of detention by assessing the type of act, the way it was committed, the personality and the conditions of the accused. This information is available through the evidence provided by the police and the hearing of the accused by the investigating judge.

In their decision on pre-trial detention judges and prosecutors rely on the evidence included in the case file and information on the person of the accused (penal record or record of punishable acts) and acquired through the hearing of the accused. One judge and one prosecutor interviewed reported that while in some cases there might be sufficient evidence in relation to the guilt or innocence of the accused, there might not be sufficient

guarantees that the accused will be present in the trial (which is the purpose of PTD). For this reason, investigating judges and prosecutors reported that they have to rely on their experience and their personal impressions especially regarding the personality of the accused, his/her profile, background and socioeconomic conditions and make deductions based on the method of committing the crime, the circumstances etc.

All investigating judges and all prosecutors placed specific emphasis on the hearing of the accused as a determining source of information on the criteria for ordering pre-trial detention and ensuring that the accused will be present in the trial. Challenges were mentioned by all of them. Two investigating judges mentioned the fact that laboratory tests, crucial for deciding on the guilt or innocence of the accused, come with significant delay and that has an impact on the proceedings, the progress of the investigation and consequently also the duration of the detention. One judge who specialises in economic crimes, noted that specialised knowledge and assistance might be necessary in order to process the evidence available (eg invoices or proof of tax fraud) and there is a need for timely and close cooperation with the specialised departments of the police or other authorities. All prosecutors noted that there is no online system to allow them to be informed in real time (information is sent by fax or in hard copy) of other crimes for which an individual is accused (besides convictions included in the penal record) and this does not facilitate them to form quickly an opinion especially on the risk of reoffending. Overall, in the interviews all four prosecutors insisted particularly on the importance of the data included in the case file as evidence while all investigating judges placed emphasis on the hearing of the accused (on top of the evidence included in the file) as a determining factor for deciding on whether to order pre-trial detention. All judges and prosecutors agreed on the importance of the personality of the accused as a crucial factor for the decision on PTD. Overall, investigating judges and prosecutors considered having sufficient evidence when ordering PTD despite the specific challenges identified above.

The defence can also bring forward arguments and evidence (64% of the cases reviewed) to counter the arguments on PTD and submit also evidence to support the arguments presented (58% of the cases). In the cases reviewed, this evidence included medical documents, certificates of participation or applications in programmes for addicts, proof of asylum requests, proof of permanent residence, proof by employers, contracts, company documents, agreements, receipts, curricula vita or letters by well known persons on the personality of the accused.<sup>78</sup> However, although in the majority of case reviews (80%) PTD orders were considered justified, their reasoning was not specific enough especially with regard to the reasons for ordering pre-trial detention while no reference to specific evidence and the arguments of the parties was made (such references were reported in 26% of the cases). References were made to evidence produced in the preliminary investigation. Practitioners claimed in the survey that judges simply repeated the existing provisions of the law without any substantive analysis of the specificities of each case and relied disproportionately on the severity of the crime, which cannot, based on the law, be a criterion on its own.

## Findings

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<sup>78</sup> The defence argued by questioning the severity of the accusation (20 references), emphasised the motive of the accused to be present in the trial (16 references), the fact that the accused had a permanent and known residence, employment and the lack of previous arrests (15 references), the will of the accused to present him/herself before the authorities (14 references), the existence of a family and dependent members (11), the possibility to pay bail (8), health reasons (6), possibility to suffer during detention due to personal conditions (4), humanitarian reasons (3), special conditions (2), treatment (2), good behaviour in previous trials (1), bad detention conditions (1), the lack of evidence on guilt, the lack of previous history of violence (7%), the existence of abusive conditions for plea or the possession of drugs for personal use (10%), the presumption of innocence, procedural problems of the police (11%) and the fact that the opinion of the prosecutor was not based on evidence (3%).

Then data collected through the research revealed the following:

- With regard to the duration of PTD, although the maximum limits are never violated, the average duration of PTD differs substantively depending on the case. The average however appears to exceed six months. The reasons behind the extended duration highlight that several organisational and bureaucratic reasons are associated to this such as workload of judges, lack of support staff, small number of judges, delays in the investigation etc (poor organization and the ineffective operation of the justice system). The latter are violation of the ECHR standards on the reasonable length of PTD and need to be urgently addressed through a simplification of related procedures to ensure that PTD is not prolonged for reasons other than those mentioned in the law.
- The existence of a statutory limit of the duration of PTD appears to have a positive impact on the speed of the trial as trials are conducted more rapidly compared to accused who are not in PTD.
- The time between arrest and the first judicial hearing deciding on PTD varies strongly. No detailed data or research exists to analyse the way these problems interact to impact the long duration between arrest and judicial hearing. More in depth research should be conducted on this point.
- The presence of the suspect in PTD hearings is largely ensured. Challenges are noted when the accused is not informed or when he/she are too far to attend. There is a complete lack of facilities to allow the remote participation of the accused in the proceedings. Improvements, especially through the use of teleconference, would need to be used to ensure the participation of the suspect.
- Interpretation is largely available but its quality is not monitored. Documents in the case file are not translated in the language of the suspect. These findings often impede effective participation for foreign individuals disproportionately compared to nationals. In any case, they are not in compliance with the standards introduced by the Directives on the Right to Information and on the Right to Interpretation and Translation. Close monitoring of these standards is required.
- Defence lawyers are present in the hearing and have access to case file. Challenges are identified in relation to crimes caught in the act (where strict statutory deadlines apply) and suspects of foreign nationality might not be adequately informed on their right to have a defence attorney and appointment might come too late or without enough safeguards for an effective defence.
- With regard to the time available for preparing for the proceedings, in crimes caught in the act, time is limited and might often impede the right to an effective defence.
- While access to a lawyer, understanding the proceedings and access to the case file are overall guaranteed, challenges emerge in regard to the representation of foreign nationals, interpretation, translation and information. This needs to be addressed/ Court appointed lawyers and those appointed through legal aid usually have less time to work on the case,
- All parties have the possibility to bring forward evidence proving the need or not for PTD. However, PTD orders rarely have a detailed and specific reasoning making reference to specific evidence and the arguments of the parties.

## VII. Substance of pre-trial detention decision-making

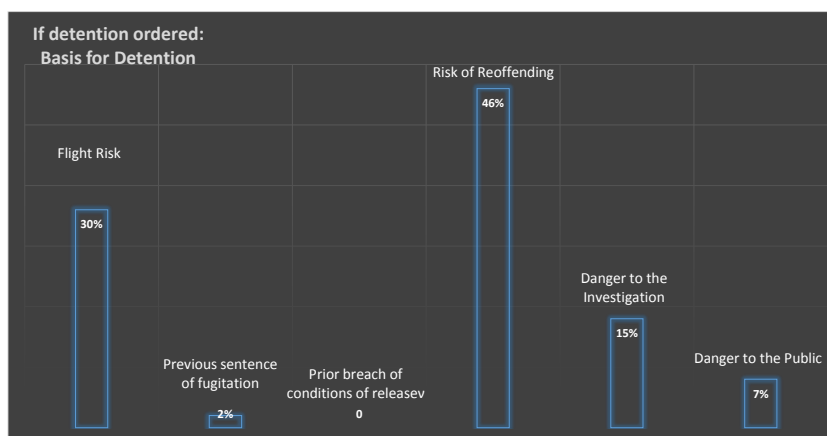
In Greece, pre-trial detention is a measure of last resort with a double purpose: to prevent the risk of new crimes and to ensure that the accused will be present at the investigation or trial and will be subjected to the execution of the judgement. PTD can be imposed only if restrictive conditions are not sufficient (art. 282 CCP) and requires a double reasoning a) on the inadequacy of restrictive conditions and b) how the legal prerequisites stipulated by law apply in the specific case. Restrictive conditions or PTD can be ordered if there are serious indications of guilt of the accused for felony or misdemeanour punished with imprisonment of at least three months.

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 related arguments need to be set out 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 reviewed in the course of the project (66%), 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 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<sup>79</sup> and the impact of the lack of fixed residence on the decisions<sup>80</sup>.

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 ie 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 1 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 (felonies or misdemeanors with a minimum of 3 months imprisonment) in fact links them closer to PTD (1 investigating judge).

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 CPC). 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 determining for forming an opinion on whether the legal requirements are fulfilled. A third criterion is the 'penal history' 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<sup>81</sup>.

All prosecutors reported that the criteria in the law in combination with the evidence available in the case file and the penal 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<sup>82</sup>, 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

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<sup>79</sup> *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>.

<sup>80</sup> *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>.

<sup>81</sup> 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.

<sup>82</sup> See the statistical data in Section II. 5



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.

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 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 a disciplinary proceedings were initiated on the grounds of the decision of a judge.

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<sup>83</sup>, the risk of reoffending and the severity of the crime as grounds for ordering PTD<sup>84</sup> (they appear to bear an important weight in the conscience of investigating judges) and the need for specific documentation of the risk of reoffending<sup>85</sup>. 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)<sup>86</sup>.

### **Link between certain offences and PTD.**

Greek legislation links restrictive measures and PTD to 'serious' crime ie felonies or misdemeanors punishable with at least 3 months imprisonment. 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 judges, crimes caught in the act, where there is strong evidence on the guilt of the accused might also be closer linked 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 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

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<sup>83</sup> *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>

<sup>84</sup> *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>.

<sup>85</sup> *Matznetter v Austria*, App 2178/64, 10 November 1969, concurring opinion of Judge Balladore Pallieri, para 1, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57537>.

<sup>86</sup> *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>.

(seizure – 1 case). The majority of cases involved more than 1 accusation. In fact, only 37% of the cases concerned only one accusation, 50% concerned 2 or 3, 11% had 4 or 5 and 2% more than five accusations. In 91% of the cases, the charges concerned felonies and in 9% the accusations concerned felonies and misdemeanors. In 93% of the cases, the maximum penalty that could be imposed based on the accusation 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.

Prosecutors 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. All prosecutors denied having received pressure in high profile cases. Few of them mentioned however that pressure from the media and public opinion can prove to be very intense. They insisted on their effort to remain unaffected and to take into account only the evidence in the case file. In any event, they rejected the possibility of facing consequences in case of release of a suspect who reoffends or does not show up in trial.

### **Specific characteristics of defendants and link to PTD.**

All judges and prosecutors interviewed did not associate specific personal characteristics of defendants to the use of pre-trial detention eg being a non-national. The critical factors, which might be prevalent in specific groups, pertained mostly to the existence of permanent or known residence and the possibility to flee. It was repeatedly mentioned (3 judges and 3 prosecutors) that the large flow of incoming immigrants (to a large extent irregular) and the poor reception conditions often push them to criminality or exploitation by criminal networks. As a fact immigrants tend to be a significant part of the prison population.

### **Reasoning of PTD orders.**

In cases reviewed, where PTD was ordered, the main reasoning in the order related to reoffending (46%), the risk of fleeing (30%), the risk of hindering the investigation (15%), danger for the public (7%) and the existence of previous attempts to flee (2%). In all cases reviewed, the order was reasoned. However, this reasoning was not always substantive and specific as the ECtHR requires but in violation of the jurisprudence not always tailored to the individual case.

According to the case file reviews, the risk of reoffending was the main ground on which a positive opinion for PTD was based (28 references), followed by the severity of the offence (17 references), the danger of fleeing (3 references) and risk to the public (2 references). The risk of fleeing was associated to the lack of permanent residence (27%), the severity of the penalties for the alleged offence (18%), foreign nationality (16%), informal labour conditions (4%), residence in another part of the country (3%). Hindering the

investigation was associated to threats to witnesses and contacts with other accused to alter witness statements (68%) and the alteration of evidence (30%).

The defence made written submission in the proceedings (64% of the 44 cases). In 25 cases it argued in favour of the release of the accused and measures less restrictive than PTD like regular check ins at police department (8 references), bail (6 references), prohibition of attending specific places (4 references), rehabilitation or other medical programmes (3 references). Other requests by the defence concerned the need for expert assessments, or specialised medical and laboratory tests.

Responding to the arguments brought forward by the investigating judge or the prosecutor, the defence questioned the severity of the accusation (20 references), claimed that the accused has motive to be present at the trial (16 references), that he/she has permanent and known residence and permanent employment, blank penal record and no history of arrests or convictions (15 references), willingness to present him/herself before the authorities (14 references). Additional arguments referred to the existence of a family and dependent members (11 references), the possibility to pay bail (8 references), health reasons (6 references), possibility to suffer during detention due to personal reasons (4 references), humanitarian reasons (3 references), special conditions (2 references), medical or rehabilitation treatment (2 references), appearance in previous trial (1 references) and bad detention conditions (1 references).

Responding to the argument on the dangerousness of the accused, the defense referred to the lack of evidence on guilt (60%), questioned the severity of the accusation and emphasized the lack of a previous history of violence (7%). Other arguments related to the conditions under which the confession of the accused was made, and circumstances relevant to the crime eg the use of drugs for personal recreation etc. In terms of general arguments, the defense made reference to the non-existence of the legal requirements defined in legislation (44%), the presumption of innocence (42%), procedural problems in handling of the case by the police (11%) and the lack of evidence to support the opinion of the prosecutor (3%). In 58% of the cases, the defense submitted evidence to validate its arguments including medical documents, certificates for participation in rehabilitation programs, proof of permanent residence, proof of employment, contracts, company documents, receipts including letters from well known persons on the honesty of the accused.

The defence argued by questioning the severity of the accusation (20 references), emphasised the motive of the accused to be present in the trial (16 references), the fact that the accused had a permanent and known residence, employment and the lack of previous arrests (15 references), the will of the accused to present him/herself before the authorities (14 references, the existence of a family and dependent members (11), the possibility to pay bail (8), health reasons (6), possibility to suffer during detention due to personal conditions (4), humanitarian reasons (3), special conditions (2), treatment (2), good behaviour in previous trials (1), bad detention conditions (1), the lack of evidence on guilt, the lack of previous history of violence (7%), the existence of abusive conditions for plea or the possession of drugs for personal use (10%), the presumption of innocence, procedural problems of the police (11%) and the fact that the opinion of the prosecutor was not based on evidence (3%).

The majority of defense practitioners (58%) participating in the survey is critical towards the orders of investigating judges and rarely consider their reasoning just and duly documented. Only 1,2% of the respondents considered that orders are always fair and documented while 35,8% considered them overall justified. A small percentage of lawyers (4,9%) considered them always unfair and unjustified. Practitioners who doubted the fairness of the orders referred to the fact that reasoning of PTD orders repeats the

legislation without a clear consideration of the specific circumstances of the case or the features of the accused or takes into account predominantly the nature and severity of the crime without sufficiently considering other factors (lack of known residence, previous flight, risk of reoffending etc.). It was commented by lawyers in the survey that even in cases where PTD would seem to be a reasonable measure, it is not sufficiently justified, as the reasoning is too general and too brief (10 comments). A large number of practitioners (69.19%) reported in the survey that judges rely on assumptions not provided for in legislation, that they make their decision based on the severity of the crime, that they use PTD as a means of pressure and that they are affected by the public opinion (24 comments were received). The link between the conditions mentioned in the law and the specific circumstances of the case is not achieved. The nationality of the accused was also considered to be a determining factor.

It is acknowledged by all the lawyers surveyed however that judges do not have access to professional services that can assess the risk of new crimes. Judges and prosecutors state that their decisions are made on the basis of the evidence in the case file, the hearing of the accused and police data eg penal record that shows the criminal past of the accused. The existence of standardised methods for risk assessment or professional support could significantly limit the burden and the responsibility they have to bear in this decision.

The data collected through the study suggests that although PTD orders are considered justified their reasoning is general and does not make specific links to the circumstances of the case and the way in which the specific criteria in the law are fulfilled. Secondly, evidence is not sufficiently used and orders rely on a repetition of the provisions in the law, general assessments, while the severity of the crime appears to have a important weight for this decision.

### **Problems with PTD and reform ideas.**

All judges and prosecutors interviewed overall consider that the conditions determined in the law are reasonable and do not question them. It was their overall conclusion that PTD is well regulated. 3 investigating judges referred to their workload and the limited facilities they have at their disposal as a factor that results in delays in the investigation. Two investigating judges referred to the fact that while they are required to perform specific acts, they do not receive specific training to this effect. Developing specific on-the-job training for investigating judges could be a solution for better preparing them for this position. Bureaucracy was mentioned by 2 investigating judges as a barrier to effective procedures including the lack of tools such as online real-time information about the suspects etc, in order to be in the position to judge in a more objective way specific factors (2 judges and 2 prosecutors). All investigating judges were concerned over the lack of effective alternatives to detention and this was in fact one of the major problems reported.

### **Compliance of PTD with ECHR-law.**

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.

### **Training on the jurisprudence of the ECtHR.**

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.

### **Findings**

With regard to the substance of PTD, until today no in depth research is in place on the ways that the relevant decisions are made. Despite the fact that the data generated through the research is not representative, it suggests the following interesting findings:

- In decision making on PTD orders the type and nature of the offence, the personality of the accused and the risk of reoffending appear to have a significant weigh in the mind of judges and prosecutors. These indicate important deviations from the ECtHR standards that consider the risk of reoffending and the severity of the crime insufficient grounds for PTD.
- The aim of PTD to ensure the presence of the accused in trial appears to have a negative impact on people who do not have permanent residence (mostly immigrants, foreigners) who are often detained, even though less restrictive measures would suffice, as no other effective alternatives exist. Again, this appears to be a deviation from ECtHR standards, according to which the lack of fixed residence per se is not sufficient ground for ordering PTD.
- The reasoning of PTD orders are often viewed critically by practitioners. Even when orders are considered justified, their reasoning is brief and general, repeats the legal provisions in force and do not examine in detail the facts in favour or against requirements for detention with specific references to evidence and the specific case. This is not in compliance with the ECtHR standards that require a convincing and specific justification.
- investigating judges do not receive specific training in relation to the specific tasks they have to perform which include conducting investigations and ordering PTD. Further, judges are not specifically familiar with ECHR standards, do not have time and access to the case law and have not received related training. While they believe that their work is aligned to ECtHR standards this is contrasted by the data that points to some important deviations from the standards set by the ECtHR in decision making on PTD. Combined with the fact mentioned above, it is clear that developing specific on-the-job training for investigating judges, including trainings seminars on ECHR standards and case law on fair trial, could assist in a better application of ECHR standards from their part. Other information and dissemination activities, eg codifying ECHR standards in a brief document or collection and making them available to all judges could help improve the application of the principles.

- Decision making on PTD is not facilitated by bureaucratic procedures, organisational shortcomings, backlog and lack of human resources and infrastructure.

## VIII. Alternatives to Detention

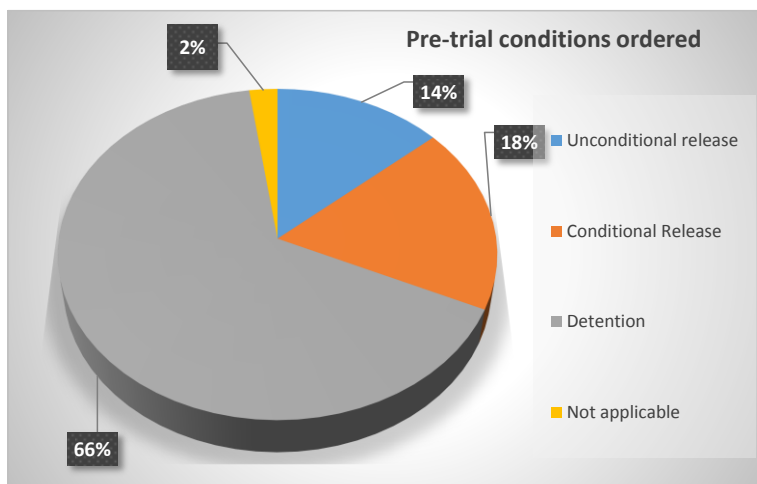
Pre-trial detention (PTD) imposes severe restrictions on individual liberty and has severe negative consequences on the detainees' life. The use of alternative, less intrusive measures, is preferable for mitigating adverse effects. Under the European Convention on Human Rights, national courts, when deciding whether a person should be placed in PTD or released, must consider alternative methods of ensuring that the person appears in trial. In Greek legislation PTD can be ordered only when less strict measures cannot ensure the presence of the accused at the investigation and the trial. Investigating judges have discretion to propose alternative measures that would be suitable for the circumstances of the accused but appear to have a lack of faith in the effectiveness of such measures. This is confirmed by the views of defense practitioners. Further, PTD orders must contain detailed reasoning on why alternative measures are unsuitable. Lack of detailed reasoning on the sufficiency of alternatives was noted in case file reviews and confirmed by the opinions of the defense practitioners.

### Consideration of alternatives to detention by the judge.

During the pre-trial stage, if there are serious indications of guilt of the accused, it is possible to order restrictive conditions in order to prevent new crimes and ensure the presence of the accused at the investigation and the trial. According to the law, pre-trial detention is possible only when it can be decided, based on founded grounds, that restrictive conditions do not suffice or cannot be imposed. The latter include (indicatively) bail, the obligation of the accused to regularly present himself/herself before the investigating judge or other authority, the prohibition to live or access a specific place or to leave the country, a ban on meeting or associating with specific persons and restriction at home with electronic surveillance (art. 282 CCP). The investigating judge has the discretion to propose the alternative measures, or combinations thereof that would best serve the purpose of preventing new crimes and ensuring that the accused is present at the trial.

In 66% of the cases reviewed in the 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).

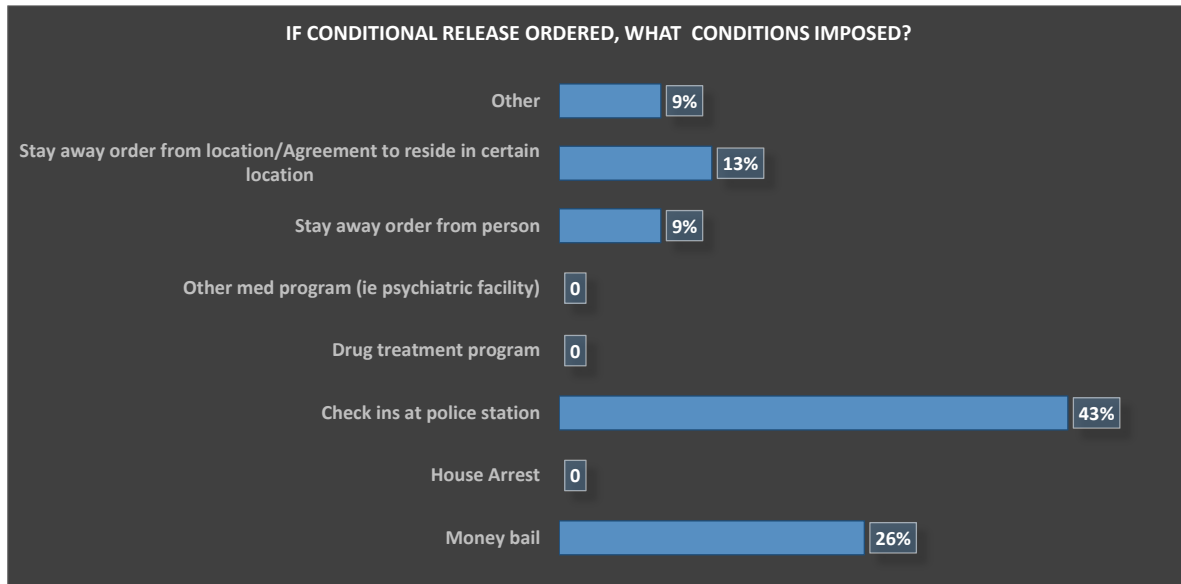
**Diagram 4: Pre-trial conditions ordered**



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

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 possibility 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 committed 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 accused for manslaughter 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 fiancée. The crime was committed in a remote island and it caused a lot of turmoil 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 nowhere 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 (manslaughter) and the method she used to commit it (she broke a glass and fatally injured her fiancée 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. On 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.

### **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 in their entirety 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 eg data on other pending offenses of the accused (such data is available but is not online and takes time) that would allow them to judge in a more objective way the risks associated to a particular offender.

### **Frequency of ordering alternatives to PTD.**

There is no official data on the regularity of ordering alternatives to pre-trial detention. The opinions of judges and prosecutors differ: some of them report that alternatives are not used sufficiently while others consider that they are used when there is a possibility 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 could. The qualitative data collected through the case file review partly confirms 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 possibility to propose restrictive conditions or PTD if appropriate. Defense practitioners have the possibility, 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.

#### **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.

#### **Findings**

Alternative measures are the first option that judges have to examine and only if these are not considered sufficient, they can imposed PTD. Alternative measures are mentioned indicatively in Greek legislation and investigating judges have the freedom to adapt or combine them in a way to respond to the specificities of each case.

- Although, PTD is a measure of last resort applied only if restrictive measures are not sufficient, the lack of trust in restrictive measures often leaves no alternative to the judges. This is an important deviation from ECtHR standards on the presumption in favour of release and requires more in depth research.
- Although alternatives have to be examined before PTD is ordered, there is limited faith in the effectiveness of restrictive measures from the part of the judges,

especially when the accused has no permanent residence, when he/she is accused of violent crimes and there is a high risk of reoffending.

- Defence practitioners have the possibility to propose alternatives to detention but these might not always be accepted, given the general concerns, especially for specific forms of crime (violent crime, economic crime, crime involving people with no permanent residence).
- Alternatives like electronic surveillance, which were recently introduced in Greek legislation, are also met with cautiousness due to gaps in legislation, gaps in implementation, the high cost and the fact that the accused has to request the measure and to pay for it. Conducting more research on ways to enhance the effectiveness of restrictive measures eg for people without permanent residence (foreigners or immigrants, people used by criminal networks etc) is necessary to make them a realistic alternative to detention. Further, it is important to ensure that the cost of restrictive conditions is borne by the state in the same way as for PTD.
- A strong duty from the part of the judge to protect the public and common sentiment of justice appear to bear specific weight in decision making on restrictive measures. Combined with the lack of faith in restrictive measures, detention would often seem a one way solution. Access to infrastructure (eg access online to data on the accused eg pending offences) and professional services to support risk estimations could facilitate decision making
- No data is available on the achievability of the alternatives ordered. More research on this topic and regular monitoring could enhance in an evidence-based way the faith in the effectiveness of restrictive conditions.
- Unlike PTD, which shortens the time to trial, alternatives to PTD do not appear to affect positively the length of proceedings. As restrictive conditions restrict personal liberty, it is recommended to consider the introduction of time limits in their use.

## IX. Review of pre-trial detention

A review procedure for pre-trial detention (PTD) is essential for ensuring the lawfulness of prolonged detention and assessing whether grounds to continue 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<sup>87</sup> and continued detention “can 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”.<sup>88</sup> The authorities remain under an ongoing duty to consider whether alternative measures could be used.<sup>89</sup>

Under the Greek Code of Criminal Procedure, a review of the pre-trial detention takes place a) *automatically* after six months (art. 287 par. 1 CPP) and the judicial council

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<sup>87</sup> See above, note 12, para 145.

<sup>88</sup> *McKay v UK*, App 543/03, 3 October 2006, para 42.

<sup>89</sup> *Darvas v Hungary*, App 19574/07, 11 January 2011, para 27.

decides whether the accused will be released or detained for an additional period (art. 287 par. 5 CCP); b) *upon request by the accused* (art. 286 CCP) to the investigating judge at any time and by decision of the judicial council c) *with a reasoned order of the investigating judge and a written opinion of the prosecutor to replace pre-trial detention with restrictive conditions* (art. 298 CCP) or change the conditions imposed. Against this order the prosecutor and the accused can appeal before the council of misdemeanour judges within ten days.

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

In case of automatic reviews (art. 287 par. 1 CCP), if the investigation is still ongoing, the investigating judge informs the prosecutor of the court of appeal on the reasons and transmits the file to the prosecutor of the court of misdemeanors who introduces the case to the competent council. The accused is informed in order to present his/her opinions in writing within the deadline defined by the chairperson of the judicial council. The accused has the right to be informed and receive a copy of the proposal of the prosecutor. The prosecutor, the accused and his/her lawyer do not appear before the council. The council can, if it considers it necessary, request the presence of the accused, in which case the prosecutor is also invited. Following this, the council decides whether the accused should be temporarily released or whether detention should continue. If investigation has been completed, the prosecutor introduces the file before the competent council. The same applies with regard to the notification of the accused for the submission of a note, the receipt of a copy of the prosecutorial proposal, non appearance before the council and the decision of the latter.

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<sup>90</sup>. 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 1<sup>st</sup> 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% of the cases, a second review was initiated with a request of the defense and 29% based on the existing statutory requirements. 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

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<sup>90</sup> Reviews refer to both the automatic review that takes place every six months and the request for substitution of pre-trial detention or restrictive conditions.

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 3<sup>rd</sup> 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 3<sup>rd</sup> time, 33% presented counterarguments. 33% were subjected to appeal against the decision to prolong detention.

Only 1 case was subjected to a 4<sup>th</sup> 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.

### **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), automatism 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.

## 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 1<sup>st</sup> review is presented in the following table:

**Table 5: Timing of first review of PTD**

1 <sup>st</sup> 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.

### Findings

- Greek legislation offers a possibility to all parties to review the PTD order either automatically or upon initiative of the defence or the investigating judge. Automatic review takes place regularly every six months.
- Review hearings are not public and parties (defense and prosecutor) can attend only upon request of the judicial council.
- The major challenge identified in the review process relates to the specific reasoning for continuing detention. In practice, the presumption in favour of release required by ECHR standards is reversed into a presumption in favour of continuation of detention with a reproduction of previous decisions, without specific reasons for the need for continued detention. The reasoning of review decisions is formalistic and repetitive and does not focus sufficiently on the specific circumstances of each case.
- Several barriers were reported by defense practitioners in the effective review of decisions pertaining mostly to the reasoning, automatism in judicial practice and reluctance from the part of judges and prosecutors to reverse or question decisions made by their colleagues, a lack of faith towards less restrictive means than detention, time pressure, excessive work load. Judges on the other hand reported bureaucratic barriers in relation to the review procedures.

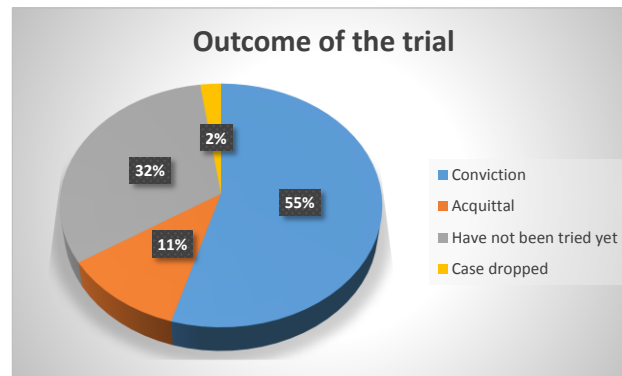
## X. Outcomes

The case-file analysis conducted in the course of the project examined the final outcome of the case (whether the accused was acquitted or found guilty) and the type of sentence ordered. This connection is important, as the placement in pre-trial detention (PTD) is likely to have lasting negative consequences on a person's life despite being found not guilty.

**Number and proportion of acquitted pre-trial detainees.** No official data exists on the proportion of pre-trial detainees who are acquitted in trial. The lack of generalised statistical data does not allow the deduction of definite conclusions that connect pre-trial detention orders and the final outcome of the trial. The sample of cases examined during the project (44) was too small to allow conclusions to be deducted on this matter, but points to some interesting conclusions. In a sample of 44 cases, where 66% of the accused

were detained pre-trial, 55% of them were convicted (24 cases), 11% were acquitted (5 cases) and in 2% the charges were withdrawn (1 case). In 14 cases, trial is still pending.

**Diagram 5: Conditions imposed in case of conditional release**



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

**Number and proportion of pre-trial detainees who receive a custodial sentence shorter than the duration of PTD.** In 62% of the cases where the accused were convicted, custodial sentences were imposed, while in 38% non-custodial sentences were imposed. In cases where custodial sentences were imposed, if the accused had been detained pre-trial, the sentence was reduced taking into account the duration of detention.

The lack of generalised statistical data makes it difficult to establish a definite connection between the decision on pre-trial stage and the outcome of the trial, as the data collected is not representative and does not allow generalized conclusions. Based on it however (given that no other data exists) it can be observed that the number of cases where PTD was imposed (66% of the sample) and those where the accused were convicted (55% of the sample) do not present large deviations (11%). A clear connection exists between pretrial detention and sentencing to the extent that the duration of PTD is reduced from the sentence.

## **XI. Conclusions and Recommendations**

With regard to the **procedure** of PTD, the analysis shows that according to the law PTD is a measure of last resort conditional on strict requirements. The research revealed that :

- With regard to the duration of PTD, although the maximum statutory limits are never violated, the average duration of PTD differs greatly depending on the case. The average duration however appears to exceed six months. Apart from substantive reasons (where there might be a need for prolonged duration of PTD) the extended duration of PTD is often associated to organisational and bureaucratic factors related to the poor organization and the ineffective operation of the justice system such as workload of judges and the backlog of courts, lack of support staff, small number of judges, delays in the investigation etc.
- The existence of a statutory limit of the duration of PTD appears to have a positive impact on the speed of the trial as trials are conducted more rapidly compared to accused who are not in PTD.
- The time between arrest and the first judicial hearing deciding on PTD varies strongly. No detailed data or research exists to analyse the way these problems interact to impact the long duration between arrest and judicial hearing.

- The presence of the suspect in PTD hearings is largely ensured. Challenges are noted when the accused is not adequately informed on his/her rights and presence might be hindered. There is a complete lack of facilities to allow the remote participation of the accused in the proceedings.
- Interpretation is largely available but its quality is not monitored. Documents in the case file are not translated in the language of the suspect resulting in a disproportionate burden to effective participation in the trial for foreign individuals. These practices need to be revisited through clear legislative provisions in accordance with the standards introduced by the Directives on the Right to Information and Translation. Close monitoring of these standards is required.
- Defence lawyers are present in the hearing and have access to the case file. Challenges to an effective defence are identified in relation to a) the time available to prepare for the proceedings (especially for court appointed lawyers) on crimes caught in the act (where strict statutory deadlines apply) and b) for suspects of foreign nationality who are not adequately informed on their right to have a defence attorney.
- While access to a lawyer, understanding the proceedings and access to the case file are overall guaranteed, challenges are identified in regard to the representation of foreign nationals and their understanding of the proceedings (through the availability of interpretation and translation). While interpretation is available, its quality is not guaranteed. Translation of case file documents needs to be provided.
- All parties have the possibility to bring forward evidence proving the need for PTD. However, PTD orders rarely have a detailed and specific reasoning making reference to specific evidence and the arguments of the parties. Training to investigating judges and familiarisation with ECHR standards is recommended to ensure a detailed and specific reasoning of PTD orders

With regard to the **substance** of decisions made at pre-trial stage, no research exists on the ways that the relevant decisions are made. Despite the fact that the data generated through the research is not representative, it suggests the following:

- In decision making on PTD, the type and nature of the offence, the personality of the accused and the risk of reoffending appear to have an important weight in the mind of judges and prosecutors.
- Although no specific groups are a priori connected to PTD, the personal and social circumstances of non-nationals, especially the lack of permanent or known residence and the danger of fleeing makes them more vulnerable to detention. The aim of PTD to ensure the presence of the accused in trial appears to have a negative impact on people who do not have permanent residence (mostly immigrants, foreigners) who are often detained, even though less restrictive measures would suffice, as no other effective alternatives exist.
- Although basic evidence is available in the case file, judges and prosecutors often have to rely to their experience and intuition as professional services are not available nor adequate objective tools or data for justifying their decisions. Investigating judges consider the hearing of the accused a very important source of information.
- Although PTD is a measure of last resort applied only if restrictive measures are not sufficient, the lack of trust in restrictive conditions often leaves no alternative to the judges.



- In the latest alternative to detention introduced in legislation in 2013–home restriction with electronic surveillance- the accused has to request the measure and bear its cost, which is quite considerable and has to be prepaid. It is important to ensure that the cost of restrictive conditions is borne by the state in the same way as for PTD.
- The types of act which are more commonly associated to PTD include violent crimes and crimes against minors or vulnerable groups.
- With regard to the reasoning, practitioners claim that orders are not sufficiently detailed and specific and rely too much on a general repetition of the criteria set in legislation. This was also confirmed in the case file reviews. References to specific evidence or claims of the defence are rarely identified to justify the PTD order. Even when orders are considered justified, their reasoning is brief and general, repeats the provisions in force and do not examine in detail the facts in favor or against requirements for detention with specific references to evidence. This is not in compliance with the ECtHR standards that require a convincing and specific justification.
- Investigating judges do not receive specific training in relation to the specific tasks they have to perform which include conducting investigations and ordering PTD. Further, judges are not specifically familiar with ECHR standards, do not have time and access to the case law and have not received related training. Developing specific on-the-job training for investigating judges, including trainings seminars on ECHR standards and case law on fair trial, could assist in a better application of ECHR standards from their part. Other information and dissemination activities, eg codifying ECHR standards in a brief document or collection and making them available to all judges could help improve the application of the principles.
- Decision making on PTD is not facilitated by bureaucratic procedures, organisational shortcomings, backlog and lack of human resources and infrastructure.

With regard to **alternatives** to detention, the restrictive measures provided for in Greek legislation are not used as much as one would expect, given that PTD should be the measure of last resort. Alternative measures are mentioned indicatively in Greek legislation and investigating judges have the freedom to adapt or combine them in a way to respond to the specificities of each case.

- Overall, the research suggests that the lack of effectiveness of alternatives, in the views of investigating judges and prosecutors, is one of the main factors behind the extensive use of PTD in Greece. This is due both to the fact that a) they can neither deter reoffending nor ensure appearance at the investigation or trial and b) the most common restrictive measures do not offer credible solutions to the specific characteristics of groups vulnerable to detention (individuals with no known residence and limited financial resources). This often presents, in cases of offenders with no residence or perpetrators of violent or anti-social crimes, PTD as the only solution that cumulatively fulfils statutory requirements and societal expectations.
- Professional services are not available to judges and prosecutors who have to rely on the evidence and their personal assessment of the personality of the accused.

- The defence has an opportunity to come forward with information and data and argue against PTD and restrictive measures. However, they claim that the evidence provided is not always taken sufficiently into account
- Alternatives like electronic surveillance, which were recently introduced in greek legislation, are met with particular cautiousness due to gaps in legislation, gaps in implementation, the high cost and the fact that the accused has to request the measure and to pay for it.
- A strong feeling of duty from the part of the judge to protect the public and common sentiment of justice appear to bear specific weight in decision making on restrictive measures. Combined with the lack of faith in their effectiveness of alternatives, detention is often seen as the only reliable solution. Access to infrastructure (eg access online to data on the accused on pending trials) and professional services to support risk estimations could facilitate decision making and enhance the
- No data is available on the achievability of the alternatives ordered. There is no general way to monitor the achievability of alternative measures although the micro data from the case file monitoring suggests that these were respected to a satisfactory extent.
- Unlike PTD, which shortens the time to trial, alternatives to PTD do not appear to affect positively the length of proceedings. As restrictive conditions restrict personal liberty, it is recommended to consider the introduction of time limits in their use.

With regard to **review**, the procedures offer a possibility to regularly re-examine and re-assess the necessity for pre-trial detention, including the existence of new information and evidence in relation to the accused. Greek legislation offers a possibility to all parties to review the PTD order either automatically or upon initiative of the defence or the investigating judge. Disagreement exists between judges and practitioners with regard to the diligence of the review, the former mentioning that reviews take into account all new evidence while practitioners report that these are often formal and insufficient in providing a real overview over the existing order.

- Review hearings are not public and parties (defense and prosecutor) can attend only upon request of the judicial council.
- The major challenge identified in the review process relates to the specific reasoning for continuing detention. In practice, the presumption in favour of release required by ECHR standards is reversed into a presumption in favour of continuation of detention with a reproduction of previous decisions, without specific reasons for the need for continued detention. The reasoning of review decisions is formalistic and repetitive and does not focus sufficiently on the specific circumstances of each case.
- Several barriers were reported defense practitioners in the effective review of decisions pertaining mostly to the reasoning, automatism in judicial practice and reluctance from the part of judges and prosecutors to reverse or question decisions made by their colleagues, a lack of faith towards less restrictive means than detention, time pressure, excessive work load. Judges on the other hand reported bureaucratic barriers in relation to the review procedures.

With regard to **outcomes**, it is difficult to establish a definite connection between the decision on pre-trial stage and the outcome of the trial, as the data collected is not representative and does not allow to draw generalized conclusions.

## Recommendations

Overall, although the legislative framework does not present major problems in relation to the standards set by the ECHR, its application in practice results in very high number of pre-trial detainees, for relatively long periods of time (towards the higher end of statutory limits) and in poor detention conditions. This is the complex result of a number of factors that go beyond the remit of the present study and include the special features of criminality in Greece, chronic problems of inefficiency of justice including heavy workloads and poor infrastructure, the lack of reliable alternatives to detention and a strong feeling of responsibility from the part of the judges in their role to protect society. Making a substantive difference would require a number of changes at all levels: legislative, institutional, de-bureaucratisation of justice as well as in the attitudes of all the actors involved.

- Although there appears to be no need for major changes in the legislative framework, improvements in its application could result from the development of unified standards in the application of the legislative criteria that judges and prosecutors can rely on in their work and a consistent monitoring of PTD and alternative measures to identify problematic points and positive practices
- Robust statistical data needs to be produced on the use of detention and alternative measures, the extent to which alternative measures are respected, outcomes of related trials etc.
- In depth research needs to be conducted on the function of criminal justice system, the bottlenecks and the ways to improve the speedy delivery of justice
- Bureaucratic and organisational barriers need to be urgently addressed through a simplification of related procedures to ensure that PTD is not prolonged for reasons other than those explicitly set in legislation.
- The use of time limits appears to have a positive impact on the speed of the trial. Maximum limits with regard to alternative measures and the completion of the investigation process should be considered to limit the impact on the life and the personality of the accused
- The use of technology (especially teleconference) should be introduced to ensure/facilitate the effective participation of the accused in all proceedings with minimum cost
- Clear legislative provisions on interpretation and translation need to be introduced in accordance with the standards introduced by the Directives on the Right to Information and Translation and need to be closely monitored (the Directive has been transposed)
- Clear mechanisms and procedures for ensuring the quality of interpretation and translation should be introduced
- The procedure for appointing defense attorneys should be reviewed and simplified in a way to ensure that sufficient time is available to prepare an effective defence
- The provision of specific on-the-job training to investigating judges to familiarise them with ECHR standards especially with regard to detailed and specific reasoning of PTD orders
- Develop specific on-the-job training for investigating judges, including trainings seminars on ECHR standards and case law on fair trial to assist in the closer observance of ECHR standards from their part. Other activities, eg codifying ECHR

standards in a brief document or collection and making them available to all judges could help improve their application.

- Professional services for risk assessment and supporting resources (online information etc) should be made available to judges and prosecutors to facilitate decision making
- Conducting in depth research on ways to enhance the effectiveness of restrictive measures and the faith of judges in them
- Devising practical and credible solutions of alternative measures for groups which are particularly vulnerable to detention due to the lack of permanent residence
- Facilitate access of judges and prosecutors to the standards of ECHR relevant to PTD in a form that they can be easily used in their everyday work .Ensure regular training or updates on new decisions and the standards applicable.