

HELLENIC REPUBLIC  
MINISTRY OF PUBLIC ORDER  
GREEK POLICE COMMAND  
DIVISION OF ADMINISTRATION  
ORGANISATION AND LEGISLATION DIRECTORATE  
2<sup>nd</sup> DEPARTMENT OF LEGAL AFFAIRS  
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To: All Greek Police Services  
For info: Ministry of Public Order

Protocol Reg. No: 4803/22/44

SUBJECT: Treatment and rights of persons detained by the Police authorities

1. The main mission of the Greek Police, as stipulated by both its organizing law and the relevant regulations, consists in guaranteeing public peace and order and allowing citizens an unimpeded life in society, in preventing and suppressing crime and in protecting the State and democratic institutions within the established constitutional order (art. 8 of Law 2800\2000). In this context, it also includes the effective protection of the fundamental rights of all persons living in our country, and in particular of those persons under police custody, during all police activities.
2. It is stressed that the deprivation of personal freedom of individuals during their detention by the police authorities is not an aim in itself, but should only be considered as a necessary means to address legal, criminal or administrative procedures. In consequence, while a person remains in detention, he/she should receive a treatment that fully respects his/her personality and be able to exercise without hindrances the right to defend oneself before the institutional mechanisms of the State.
3. In this context, we consider that it is necessary to underline the following instructions to the personnel of the Greek Police in order to practically assist and contribute in reinforcing the guarantees for a humane, impartial and lawful treatment of detainees by the police authorities.
  - a. Any form of violence or degrading or humiliating treatment against a detainee is expressly forbidden. Criminal and administrative procedures should be treated and completed within the absolutely necessary time limits, in order for the deprivation of personal freedom to fulfil not only the substantive but also the formal requirements of time limits for a lawful detention (art. 2 para. 1, art. 6 and art. 7 para. 2 of the Constitution, art. 7 and 9 of the International Covenant on Civil and Political Rights (ICCPR) ratified by virtue of Law 2462/1997 and

art. 3 of the European Convention for the protection of Human Rights (ECHR) ratified by virtue of Leg. Decree 33/1974).

- b. The detainee must, when brought before the police services, be fully informed of the reasons for his/her detention as well as about all the rights to which he/she is entitled during the period of detention (art. 9 ICCPR, art. 5 para.2 ECHR). To this purpose, detainees must receive an information leaflet, approved also by the Attorney's Office, in a language they understand, on their rights; these rights should also be clearly explained to them. In the case of alien detainees, who ignore the Greek language, an effort must be undertaken to explain these rights through the most suitable means (through an interpreter, a consular authority etc.). Police authorities are also obliged to suspend in the detention premises tables that describe the detainees' rights. Special care should be undertaken in order to fully inform detained aliens who apply for asylum (art. 1 para. 6 of P.D. 61/1999).
- c. Detainees who are charged with an offence are presumed innocent (art 6 para. 2 ECHR) and their procedural rights are fully guaranteed by virtue of existing provisions (art. 14 ICCPR, art. 6 para. 3 ECHR art. 96 and fol. Criminal Procedure Code). In the case of alien detainees who do not know adequately the Greek language, the right to be assisted by an interpreter is particularly essential in order to ensure that the right of information is effectively applied, that these persons know of the charges against them and that they understand the procedures (art. 6 para.3 ECHR, art. 233 CPC). Furthermore, the assistance by their countries' consular authorities contributes in a more complete exercise of the detainees' rights, since it reduces their reservations, due to ignorance or mistrust, as to the procedural aspects of their cases.
- d. Communication between detainees in police custody and their relatives or other persons of their choice includes telephone communication as well as personal contact. The police must facilitate the telephone contact between the detainee and their families in order to inform them, if they so wish, of the place and reasons of their detention. The police is also obliged to allow visits to the detainees on the basis of a schedule that sets the timetable, the place and the persons that are allowed to visit the detainees (art. 67 para. 4 case 12 P.D. 141/1991). It is underlined that the right of communication includes, in the case of aliens detained, the obligation to inform the consular authorities of their countries, the facilitation of the telephone communication between these latter and the detainee and the obligation for the police authority to allow consular staff to visit the detainee, unless of course this latter refuses to do so (art. 36 of the International Convention on Consular Services ratified by virtue of Law 90/1975). The Police is also obliged, by virtue of existing provisions, to allow free contact between detainees and international committees, such as the Committee Against Torture (art. 2 and 3 of the Convention Against Torture, ratified by virtue of law 1949/1991), the representatives of the U.N. High Commissioner for Refugees and persons authorized by this latter (Council of the E.U. Resolution EEC 274/19-9-1996). In what concerns the visits by representatives of associations active in the fields of human rights, detention conditions and moral or legal support

to detainees (such as the Church, NGOs, Bar of Medical Associations), police authorities must inform detainees thereof and allow such visits only when these latter consent to them, especially in view of the respect of provisions protecting the individual from the treatment of their individual data (L. 2472/1997).

- e. The Criminal Procedures Code (art. 96 and fol.) enshrines absolutely the right of communication between detainees by the police authorities who are charged with an offence and their lawyers. The Police are obliged to undertake all measures, as per case, so as to facilitate the application of this right. To this aim, it must guarantee both telephone and personal contacts between a detainee and his/her lawyer. More particularly, the detainee is entitled to inform his/her lawyer by telephone of the place and reason of the detention and, in case s/he has no lawyer, to contact by telephone the local Bar Association, so as to hire a lawyer of his/her choice. Furthermore, a lawyer's free access to the detainee and the offer of legal assistance is guaranteed under any circumstances, no matter whether this person is detained on the grounds of criminal or administrative procedures; this is enshrined in the provisions of article 6 of the ECHR. The lawyer's access to the detainee, which, it should be noted, is not subject to the time limitations that are imposed to visits by other persons, is unimpeded and does not require a previous production of a power of attorney or authorization by the mandator to the police authorities. Article 45 of the Attorneys' Code (L.D. 3026/1954) provides that entry to public services is free to lawyers who may enter them after they merely produce their professional I.D. Representation by a lawyer is presumed to have been conferred unless a deed of power of attorney is expressly required by the law (art. 217 of the Civil Code). Furthermore, a power of attorney is not concurring with article 6 of the ECHR and cannot be in practice applied, since the interested person is detained. In most cases, the lawyer contacts the detainee following a mandate by the family; in such cases, the detainee's oral declaration at the moment of the contact is sufficient in order for the lawyer to represent and offer legal assistance to the former. In the case, however, of persons, mainly aliens, detained in the context of administrative procedures, when attempts are made to offer legal assistance by mandate of persons other than the family members or the diplomatic authorities of the country of origin, as well as by representatives of associations (NGOs, Bar Associations etc.), the police is obliged to allow the lawyer access to the specific detainee for whom the mandate to represent has been given, after it verifies this fact; this is also assumed by the fact that the lawyer knows the identity (name and surname) of the detainee s/he comes to assist.
- f. In all cases, as the Ombudsman has noted "*«the de facto mistrust of the attending lawyer goes against not only the assumed, in principle, existence of the power of attorney to undertake certain acts before authorities and courts but results, finally, in offending, in its very substance, the professional dignity of attorneys-at-law and puts in doubt the ensuing, by the very nature of their office, aim to ensure the lawful interests of their mandators»*". The contribution of lawyers,

especially in cases such as lodging asylum applications, may be considered of help to police authorities in what concerns the processing of procedures concerning detainees and in accordance with the rule of law. *“The mere assumption of abuse of rights from the part of the detainees – notes the Ombudsman - is a very shaky justification for a society where the rule of law applies, especially whilst the relevant Prisons Code provisions guarantee free communication and access to a lawyer (art.51 para.1, 53 para.2 L. 2776/1999)”*.

- g. The protection of the detainee’s health is a basic duty of the police authorities. Medical care is provided by the medical doctor serving in the police health service or, in case this latter is absent or prevented, by another doctor, while the detainee is entitled, while being examined by the service doctor, to ask to be also examined by a doctor of his/her choice. In case the detainee falls sick, suffers a serious accident or enters a medical institution, the police are obliged to inform thereof the family members, and, in case there are no family members, any person indicated by the detainee. Finally, special medical care is offered to detainees who are drug addicts and whose life is in danger due to the deprivation syndrome (art. 60 para 3 cases 8, 11 and art. 67 para. 4 case 22 P.D. 141/1991).
4. It is also reminded that there are Criminal Law provisions established in order to protect permanently and efficiently the rights of detainees; these provisions contain very severe punishment of relevant offences. The provisions, for instance, of articles 137 bis, 137 ter and 137 quatuor of the Criminal Code (as added by L. 1500/1984) define and punish as a felony acts of violence against detainees or the violation of their human dignity, while the provisions of articles 239, 325 and 326 of the Criminal Code punish the cases of abuse of power or illegal detention. Furthermore and irrespectively of criminal charges, the disciplinary rules of the Greek Police punish with dismissal any police officer who acts or behaves in a way that gravely offends the human dignity (art. 9 of P.D. 22/1996). Neither an order by a superior or a public authority nor a state of emergency can be claimed to justify torture, whilst no other acts of cruel, inhuman or degrading treatment or punishment incited or committed with the consent or tolerance of a public servant are admitted (articles 2 para 3 and 16 para. 1 of the Convention Against Torture, ratified by virtue of L. 1782/1988, articles 137quinquies of the Criminal Code).
5. Detainees exercise their rights without prejudice to the foreseen legal service actions that aim to protect the interests of the service as well as, more widely, the public and social interests. The application of the provisions of the Prisons’ Code (L. 2776/1999) and of the P.D. 141/1991 on the “competencies and in-service acts of the personnel of the Ministry of Public Order” offers adequate enough guarantees to this aim. In particular, detainees when brought to the police premises are undergoing a body search as well as a search of their personal belongings; this search should be performed in a private area and in such a way so as not to offend their dignity. All money, valuable items and other objects whose possession within the detention premises is prohibited – such as sharp tools, mobile phones and generally objects whose use might cause crimes, self-inflicted wounds or danger to detainees’ lives - are taken away. Furthermore, all indicated measures to prevent detainees from escaping, especially during the time they go out of detention premises and remain in

areas of examination, telephone communications and visits, are being taken. To this goal, the areas where detainees are being kept and reside should be guarded with diligence (articles 23 and 53 para. 1 of L. 2776/1999 and articles 60 para. 2 and 3, 66 and 67 of P.D. 141/1991). Particular measures to prevent escapes must be taken during detainees' transfers, which must be undertaken in such a way so as to ensure their normal movement without offending their dignity (art. 144 and fol. of P.D. 141/1991). Finally, and according to existing circumstances and if the number of detention premises allows for it, all indicated measures should be taken to avoid intermingling among detainees, while women and minors should be kept in special detention premises (art. 67 para. 3 case 25 of P.D. 141/1991). In all cases, detainees must be treated on an equal basis and any discriminatory treatment is forbidden (art. 3 L. 2776/1999).

6. From the above-mentioned it is clear that the existing legal framework protects adequately the rights of persons detained; in particular, protection is enshrined by means of legal provisions of higher formal authority, as per article 28 para. 1 of the Constitution (international conventions). Police officers are obliged to unequivocally respect the a/m provisions; for them, the treatment of detainees, in the small period of time they are kept by the police, represents a challenge to confirm their lawful behaviour, the respect of the personality, the protection of the dignity and the guarantees of the detainees' rights. Police officials should, furthermore, be even more sensitive in case of detainees who are considered particularly vulnerable and whose rights need a more indicated protection. As such, should, in principle, be considered minors, sick persons, alcoholics, drug addicts, illiterate persons, political refugees, asylum seekers and aliens in general. By fully respecting the rights of every individual detained by the police and by treating this person in a humane, impartial and lawful way, the police officer demonstrates that s/he has a complete professional training, ethics and personality, and establishes relations of reliability and mutual trust with the citizenry, while reconfirming the position of the State, which pays particular attention to the universal application of the measures aiming to allow detainees full use of their rights and to control on a permanent basis this application by the concerned services and their personnel. This practice abides to the humane spirit that should underpin the functioning of our State is a single area of freedom, security and justice within the European Union and corresponds to the recommendations of the commissioner for Human rights of the Council of Europe, to the resolutions of the European Parliament and to the guidelines of the European Commission in the *Green Book on the procedural guarantees for persons suspected or charged in criminal procedures throughout the European Union*.
7. Further to the above, we request that, care of the Directors, Commanders and Heads of units, the personnel be adequately and duly informed on the strict application of the present.

THE CHIEF  
FOTIOS NASIAKOS  
GENERAL (2 STARS)

Copy  
Athens, on the same day

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