



Universiteit
Leiden
The Netherlands

The right to health : a human rights perspective with a case study on Greece

Alexiadou, E.

Citation

Alexiadou, E. (2016, December 15). *The right to health : a human rights perspective with a case study on Greece*. University Studio Press, Thessaloniki , Greece. Retrieved from <https://hdl.handle.net/1887/45017>

Version: Not Applicable (or Unknown)

License: [Licence agreement concerning inclusion of doctoral thesis in the Institutional Repository of the University of Leiden](#)

Downloaded from: <https://hdl.handle.net/1887/45017>

Note: To cite this publication please use the final published version (if applicable).

Cover Page



Universiteit Leiden



The handle <http://hdl.handle.net/1887/45017> holds various files of this Leiden University dissertation.

Author: Alexiadou, E.A.

Title: The right to health : a human rights perspective with a case study on Greece

Issue Date: 2016-12-15

The Right to Health

A Human Rights Perspective with a Case Study on Greece

© E.A. Alexiadou, 2016
ISBN 978-960-12-2301-8

No part of this publication may be reproduced in any form or by any means without the prior permission of the author.

The Right to Health

A Human Rights Perspective with a Case Study on Greece

PROEFSCHRIFT

ter verkrijging van
de graad van Doctor aan de Universiteit Leiden,
op gezag van Rector Magnificus prof. mr. C.J.J.M. Stolker,
volgens besluit van het College voor Promoties
te verdedigen op donderdag 15 december 2016
klokke 15.00 uur

door

Elisavet Athanasia Alexiadou

geboren te Thessaloniki, Griekenland

in 1983

Promotor: Prof. dr. A.C. Hendriks

Promotiecommissie: Prof. dr. T. Liefwaard
Prof. dr. N.J. Schrijver
Dr. V. Kosta
Prof. dr. B.C.A. Toebes (Rijksuniversiteit Groningen)
Prof. dr. P. Stangos (Aristotle University
of Thessaloniki, Greece)

Dedicated to my family

“Where after all, do universal human rights begin?
In small places, close to home- so close and so small that
they cannot be seen on any maps of the world.
Yet they are the world of the individual person; [...]
Unless these rights have meaning there,
they have little meaning
anywhere.”

Eleanor Roosevelt, United Nations - New York, 27 March 1958

(cited in: M.A. Baderin & R. McCorquodale, ‘The International Covenant on Economic, Social and Cultural Rights: Forty Years of Development’ in: M.A. Baderin & R. McCorquodale (ed.), *Economic, Social and Cultural Rights in Action*, Oxford: OUP 2007, p. 24).

ACKNOWLEDGEMENTS

The ‘right to the highest attainable standard of health’ (‘right to health’) is by now firmly enshrined in international law, despite the absence of worldwide consensus as to its meaning and its various aspects.¹ Seven decades since its initial recognition in the preamble to the Constitution of the World Health Organization (1946), the right to health has increasingly attained a prominent position at the international level. As a result, this right can be influential in the health and well-being of all individuals, especially those most in need, worldwide. Therefore, the next step is to move from its recognition to its realization and develop an understanding of the state measures required with the aim of bringing this right closer to reality. Put simply, we need to consider the normative content of the right to health and evaluate its status within national contexts. The challenge then is to learn about how human rights standards are to be operationalised in such contexts and what role, if any, these standards can play in law - policy making in order to secure the right of everyone to the highest attainable standard of health. Hence, finding this an interesting and developing area in the law practice, the focus of my research is on the national implementation of the right to health.

The conduct of this research was an interesting and a challenging project. It would not have been possible if it had not been the interest and support of a number of people. Therefore, I am utterly grateful to all those people for their inspiration, and various forms of support in this project. Importantly, I am grateful to my supervisor professor Aart Hendriks who continuously challenged me with his critical and valuable commentary and sound advice on the scope of the right to health. Having professor Aart Hendriks as my supervisor was both a pleasure and an honour.

¹ See, e.g., UN, *The Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health: Report of the Special Rapporteur, Paul Hunt, UN ESCOR, Commission on Human Rights, 60th Sess., Agenda Item 10*, UN Doc. E/CN.4/2004/ 49/Add.1, 1 March 2004, § 15.

Finally, I would like to especially thank my parents and my sister, for their constant material and moral support, unwavering love and understanding in all possible ways at every stage of this project and beyond that. Their support and confidence provided me with the inspiration, persistence and energy to begin, continue and complete this project with great enthusiasm.

Contents

<i>Acknowledgements</i>	vii
<i>List of Abbreviations</i>	xiii
1. General Introduction	1
1.1. Background and Problem	1
1.2. Research Objectives, Questions and Outline	8
1.3. Methodology	11
1.4. Terminology	13

PART I

From Theory to Practice

2. The Right to Health in Human Rights Law and its Relation to other Human Rights	19
2.1. Introduction	19
2.2. Health as a right at the international level	19
2.2.1. WHO Constitution, UDHR & ICESCR	20
2.2.2. Other UN treaties	26
2.2.3. Other key sources	35
2.2.4. General Comments on the right to health	41
2.3. Health as a right at the regional level: A focus on Europe	44
2.4. Health as a right at the national level: Constitutional provisions	53
2.5. The right to health and other human rights	56
2.6. Conclusions	57
3. Understanding the Content of Health as a Right	61
3.1. Introduction	61

3.2	Towards health as a right	62
3.3.	Identifying the legal state obligations in relation to a right to health	65
3.4.	Progressive nature and core obligations	69
3.5.	Key principles	76
3.6.	Indicators and benchmarks	81
3.7.	Challenges on the way ahead: An overview	85
3.7.1.	Privatization	87
3.7.2.	Corruption	91
3.8.	Conclusions	95
4.	The Realization of the Right to Health: The Role of the State	99
4.1.	Introduction	99
4.2.	UN human rights monitoring bodies	100
4.2.1.	UN Committee on Economic, Social and Cultural Rights	103
4.2.2.	UN Committee on the Rights of the Child	115
4.2.3.	UN Special Rapporteur on the Right to Health	128
4.3.	Exploring the justiciability of the right to health: A focus on Europe	138
4.4.	International co-operation	144
4.5.	Conclusions	150

PART II

State Practice: Greece as a case study

5.	Constitutional Entrenchment of Health as a Right	157
5.1.	Introduction	157
5.2.	Key elements of the right to health in the Constitution	159
5.2.1.	Articles 5§5 & 21§3 of the Constitution	160
5.2.2.	Implementation of articles 5§5 & 21§3 of the Constitution	162
5.3.	Other Constitutional articles	166
5.4.	Conclusions	168
6.	Health Infrastructure	169
6.1.	Introduction	169
6.2.	The national health system in Greece	171
6.2.1.	Setting the scene	171
6.2.2.	The core of the ESY	172

6.3. The Prominence of primary health care within the ESY	178
6.4. The ESY in relation to the ‘AAAQ’	180
6.4.1. Availability of health care	181
6.4.2. Accessibility of health care	186
6.4.2.1. Non-discrimination	186
6.4.2.2. Physical accessibility	187
6.4.2.3. Economic accessibility	188
6.4.2.4. Access to information	192
6.4.3. Acceptability and quality of health care	194
6.4.4. Concerns and steps for the future	199
6.5. Challenges within the health system in Greece	202
6.5.1. Privatization	202
6.5.2. Corruption	207
6.6. Conclusions	211
7. Undocumented Migrants	215
7.1. Introduction	215
7.2. Undocumented migrants and their health status	217
7.3. Health-related law and policy	220
7.3.1. Setting the scene	220
7.3.2. Constitutional entrenchment	221
7.3.3. Undocumented migrants and access to health care	224
7.3.4. Undocumented migrant children and access to health care	227
7.3.5. The critical role of NGOs	229
7.3.6. Remaining issues	231
7.4. Areas of concern and steps forward	237
7.4.1. Expulsion of seriously ill undocumented migrants	238
7.4.2. Public health issues relating to undocumented migrants ..	240
7.5. Conclusions	245
8. Roma Children	249
8.1. Introduction	249
8.2. Roma children and their health status	251
8.3. Health-related law and policy	255
8.3.1. Setting the scene	255
8.3.2. National legislation regulating access to health care for Roma children	256
8.3.3. Health-related policies for Roma children	260

8.3.4. Remaining issues	268
8.4. Areas of concern and steps forward	275
8.4.1. Roma children poverty	276
8.4.2. Standard of living-housing conditions	278
8.4.3. Birth registration	280
8.5. Conclusions	282
9. Conclusions and Recommendations	287
9.1. Introduction	287
9.2. Discussion	287
9.3. Conclusions	290
9.4. Recommendations	295
<i>References</i>	301
<i>Annex 1</i>	335
<i>Annex 2</i>	339
<i>Summary</i>	341
<i>Samenvatting (summary in Dutch)</i>	345
<i>Curriculum vitae</i>	349

List of abbreviations

AAAQ	Availability, Accessibility, Acceptability, Quality
ACHR	American Convention on Human Rights
AfCHPR	African Charter on Human and People's Rights
AIDS	Acquired Immunodeficiency Syndrome
AP	Accountability and Participation
AP (ESC)	Additional Protocol (to the ESC)
Art.	Article
CAT	UN Committee against Torture
CEDAW	UN Convention on the Elimination of all forms of Discrimination Against Women
CERD	UN Committee on the Elimination of Racial Discrimination
CESCR	UN Committee on Economic, Social and Cultural Rights
CETS	Council of Europe Treaty Series
CFREU	Charter of Fundamental Rights of the European Union
CMW	UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families
CoE	Council of Europe
CO	Concluding Observations
CP rights	Civil and Political rights
CRC	UN Convention on the Rights of the Child
CRC Committee	UN Committee on the Rights of the Child
CRPD	UN Convention on the Rights of Persons with Disabilities
CSDH	Commission on the Social Determinants of Health

Doc.	Document
EC	European Community
ECB	European Central Bank
ECDC	European Centre for Disease Prevention and Control
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms
ECOSOC	UN Economic and Social Council
ECSR	European Committee of Social Rights
ECtHR	European Court of Human Rights
E.g.	Exempli gratia (for example)
ERRC	European Roma Rights Center
ESC	European Social Charter
ESC rights	Economic, Social and Cultural rights
ESCOR	Economic and Social Council Official Records
ESY	Ethniko Systima Ygeias
ETS	European Treaty Series
EU	European Union
GA	UN General Assembly
GAOR	General Assembly Official Records
GC	General Comment
GDP	Gross Domestic Product
GTZ	Gesellschaft für Technische Zusammenarbeit
HCDCP	Hellenic Center for Disease Control and Prevention
HDPa	Hellenic Data Protection Authority
HIV	Human Immunodeficiency Virus
HRL	Human Rights Law
HRC	UN Human Rights Council
ICCPR	UN International Covenant on Civil and Political Rights
ICERD	UN International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	UN International Covenant on Economic, Social and Cultural Rights

ICPD	International Conference on Population and Development
I.e.	Id est (namely)
IHR	International Health Regulations
ILO	International Labour Organization
IMF	International Monetary Fund
IOM	International Organization for Migration
LLM	Master of Laws
MDGs	Millennium Development Goals
MdM	Médecins du Monde
MoU	Memorandum of Understanding
MSc	Master of Science
MSF	Médecins Sans Frontières
MWC	UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
NQHR	Netherlands Quarterly of Human Rights
NGO	Non Governmental Organization
OAS	Organization of American States
OAU	Organization of African Unity
OECD	Organization for Economic Co-operation and Development
OHCHR	United Nations Office of the High Commissioner for Human Rights
OP	Optional Protocol
PD	Presidential Decree
REC	Recommendation
RES	Resolution
RESC	Revised European Social Charter
SDGs	Sustainable Development Goals
TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNCAC	United Nations Convention Against Corruption

UNCHR	United Nations Commission on Human Rights
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCHR	United Nations High Commissioner of Human Rights
UNICEF	United Nations Children's Fund
UNTS	United Nations Treaty Series
WHA	World Health Assembly
WHO	World Health Organization
WTO	World Trade Organization