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

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PART II

STATE PRACTICE: GREECE AS A CASE STUDY

5 | Constitutional Entrenchment of Health as a Right

5.1. INTRODUCTION

The Constitution of Greece (in Greek: Syntagma, henceforth: the Constitution) that is in force today, was adopted in 1975, one year after the collapse of the dictatorship in Greece and the endorsement of parliamentary republic as a form of government by a referendum of the people. Since its adoption, the Constitution has been amended three times, particularly in the revisions of 1986, 2001 and 2008. Currently, in light of the preceding analysis in Part I, Greece is a party to most of the international and regional human rights treaties that guarantee a right to health, including the ICESCR, the CRC, the CEDAW, the ICERD, the CRPD, and the RESC (see Part I, section 2.2 and 2.3, and Annex 2).¹ Meanwhile, after ratification, international human rights treaties that contain a right to health have been incorporated into national law and can be applied before the Greek national courts.² In this regard, since 1975 the Constitution stipulates in its Article 28 § 1 that international treaties ratified by statute shall become an integral part of domestic Greek law, and shall prevail over any contrary provision of the law.³ Moreover, since 1975 the significance of the incorporation of international law is underlined

¹ Up until 30 June 2016, Greece had not signed/ratified and incorporated into national law the UN MWC; See also, Annex 2.

² Note that Article 93 § 4 of the Constitution provides that ‘the courts shall be bound not to apply a statute whose content is contrary to the Constitution’.

³ The *Constitution of Greece (1975-1986-2001-2008)*, as revised by the parliamentary resolution of 27 May 2008 of the VIIIth Revisionary Parliament and published in the *Official Government Gazette* - ΦΕΚ issue A' 120/27-06-2008. The texts of the Constitution of Greece are the Official translation of the Hellenic Parliament available at <www.hellenicparliament.gr>; Notably, Article 100(1)(f) of the Constitution provides that the Special Highest Court is responsible for ‘the settlement of controversies related to the designation of rules of international law as generally acknowledged in accordance with article 28 paragraph 1’.

in Article 2 § 2 of the Constitution, which stipulates that ‘Greece, adhering to the generally recognized rules of international law, pursues the strengthening of peace and of justice, and the fostering of friendly relations between peoples and States’.⁴ It is also noteworthy that Article 2 § 2 is placed in the section entitled ‘Form of Government’, thereby reflecting the prominent position of international law as part of the national legal order given by the constitutional legislator. Importantly, the wording of the two aforementioned constitutional provisions constitutes a foundation for interpreting and applying the Constitution in conformity with international law, while reflecting the significance of international perspective within national legal order.⁵

Notably, as regards the internationally guaranteed human right to health, in addition to the incorporation of human rights treaties containing this right in the national legal order, Greece has entrenched health as a right in its Constitution, which determines the scope of health legislation and policy, as will be elaborated in chapter 6. Hence, this chapter explores the constitutional entrenchment of the right to health in Greece. Particularly, section 5.2 will provide an analysis of the key elements of the constitutional framework of the right to health, including the elaboration of provisions on implementation of this right. After providing an account of the constitutional framework of the right to health, section 5.3 will address the relevance of other constitutional articles for the right to health, namely their influence on the realization process of this right.

But firstly, we need to briefly elucidate the role of the Council of State, whose judgments will be referred to below for the purposes of our analysis. The Council of State (in Greek: *Symvoulío tis Epikrateias*, StE) constitutes the Supreme Administrative Court of Greece. Under Article 94 § 1 of the Constitution the Council of State is generally authorized to decide upon matters of administrative (annulment) disputes.⁶ Particularly, Article 95 § 1 of the Constitution provides that the jurisdiction of the Council of State pertains primarily to: ‘a) The annulment upon petition of enforceable acts of the administrative authorities for excess of power or violation of the law, b) The reversal upon petition of final judgments of ordinary administrative courts, as specified by law, c) The trial of substantive administrative disputes submitted thereto as provided by the Constitution and the

⁴ Ibid.

⁵ Note that an interpretative clause was added to Article 28 in the 2001 revision of the Constitution which stresses that ‘Article 28 constitutes the foundation for the participation of the Country in the European integration process’.

⁶ Ibidem supra note 3.

statutes and d) The elaboration of all decrees of a general regulatory nature'.⁷ It is also notable that the judgements of the Council of State create important legal precedents for the lower administrative national courts as well as set the standards for the interpretation of the Greek Constitution and national laws. All in all, through its case law the Council of State tends to contribute to the advancement of legal theory and practice in Greece. Last but not least, the Council of State is member of the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union (ACA-Europe) as well as of the International Association of the Supreme Administrative Jurisdictions (IASAJ).⁸

5.2. KEY ELEMENTS OF THE RIGHT TO HEALTH IN THE CONSTITUTION

Before examining the key elements of the right to health in the Constitution, it is worth mentioning, by way of background, that the supreme legal status of the Constitution within the national legal framework is ensured and set out in several constitutional provisions. For instance, Article 110 of the Constitution bans the revision of certain constitutional provisions and stipulates a specific strict procedure to be followed by the Parliament for the revision of all others. Further, Articles 93 § 4 and 87 § 2 impose on the judiciary the duty of not applying and reviewing a law in case it is contrary to the Constitution (e.g., domestic health legislation that is opposed to the right to health or other health-related rights as contained in the Constitution). Moreover, Article 111 § 1 stresses that any previous rules (i.e., provisions of statutes or of administrative acts of regulatory nature) contrary to the Constitution will be abolished.⁹

As regards the definition of health as a constitutional right, it is noteworthy that such definition was first provided in Article 27 § 3 of the 1968 dictatorial Constitution, which stressed that 'the State shall care for the health and social security of the population as well as for the possession of housing as regards the deprived persons'.¹⁰ However, the 1968 Constitution was revoked by the 1974 government and thereby it cannot be considered as an official document of the Greek State. As a result, the actual recognition of health as a constitutional right was embedded in Article 21 §

⁷ Ibidem supra note 3.

⁸ See Website of the Council of State <www.ste.gr>.

⁹ Ibidem supra note 3.

¹⁰ K.G. Mavrias & A.M. Pantelis, *Constitutional texts- Greek and Foreign*, Athens - Komotini: Ant. N. Sakkoulas 1981, p.147.

3 of the 1975 Constitution, namely prescribed as the State's duty, and later was supplemented by Article 5 § 5, which was added to the Constitution in the 2001 revision (i.e., the second revision, with the latest -third- revision taken place in 2008) and laid down the right of every person to the protection of health.¹¹

5.2.1. ARTICLES 5 § 5 & 21 § 3 OF THE CONSTITUTION

As already noted, in addition to the international treaty provisions, the Constitution recognizes an individual right as well as a general obligation on the part of the State with respect to the protection of health. In particular, the Constitution in Article 5 § 5 provides that 'all persons have the right to the protection of their health and of their genetic identity...'. As such, the Constitution makes an explicit reference to the right to the protection of health, being applicable to every person residing in Greece. At the same time, the wording of this provision implies that both the State and non-State actors are under the obligation to abstain from actions that will violate the well-being of individuals or restrict their freedom to decide themselves for health-related matters.¹² Notably, Article 5 § 5 complements and supports the protection of health, also enshrined as a State's duty in Article 21 § 3 of the Constitution. Hence, the Constitution not only defines health as a right, but also articulates the duty of the State to take measures to protect the health of the population. Accordingly, Article 21 § 3 of the Constitution stresses that 'The State shall care for the health of citizens and shall adopt special measures for the protection of youth, old age, disability and for the relief of the needy'.¹³ Contrary to the human rights provisions (see Part I, chapter 2), the strength of Article 21 § 3 does not lie in the word 'care', which lacks precision in that it is not accompanied by a list of specific measures required for the protection of health. Such a word implies a relatively modest commitment to health on the part of the State.¹⁴

¹¹ *The Constitution of Greece* as voted under the parliamentary resolution of 7 June 1975 of the Vth Revisionary Parliament and published in the *Official Government Gazette* - ΦΕΚ issue A' 111/09-06-1975; *The Constitution of Greece (1975/1986)*, as amended by the parliamentary resolution of 6 April 2001 of the VIIth Revisionary Parliament and published in the *Official Government Gazette* - ΦΕΚ issue A' 85/18-04-2001.

¹² K. Chrisogonos, *Civil and social rights*, Athens-Komotini: Ant. N. Sakkoulas publishers 2002, p. 213.

¹³ *Ibidem* supra note 3.

¹⁴ See, Parliament of Greece - Vth Revisionary (Period A'-Synod A'), *Official Records of Parliament's Sessions* (presidency: K. E. Papakonstantinou), Volume B' (sessions ΜΘ' - Π') 6 March 1975- 27 April 1975, Athens 1975. Note by way of background that at the time of the drafting process of Article 21 § 3 of the Constitution, initially Article 23 § 3, instead of

Meanwhile, Article 21 § 3 involves a general and open-ended positive obligation on the part of the State to take steps in order to ensure the health of its *citizens*. Thereby, this provision, in principle, gives public authorities a wide margin of discretion in the measures required for the effective implementation of the right to health. Indeed, this provision implies that the State is required to take measures, *inter alia*, by enacting legislation for the purpose of: establishing an appropriate health infrastructure; regulating the health sector towards a high level of health care provision; and preventing the activities of third parties, namely of the various (public or private) actors in the health sector, from interfering with constitutional guarantees to health.¹⁵ In Chapter 6 we will examine how Greece satisfies (or not) this requirement in practice, namely its obligation to secure the realization of the right to health.

A further argument with respect to Article 21 § 3 is that even though this provision is limited (in principle) to the Greek *citizens* as well as lists a number of particular groups to be granted special care by the State, the legislature may extend this protection to other population groups, including non-nationals. In fact, such practice would be in line with the binding obligations under international treaties that Greece has ratified and with Articles 5 § 5 and 2 § 1 of the Constitution (the principle of human value). However, given that the Constitution does not provide conceptual clarity with regard to the content of the term *citizens*, this would imply that Article 21 § 3 applies to *non-citizens* (e.g. migrant workers) who meet certain legal conditions, such as lawful residence or regular work in Greece. Nevertheless,

adopting a general statement for the protection of health, the opposition parties, constituting the minority, had suggested the clarification of the meaning of the word ‘care’ in the constitutional provision by including practical measures (e.g. the provision of medical, hospital and pharmaceutical care) and a strong commitment on the part of the State at a separate article, Art. 23a (see session of 24 April 1975, pp. 2195-2198 and session of 26 April 1975, pp. 2235-2244).

¹⁵ See, e.g., Judgment of the Administrative Court of Appeal of Piraeus, No. 1048/1994 regarding a compensation case, available at <www.lawdb.instrasoftnet.com>. Accordingly, it was stated that ‘Article 21 § 3 of the Constitution, which stipulates that the State shall care for the health of the citizens, imposes a direct constitutional obligation on the State and the public law legal entities in the health sector, within which the respective state care is delivered, to adopt positive measures for the protection of health of the citizens and the provision of high standard health care to everyone who is entitled to demand the realization of the respective state obligation’; Judgment of the Council of State (StE), No. 43/2000 cited in Armenopoulos Journal, March 2000, issue 3, pp. 428-429. The Supreme Administrative Court held that the denial of health care to an elderly patient on the basis of selection criteria, namely his advanced age (old age), is contrary to Article 21 § 3 of the Constitution (p. 429); Ibidem supra note 12, K. Chrisogonos, p. 514.

such a discretion as to the definition of the term *citizens* does not imply that the Greek authorities operate in a vacuum. As will be elaborated in Chapter 7, the Greek State has adopted respective legislation and policy documents that interpret the relevant constitutional provisions. Along similar lines, Chapter 6 will set out an elaborate body of health-related law that tends to operationalize Articles 5 § 5 and 21 § 3 of the Constitution and regulate several aspects of the health care sector, involving preventive health care, health care financing and delivery.

5.2.2. IMPLEMENTATION OF ARTICLES 5 § 5 & 21 § 3 OF THE CONSTITUTION

As mentioned earlier, Article 21 § 3 in conjunction with Article 5 § 5 of the Constitution imposes on the State a general positive obligation to ‘care’ for the population’s health with the ultimate aim to realize the right to health of every individual. However, the realization of this constitutional obligation is intertwined with the general policy adopted by the State. In this regard, Article 82 § 1 of the Constitution stipulates that the general policy of the Country shall be defined and determined in accordance with the provisions of the Constitution and the laws.¹⁶ The general policy involves, *inter alia*, the economic policy, namely the allocation and prioritization of resources for the realization of constitutional obligations. As such, this means that the State is required to adopt an economic policy towards the fulfillment of its constitutional obligations, including the special care for the health of the population at large.¹⁷ Nonetheless, like most European countries, Greece is grappling with the rising costs of its public sector, especially since the emergence of its economic crisis, primarily from 2010 onwards. In relation to expenditure on health, the Greek Ombudsman for Health and Social Solidarity (see section 6.2.2) in his annual report of 2010 has pointedly emphasized that the restriction of rights, including the right to health, on the basis of fiscal criteria, involving securing public funds and curtailing of costs, cannot be considered lawful.¹⁸ Nevertheless, given

¹⁶ Ibidem supra note 3.

¹⁷ Nevertheless, it is noteworthy that at the Vth Revisionary Parliament, a member of Parliament (A. Katsaounis) stressed that the state’s policy must be based on the status that the Country can support economically, socially and politically, and that the economic status of the Country does not permit the adoption of a strong constitutional commitment on the part of the State regarding health (namely the economic status of the Country at the time of the drafting) (supra note 14, p. 2237).

¹⁸ G. Sakellis, ‘Social rights in time of crisis’, in: *Annual report 2010 Greek Ombudsman*, Athens: State printing 2010, p. 68; Note that the role and authority of the Greek Ombudsman for Health and Social Solidarity are elaborated in section 6.2.2.

the fact that the State's budget is generally limited, State's policy choices must be made within these limits over the allocation of resources necessary to enable effective implementation of constitutional rights, such as the right to health.¹⁹

In light of the preceding analysis, the question that arises is what level of resources must be allocated to the health budget by the Greek State without displacing other competing rights, given the fact that the Greek State must also consider other competing areas, involving education, defence, justice etc (see Part I, section 4.2.3). The answer to this question is related to the interpretation of Article 82 § 1 of the Constitution in conjunction with the respective right to health obligations that the Greek State has undertaken under constitutional and international law. As such, the Greek State will decide on the allocation and prioritization of available resources and their respective level in order to fulfill its right to health obligations as well as the other competing obligations (see Part I, 4.2.3). At this point, it is worth mentioning that on the basis of Part I, this margin of discretion in relation to the level of resources to be allocated by a State is given also by human rights bodies, like the CESCR (see Part I, section 4.2.1).

Meanwhile, Article 21 § 3 in conjunction with Article 5 § 5 of the Constitution does not preclude privatization as being incompatible with the State's obligation to care for the protection of population's health. With respect to private initiative in the health care sector, such initiative is not explicitly addressed in the Constitution of Greece and a significant margin of appreciation is accorded to the Greek State with respect to this issue. Under its respective right to health provisions, the Constitution, thereby, neither suggests nor bans privatization in health care sector as a complementary measure to secure the health of the general population. The Greek State is entitled to adopt either a public or a private- public funding mixed system that it considers to be appropriate for achieving its national health goals. Even at the time of the session of the Vth revisionary parliament, concerning this provision (initially Article 23 § 3) a reference was made at the potential role of private actors in the provision of medical care.²⁰ A similar approach has been also endorsed by national judicial bodies. With respect to case law, in a decision of 1997 the Council of State (henceforth: the Council) ruled that the State has to strengthen the efforts of private actors towards providing appropriate and of good quality health care to

¹⁹ For an analogous approach, see, e.g., P. Dagoglou, *Individual rights – vol. B'*, Athens-Komotini: Ant. Sakkoulas 1991, p. 1235.

²⁰ Ibidem supra note 14, p. 2196. Accordingly, it was suggested by a member of the Parliament (Th. Manavis) the establishment of sanitary institutions by non-state actors until the State could cover the health needs of the population.

the population as well as introduce supervisory mechanisms.²¹ In this regard, the Council also stressed that Article 21 § 3 does not promote solely the public provision of health care and, for that reason, it called on the provisions of the ESC, namely Articles 11, 13 and 14 of the ESC, which promote the collaboration between public and private actors in the field of health care provision.²² Here, it is important to note that both the ESC and its revised version have been incorporated within national legal order by Law 1426/1984 and Law 4359/2016, respectively (see Annex 2).

At the same time, the private initiative in health care provision is also supplemented by every individual's right to develop freely, embedded in Article 5 § 1 of the Constitution. Article 5 § 1 underpins that 'all persons shall have the right to develop freely their personality and to participate in the social, economic and political life of the country, insofar as they do not infringe the rights of others or violate the Constitution and the good usages'.²³ However, the economic freedom afforded to private actors under this provision remains subject to certain requirements which are determined by the legislature, for instance as to the nature of measures taken by them in the field of health care provision (see section 6.5.1). It is on this basis that Article 106 § 2 of the Constitution stresses that 'private economic initiative shall not be permitted to develop at the expense of freedom and human dignity, or to the detriment of the national economy'.²⁴ With regard to the privatization in health care, this provision alludes that the design and delivery of health care under a system of privatization must be consistent with the principle of human dignity at all stages as to ensure that such a system is contributing to the well-being of the general population. Anything less would constitute a threat to the purpose of the right to health as well as to human dignity under this constitutional provision. Nonetheless, beyond this broad scope of protection, under this constitutional provision it is not clarified how this will be managed, namely a clear account of the measures required to secure the implementation of this provision is not provided. In practice, this means that the Greek State is required to create some institutional or regulatory framework to ensure monitoring of implementation as well as transparency of the process (see sections 3.7.1 and 6.5.1). All in all, it must be conceded that the Constitution guarantees a freedom of private activity in the health sector, while at the same time allowing a State intervention through legislative

²¹ Council of State (StE) 1374/1997, 1 April 1997, available at <www.lawdb.intrasoftnet.com>; Of note, with respect to the jurisdiction of the Council of State, namely the Supreme Administrative Court, see Articles 94 § 1, 95 and 100 § 5 of the Constitution.

²² *Ibid.*, § 4.

²³ *Ibidem supra* note 3.

²⁴ *Ibid.*

measures for generally ensuring the well-being of the population as a whole.

Notably, as mentioned earlier, the wording of Article 21 § 3 implies that both the State and non-State actors are under the obligation to abstain from actions that will violate the well-being of individuals or restrict their freedom to decide themselves for health-related matters.²⁵ As such, the Greek State should not delay or even abandon its right to health obligations, enshrined both in the Constitution and in international law, by means of health care privatization (see Part I, section 3.7.1). In fact, in literature it is maintained that private actors are not concerned with enhancing general population's well-being, including deprived or uninsured population groups, such as undocumented migrants and Roma.²⁶ In essence, it is within the Greek State's power to prevent health disparities and provide for a health infrastructure to safeguard the health of the population as a whole. Indeed, the Constitution does not grant exclusively the provision of health care to private actors and, thereby, does not relieve the Greek State from its own primary and ultimate obligation under the respective right to health provisions. On the contrary, under Article 25 § 1 of the Constitution, the Greek State has the obligation to guarantee to every individual the exercise of his/her rights, including the right to health. In particular, following the revision of 2001 this provision explicitly establishes the principle of the welfare State that alludes to a national system of social assistance, including health care.²⁷ This statement provides supplementary safeguards (see below section 5.3), apart from the protection granted in specific constitutional provisions, mainly in Articles 5 § 5 and 21 § 3 of the Constitution.

Finally, even though the privatization in the field of health care is not inconsistent *ex constitutione* with the State's requirement to take measures to secure the health of the general population, this process must be subject to scrutiny with a view to addressing firmly the responsibilities of private actors and ensuring that privatization in the health sector contributes to the fulfillment of the health needs of the population as a whole (see sections 3.7.1 and 6.5.1). This implies that even though the Greek State will not be responsible for the delivery of health care, it will act as the guarantor of the right to health for all. Consequently, the Greek State should never undermine its primary and overall responsibility under national law, namely Article 21 § 3 of the Constitution, and under international law towards the

²⁵ See, also, P. Dagoglou, *Individual Rights - vol. A'*, Athens-Komotini: Ant. Sakkoulas 1991, p. 202.

²⁶ B. Toebe, 'The Right to Health and other Health-Related Rights' in: B. Toebe, M. Hartlev, A. Hendriks & J. Rothmar Herrmann (eds.) *Health and Human Rights in Europe*, Cambridge/Antwerp/Portland: Intersentia 2012, pp. 83-110.

²⁷ Ibidem supra note 3.

protection of the health of the general population. As will be elaborated in Chapter 6 (see section 6.5.1), the Greek State has adopted respective health-related legislation for the purpose of regulating some aspects of the behaviour of private healthcare providers.

5.3. OTHER CONSTITUTIONAL ARTICLES

As mentioned in Part I the right to health is closely connected to and supported by other rights that have the potential to protect and promote health (see Part I, chapter 2). Notably, beyond the formulation of health as a constitutional right, the Constitution encompasses also several other rights that have a health dimension and influence the realization of the right to health. Some of these rights will be discussed briefly below and where relevant, references will be made to other sections (for example, see section 7.3.2). As noted earlier, of particular interest is Article 25 § 1 of the Constitution which stipulates that ‘The rights of the human being as an individual and as a member of the society and the principle of the welfare state rule of law are guaranteed by the State ...’.²⁸ The wording of this constitutional provision gives rise to an obligation on the Greek State to take measures to secure the enjoyment by every individual of all constitutional rights, including the right to health.

Meanwhile, the aforementioned provision should be read in conjunction with Article 5 § 2 of the Constitution, implicitly guaranteeing the right to life, whilst at the same time explicitly embracing the principle of non-discrimination. In particular, it declares that ‘all persons living within the Greek territory shall enjoy full protection of their life, honor and liberty, irrespective of nationality, race or language and of religious or political beliefs. Exceptions shall be permitted only in cases provided by international law’.²⁹ This provision has a health-related dimension in that it can be relevant in relation to matters concerning access to health care for vulnerable population groups, such as undocumented migrants, Roma children etc. (see e.g., chapter 7). For example, it may imply that healthcare provision must be defined according to the medical need of the individual and regardless of nationality, race etc.

Furthermore, the protection of the environment, embedded in Article 24 of the Constitution, is an important aspect of the right to health (see Part I, chapter 2). Accordingly, Article 24 § 1 (a) provides that ‘the protection of the natural and cultural environment constitutes a duty of the state and right to every person’.³⁰

²⁸ Ibidem supra note 3.

²⁹ Ibid.

³⁰ Ibid.

In this regard, with respect to case law, the Council of State has repeatedly acknowledged in its decisions the relation between health and environment. For instance, in a decision of 1983, the Council established a link between Article 24 § 1 and 21 § 3 of the Constitution.³¹ Similarly, in decision 1874/1994, the Council ruled that Article 24 of the Constitution imposes on the State the obligation to protect the natural environment based on its responsibility to secure the health of the population, which arises from Article 21 of the Constitution, as well as on its responsibility to ensure the protection of ecosystems and biotopes, involving also the protection of diversity. Additionally, the Council in its ruling stressed that in case of conflict between the two provisions, the protection of health should be prioritized.³²

Moreover, there are links between one's state of health and one's enjoyment of human dignity and freedom from inhuman and degrading treatment, enshrined in Articles 2 § 1 and 7 § 2 of the Constitution, respectively, which apply to all individuals regardless of nationality (see Part I, chapter 2). More specifically, Article 2 § 1 provides that 'respect and protection of the value of the human being constitute the primary obligations of the State'.³³ Additionally, Article 7 § 2 stresses that 'Torture, any bodily maltreatment, impairment of health or the use of psychological violence, as well as any other offence against human dignity are prohibited and punished as provided by law'.³⁴ As such, the protection of health is intertwined with the aforementioned rights in such a way to impose on the Greek State the duty to prevent individuals from exposure to health risks and refrain from undertaking measures detrimental to health by providing sufficient medical attention for all population groups, including undocumented migrants, especially those held in detention centers (see chapter 7).

Last but not least, the enjoyment of the right to private and family life, embedded in Article 9 § 1 of the Constitution combined with Article 5 § 1 on the freedom to develop one's personality, embraces issues, which are relevant in a healthcare setting, relating to personal autonomy (informed consent), the disclosure of information on private, personal existence. In this regard, with respect to case

³¹ Council of State (StE) 3458/1983, index StE 1983, p. 1232.

³² Council of State (StE) 1874/1994, 7 June 1994, § 7, available at <www.lawdb.intrasoftnet.com>

³³ Ibidem supra note 3; It is noteworthy that Article 2 § 1 is supplemented by Article 5 § 1 of the Constitution which guarantees every individual's right to develop freely his/her personality and participate in the social and economic and political life of the country, as long as he/she does not infringe upon the rights of others or violate the Constitution and the good usages (moral values).

³⁴ Ibid.

law, the Council of State has found that the protection of one's sexuality can be addressed under Articles 9 § 1 and 2 § 1 of the Constitution.³⁵

5.4. CONCLUSIONS

In this chapter, the analysis of several constitutional provisions relevant to health has been used as a starting point for answering the question how the internationally guaranteed right to health has been recognised and applied in national law. Importantly, since 1975 the Constitution of Greece attaches growing significance to the role of international law within domestic legal order, through including special clauses on the domestic applicability and supremacy of international treaties in constitutional provisions. In addition to the recognition and integration of international law that, *inter alia*, contain a right to health, in national legal order, the Constitution contains two Articles, that complement each other, namely entrench health both as a right and as a state's general duty with particular consideration for the youth, elderly, disabled persons and for the relief of the needy. This constitutional open-ended framework is a valuable aspirational statement on which national legislation and policy practices can be based. Notably, the entrenchment of health as a right and as State's duty in the Constitution plays partly an important symbolic role in indicating the State's commitment to the right to health. But such a symbolism must also be accompanied by specific measures taken by the Greek State to implement such a commitment for the effective realization of the right to health of every individual in practice.

In this regard, one may agree with Ruth Roemer that 'The principal function of a constitutional provision for the right to health care is usually symbolic. It sets forth the intention of the government to protect the health of its citizens. A statement of national policy alone is not sufficient to assure entitlement to health care; the right must be developed through specific statutes, programs and services. But setting forth the right to health care in a constitution serves to inform the people that protection of their health is official policy of the government and is reflected in the basic law of the land'.³⁶ Clearly, the operationalisation of the right to health is both a cardinal issue and a challenge that will be elaborated in the following chapters.

³⁵ Council of State (StE) 3545/2002, 3 December 2002, § 10, available at <www.lawdb.intrasoftnet.com>

³⁶ R. Roemer, 'The Right to Health Care' in: H.L. Fuenzalida-Puelma & S. Scholle Connor (eds.) *The Right to Health in the Americas: A Comparative Constitutional Study*, Washington, D.C.: Pan American Health Organization (Scientific publication No. 509) 1989, pp. 17-23, p. 20 (cited also in: V.A. Leary, 'The Right to Health in International Human Rights Law', *Health and Human Rights* 1994, Volume 1, Issue 1, pp. 25-56, p. 35).