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

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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>

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Issue Date: 2016-12-15

7 | Undocumented Migrants

7.1. INTRODUCTION

Generally, there is growing attention for undocumented migrants within the European Union (EU), who constitute an ever-increasing proportion of the population in Europe¹ and as such their particular position when it comes to the realization of the right to health (care) becomes more visible. Meanwhile, there is serious concern about the impediments migrants in an irregular situation face when accessing health care. In 2011, the European Parliament explicitly recognized that ‘in many EU countries equitable access to healthcare is not guaranteed, either in practice or in law, for undocumented migrants.’² Likewise, the World Health Organization (WHO) has pointedly noted that national health care policies often discriminate against undocumented migrants by making merely emergency health care available and leading undocumented migrants to limited access to health care and as such, to a delay in receiving medical treatment, until their medical condition reaches an emergency.³ At the same time it must be conceded that there is no uniform approach of the level of access to health care for undocumented migrants

¹ Frontex-European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, *Annual Risk Analysis 2014*, Poland: Frontex Risk Analysis Unit May 2014, p.12.; Note that in the second quarter (Q2) of 2015 detections of irregular stay in the EU were almost 40% higher compared to the same quarter of 2014. (Frontex-European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, *FRAN Quarterly- Quarter 2 (April-June 2015)*, Warsaw: Frontex Risk Analysis Unit September 2015, p. 14)

² European Parliament resolution of 8 March 2011 on Reducing Health Inequalities in the EU, (2010/2089 (INI)) § AD, <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NON SGM L+TA+P7-TA-2011-0081+0+DOC+PDF+V0//EN>> [last accessed 20 December 2013].

³ WHO, *International Migration, Health & Human Rights*, Health & Human Rights Publication Series No. 4., Geneva: World Health Organization 2003, p. 23.

between the Member States of the EU and there are differences in the way access to health care for undocumented migrants is guaranteed and regulated within their jurisdiction by their respective national legislature.⁴ Thereto, Members States of the EU, like Greece, have adopted their own national definition on the issue of what level of health care should be available to undocumented migrants by reflecting their particular circumstances and starting points.⁵ Interestingly, it is notable that due to the scarcity of available resources within a State's jurisdiction, the focus of a State's attention could shift from the realization of the general right to health obligations to the realization of core obligations, despite the controversy surrounding their acceptance and definition (see Part I, section 3.4). These core obligations aimed at the realization of the right to health (i.e. its minimum requirements) if acknowledged by States can be a practical tool (albeit used with due caution) for low-income States, like Greece, to discern certain health services that should be available to marginalized population groups without financial means, such as undocumented migrants.⁶ Meanwhile, it is essential to note that this does not imply that Greece will deny the remainder of the right to health (i.e., abdicate its ensuing duties and stop taking steps) and once it has realized the core (see Part I, section 3.4).

In light of the analysis in Part I and the above concerns, this chapter seeks to investigate Greece in relation to its compliance with its binding right to health obligations towards undocumented migrants within the context of health care. The underlying preconditions for health will be addressed where relevant. Notably, in terms of this objective, in section 7.3 it is useful to briefly set out the constitutional parameters that conceptualize the State obligations concerning the right to health (care) for undocumented migrants. Subsequently, we will draw attention to the way such obligations are operationalised within national law and policy context

⁴ See, e.g., D. Biswas, B. Toebes, A. Hjern, H. Ascher & M. Norredam, 'Access to Health Care for Undocumented Migrants from a Human Rights Perspective: A Comparative Study of Denmark, Sweden, And the Netherlands', *Health and Human Rights* 2012, Volume 14, No. 2, pp. 49-60.

⁵ European Union Agency for Fundamental Rights, '*Migrants in an irregular situation: access to healthcare in 10 European Union Member States*', Luxembourg: Publications Office of the European Union 2011; International Organization for Migration, *European Research on Migration and Health*, Geneva: IOM 2009.

⁶ K.G. Young, 'The Minimum Core of Economic and Social Rights: A Concept in Search of Content' *The Yale Journal of International Law* 2008, Volume 33, pp. 113-175, p. 173. Note that the definition of minimum entitlements (i.e. core obligations) can be a useful tool that can be utilized by marginalized and vulnerable groups to lodge claims for the realization of their rights, including the right to health.

with special focus on the State approach for undocumented migrant children and on the role of NGOs. Finally, specific health-related challenges that impede and threaten the effective enjoyment of the right to health (care) by undocumented migrants coupled with steps forward will be addressed in section 7.4. But firstly, section 7.2 elucidates the term ‘undocumented migrants’ and their health status.

7.2. UNDOCUMENTED MIGRANTS AND THEIR HEALTH STATUS

Undocumented migrants represent a heterogeneous group, which generally involves individuals who enter or stay in a country without the appropriate documentation and, thereby, lack legal status in the host country.⁷ More specifically, this group includes people who have (a) no legal documentation to enter a country but entered clandestinely, (b) been rejected for asylum, (c) stayed beyond the time authorized (i.e., visa/ residence or work permit expiration) or otherwise violated the terms of entry and remained without authorization (i.e., revoked visa/ residence or work permit).⁸ In light of the above, we will use the term undocumented instead of ‘illegal’ migrant. The latter is not a preferable term, as it has a negative connotation by equating all undocumented migrants to criminals.⁹

In general, within the EU, the number of undocumented migrants was estimated to be between 3 and 6 million in 2014.¹⁰ Over the years, Greece, in virtue of being one of the frontier States of the EU, has become one of the main entry points to the EU for individuals coming from outside of the EU, and not having the status of EU citizen.¹¹ Thousands of migrants, coming primarily from developing countries, enter Greece in an irregular status. Note that in Greece during the second quarter (Q2) of 2015 a 690% increase in irregular border-crossings was reported in relation to the Q2 of 2014, which indicates that the pressure of irregular

⁷ See, Article 5 MWC; International Migration Law No. 25, *Glossary on Migration*, (2nd ed.) Geneva: International Organization for Migration 2011; European Observatory on Health Systems and Policies Series, *Migration and Health in the European Union*, England: Open University Press 2011, pp. 149 and 191.

⁸ Ibid.

⁹ UN CMW, *General Comment No. 2 on the rights of migrant workers in an irregular situation and members of their families*, UN Doc CMW/C/GC/2, 28 August 2013, § 4.

¹⁰ Ibidem supra note 1, Frontex 2014. In 2013, 344,888 detections of illegal stay within the EU were reported (p. 52). However, there are no official estimates of the annual flow of all people entering and staying illegally in the EU.

¹¹ Infra note 105, UN Special Rapporteur; See, European Centre for Disease and Control, *Joint technical mission: HIV in Greece 28-29 May 2012*, Stockholm: ECDC 2013, p. 14. Since 2010, Greek borders have accounted for 90% of all detections of unlawful border crossing into the EU.

migration remains high.¹² The number of undocumented migrants in Greece is estimated around 470,000, constituting almost 5% of the total population in Greece.¹³ Nonetheless, it should be emphasized that there is a lack of proper data to describe the issue concerning undocumented migrants and to precisely determine the population size due to the clandestine nature of their entrance and residence in Greece. Even so, from the above figures it is evident that irregular migration represents an increasing proportion of the population in Greece.

Meanwhile, migration could be regarded as a social determinant of health in that the health status of migrants at a large part is related to and influenced by migration conditions, such as the travel conditions (mode and length of travel), living conditions, and their legal and socioeconomic status in the origin and destination country.¹⁴ In May 2008, at its 61st meeting, the World Health Assembly (WHA) in its 61.17 resolution (adopted as a way of guiding future national policies) recognized that ‘health outcomes can be influenced by the multiple dimensions of migration’, namely can be dependent on the category of the migrant (i.e., regular or irregular).¹⁵ As such, migrants in an irregular situation due to their weak legal and socioeconomic status, can be more (i.e. double) vulnerable to contracting and suffering from severe chronic diseases, thereby putting their physical and mental health at risk, compared to any other population group – the ‘average person’ among Greece’s population.¹⁶ A recent study carried out by Médecins du Monde indicated that 50.8% of undocumented migrants in Greece reported to have poor mental health in 2012 compared to a 9.3% of the general population in Greece.¹⁷ It is indicative that Post-Traumatic Stress Disorder (PTSD) is a significant cause

¹² Ibidem supra note 1, Frontex 2015, p. 16.

¹³ Ibidem infra note 105, UN Special Rapporteur, § 9.

¹⁴ CSDH, *Closing the gap in a generation: health equity through action on the social determinants of health. Final Report of the Commission on the Social Determinants of Health*, Geneva: World Health Organization, 2008. Accordingly, the way, in which people are raised, live and work, determines their state of health (p. 42); Ibidem supra note 7, European Observatory on Health Systems and Policies Series 2011.

¹⁵ World Health Organization, *Sixty-First World Health Assembly, Resolutions and Decisions Annexes*, WHA 61/2008/REC/1, 19-24 May 2008.

¹⁶ Platform for International Cooperation on Undocumented Migrants, *Access to Health Care for Undocumented Migrants in Europe*, Brussels: PICUM 2007; H. Castañeda, ‘Illegality as risk factor: A survey of unauthorized migrant patients in a Berlin clinic’, *Social Science and Medicine* 2009, 28 (8), pp. 1552-1560.

¹⁷ Médecins du Monde, *Access to Healthcare in Europe in Times of Crisis and Rising Xenophobia*, France: Médecins du Monde 2013, p. 7; OECD, *Health Data on perceived health status 2000-2013*, <www.oecd.org>

for concern for this population group, being exacerbated by the constant fear of detention and deportation, and requiring follow-up care, as a result.¹⁸

Arguably, this matter raises serious questions, *inter alia*, about the extent of access to health care for undocumented migrants due to their weak status within society. In recognition of this issue, on 8 March 2011, the European Parliament adopted a resolution, namely ‘Reducing health inequalities in the EU’, to urge and assist Member States in developing appropriate policies that will ‘ensure that the most vulnerable groups, including undocumented migrants, are entitled to and are provided with equitable access to healthcare; ... assess the feasibility of supporting healthcare for irregular migrants by providing a definition based on common principles for basic elements of healthcare as defined in their national legislation’.¹⁹ As such, the Greek State, by adopting the general population’s health as a goal, can design and develop targeted health interventions that effectively meet the needs of all segments of the population, including the most vulnerable population groups, like undocumented migrants.²⁰ This implies that the living reality of undocumented migrants, namely the particular circumstances under which these people live by virtue of the lack of legality of their status, should influence the process of identification and development of comprehensive context-sensitive national health policies (see Part I, section 4.2). In fact, the increased level of vulnerability (i.e., double vulnerability: as migrants and as undocumented) with regard to their prospects for effective enjoyment of their right to health (care) entails that the special health needs of this population group must be addressed in the design and implementation of State measures relating to such needs (i.e., migrant-sensitive health measures).²¹ At the same time, this vulnerability implies that the impact of

¹⁸ 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 HRC, 4th Sess., Agenda Item 2*, UN Doc A/HRC/4/28/Add.2, 28 February 2007, § 44.

¹⁹ *Ibidem* supra note 2, European Parliament, § 5.

²⁰ The first Special Rapporteur on the Right to Health (Paul Hunt) stressed that asylum-seekers and undocumented migrants ‘are precisely to the sort of disadvantaged group that international human rights law is designed to protect’ (supra note 18: § 73). It should be, though, emphasized that failed asylum seekers constitute a considerable part of the undocumented population residing in Greece.

²¹ See, e.g., UN CESCR, General Comment No. 14: *The Right to the Highest Attainable Standard of Health*, UN Doc. E/C.12/2000/4, 11 August 2000, §§ 21-22 read in conjunction with UN CESCR, General Comment No. 20: *Non-Discrimination in Economic, Social and Cultural Rights*, UN Doc. E/C.12/GC/20, 2 July 2009, § 30. Note that the CESCR identifies a number of vulnerable groups, among which non-nationals without a legal status, to which

such health-related measures on undocumented migrants is likely to be more profound than in regard of someone who does not have special health needs. The point to stress therefore is that given undocumented migrants' lower health status compared to nationals, State's attention to access to health care and to areas such as immunization, prevention of transmission and appropriate treatment of chronic and infectious diseases and of mental health conditions through provision of psychological support, can be a significant first step towards ensuring effective protection and improvement of their health condition.²² As a consequence, both individual and population health may benefit in the long-term.

7.3. HEALTH-RELATED LAW AND POLICY

7.3.1. SETTING THE SCENE

As mentioned in Chapter 6, in broad terms, the Greek National Health System (in Greek: *Ethniko Systima Ygeias*, ESY) is mainly based on two financing methods, namely on state budget (i.e. from taxation) and on a social insurance system.²³ In essence, this covers all Greek citizens and authorized residents who work or receive unemployment benefits. Thereby, access to public health care in Greece is cost-free for those having insurance, nationals and authorized residents. Additionally, Greek nationals and authorized residents with low or no income and without an insurance coverage can obtain a welfare card in order to receive cost-free public health care.²⁴ At this point, it is, though, essential to mention that during the 2010-2015 years when Greece was hit by the economic crisis, the Greek State generated a number of austerity measures, including the increase of user fees for publicly funded health care. Such an increase, nevertheless, placed an excessive financial burden especially on the poorer segments of the society (see section 6.4.2.3).²⁵ Consequently, these

States are required under the right to health to give special attention through developing targeted health policies (see Part I, section 4.2.1).

²² Ibidem supra notes 3 and 17.

²³ L. Liaropoulos & E. Tragakes, 'Public/private financing in Greek health care system: Implications for equity' *Health Policy* 1998, 43, pp. 153-169, p. 153; See, for an elaborate assessment of the Greek National Health System Chapter 6 of the present study.

²⁴ Article 44, Law 2082/1992, *Official Government Gazette* -ΦΕΚ issue A' 158/21-09-1992; See also, Joint Ministerial Decision, 139491/16-11-2006, *Official Government Gazette*-ΦΕΚ issue B' 1747/30-11-2006.

²⁵ For instance, as from 1 January 2014, a €25 entrance fee for public hospitals and healthcare centers was established (Article 1(ΙΒ.2) (12), Law 4093/2012, *Official Government Gazette*-ΦΕΚ issue A' 222/12-11-2012). Note that this measure was never implemented due to pressure exerted from the Greek society. See, also, Government of Greece, Letter of Intent,

cost-benefit measures (co-payments) exclude a considerable number of people, especially those belonging to vulnerable groups of society, from having access to health care and may have a negative effect on health outcomes in the long-term.²⁶

With regard to migrants, access to health care is dependent on registered employment and legal status. In particular, practices in access to health care for undocumented migrants in Greece are related to the context of the existing national legislation. Notably, increased migration coupled with the rising costs of the national health system (ESY), have led Greece to explicitly limit access to health care for undocumented migrants in its legislation in an effort to reduce its health care expenses. By looking at this legislation, it is apparent that the respective law provisions allow some differentiation in the provision of health care between Greek nationals and undocumented migrants. For that reason, it is essential first to examine the key existing legislation, which imposes specific health-related obligations upon the Greek State with respect to access to health care for undocumented migrants. Then, we will identify whether the respective law provisions and applied practices are in conformity with human rights standards that are binding for Greece. But for the purposes of the present chapter, it is advisable to briefly define the constitutional parameters conceptualizing State obligations under the right to health by paying particular attention to the dimension of ‘access to health care’ for undocumented migrants, before embarking on our analysis of health care provisions for undocumented migrants.

7.3.2 CONSTITUTIONAL ENTRENCHMENT

Generally speaking, the extent of health care coverage for undocumented migrants is closely intertwined with the State obligations arising from the right to health within the context of determining health policies and defining a level of entitlement to health care applicable to every individual, including undocumented migrants. In literature it is maintained that States are responsible for creating the legal conditions for the fulfillment of their right to health obligations, targeted to the health needs of undocumented migrants.²⁷ Hence, at the constitutional level, there

Memorandum of Economic and Financial Policies and Technical Memorandum of Understanding 2012.

²⁶ M. Mackintosh & M. Koivusalo, ‘Health Systems and Commercialization: In Search of Good Sense’ in: M. Mackintosh and M. Koivusalo, *Commercialization of Health Care: Global and Local Dynamics and Policy Responses*, Hampshire: Palgrave 2005, pp. 3-21, p. 8; See, also, Section 6.4.2.3 on the issue of economic affordability within the ESY.

²⁷ R. Romero-Ortuño, ‘Access to health care for illegal immigrants in the EU: should we be concerned?’ *European Journal of Health Law* 2004, Volume 11, pp. 245-272, p. 266.

are several provisions of importance and relevance that entrench an entitlement to health (care) for undocumented migrants in Greece. The Constitution of Greece (henceforth: the Constitution) recognises such an entitlement for undocumented migrants as well as entails respective general state obligations under two ways.²⁸ More specifically, undocumented migrants are entitled to health (care) pursuant to specific constitutional provisions on the right to health as well as pursuant to general health-related constitutional provisions (i.e., provisions on protection of life and of human dignity coupled with the general guiding principles of non-discrimination and equality).²⁹

Notably, Article 5 § 5 of the Constitution constitutes a key provision for such an entitlement for undocumented migrants. This provision makes an explicit reference to the right to the protection of everyone's health living within the Greek territory. Particularly, this provision establishes a right to health, being applicable to every individual, *inter alia*, to undocumented migrants (see section 5.2.1). In addition, as elaborately analysed in section 5.2.1, the Constitution under Article 21 § 3 formulates a general positive obligation on the part of the Greek State for the health of all *citizens* in Greece. Meanwhile, the general wording of this provision allows for a distinction between *citizens* and *non-citizens*. Nevertheless, given that the Constitution provides no conceptual clarity on the content of the term *citizens*, it can be argued that Article 21 § 3 applies, *inter alia*, only to migrants who meet certain legal conditions, such as lawful residence or regular work in Greece. As such, legal migrants are considered to be active members of the Greek society and are entitled to similar access to health care as Greek citizens. On the other hand, access to health care for undocumented migrants should be regulated depending on their migration status, as they are not considered to be members of the Greek society due to the legality status of their presence. As such, this group (i.e., undocumented migrants) can be implicitly denied protection under this provision. Nevertheless, the ambiguity of the content of the term *citizens* gives discretionary power to the Greek authorities with regard to the interpretation of this constitutional provision.³⁰

²⁸ 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>; As regards to the supremacy of the Constitution of Greece within national legal order, see section 5.2.

²⁹ For an overview of health-related rights, namely rights connected to the protection of health, see, also Chapter 2, Section 5.3 and Annex 1 of the present study.

³⁰ K. Chrisogonos, *Individual and Social Rights*, Athens: Nomiki Bibliothiki 2006, p. 51.

In the meantime, we will look at the notion of the entitlement to health (care) for undocumented migrants also from the perspective of rights that are potentially relevant and can reinforce such entitlement for this population group (i.e., from the right to life and human dignity to the principles of non-discrimination and equality). Moreover, the general legal principles, enshrined in the Constitution, which are compatible with a human rights approach to health (care), could serve as a tool for the interpretation of specific legal provisions within health care settings and for guiding health policies and programmes addressed to every individual, including undocumented migrants.

Of particular interest is the broadly formulated Article 5 § 2 of the Constitution, which may extend its protection against discrimination, based on *nationality* within health-care domain for undocumented migrants (see section 5.3). In this regard, undocumented migrants are constitutionally protected in such a way that their access to health care is implicitly guaranteed through the protection of their life and human dignity, albeit reflecting a minimum level of protection, minimum care treatment. Note that the European Committee of Social Rights (ECSR) maintained such position in the case of *FIDH v. France*, which provides an interpretation of the (revised) ESC concerning undocumented migrants' access to health care, albeit not strictly legally binding for the respective States (see Part I, section 4.3).³¹

Similarly, a minimum entitlement to health (care) for undocumented migrants can also be implicitly guaranteed under Articles 2 § 1 and 7 § 2 of the Constitution, which address human dignity and freedom from inhuman and degrading treatment, respectively (see section 5.3). Under the preceding constitutional provisions, such an entitlement is intertwined with the protection of human value and dignity in such way to consider the denial of access to health care on the basis of the legality of a person's presence being non-justified.³²

Last but not least, the above general health-related constitutional provisions should be read in conjunction with Article 25 § 1 of the Constitution which establishes the principle of welfare State (see section 5.3). Particularly, the general wording of this provision implies that every individual is entitled to the enjoyment of his or her rights and that the Greek State is under the obligation to secure this enjoyment through the adoption of measures. As such, an expansive protection is granted under this substantive provision that may extend to an entitlement to health (care) for undocumented migrants.

³¹ *International Federation of Human Rights Leagues (FIDH) v. France*, Complaint No. 14/2003, 3 November 2004, §§ 31-34.

³² *Ibidem supra* note 30, pp. 553-554.

All in all, the constitutional entrenchment of the legal entitlement to health (care) for undocumented migrants is a step for the Greek State towards complying with its binding treaty obligations for this vulnerable group. Thereby, the Constitution, in principle, establishes both an entitlement for undocumented migrants and a general state obligation not to deny such an entitlement on the basis of an individual's legal status. Nevertheless, this constitutional entrenchment does not allow for exhaustive conclusions about its actual scope within the national law and policy context. The existing constitutional framework provides for the Greek State flexibility in terms of defining this scope through the creation of the conditions for the fulfillment of its duty. In practical terms, this means that this scope will be clarified through the elaboration of relevant national legislation and policy documents. For this reason, subsequent attention will be drawn to the examination of the respective law provisions, applied policies and practices with the aim of identifying the actual level of enjoyment of such an entitlement by undocumented migrants, followed by areas of concern and steps forward in light of the international guaranteed right to health.

7.3.3. UNDOCUMENTED MIGRANTS AND ACCESS TO HEALTH CARE

Greece has introduced explicit legal provisions governing the access to health care for undocumented migrants in the Greek territory under Immigration Law 3386/2005 (Article 84 § 1), which was later amended by Article 26 § 1 under Code for Migration, Law 4251/2014.³³ More specifically, both aforementioned provisions provide expressly that no public authority is allowed, under the threat of sanctions, to provide its services to third countries' nationals, who do not have a passport or any other legal document (identification documents) required by the current international agreements, European law; or an entry visa; or a residence permit; and generally who cannot prove that they have entered and reside legally in Greece.³⁴ Here, both

³³ Law 3386/2005 on 'Entry, Residence and Social Integration of Third-Country Nationals in the Greek Territory', *Official Government Gazette*- ΦΕΚ issue A' 212/ 23-08-2005; Law 4251/2014 'Code for Migration and Social Inclusion and other Provisions', *Official Government Gazette*- ΦΕΚ issue A' 80/01-04-2014. Note that under Article 1 § 1 Law 4251/2014, a migrant is defined as a citizen of a third country, person who does not have the Greek citizenship neither the citizenship of any other Member State of the European Union. This definition was first introduced by Law 3386/2005.

³⁴ In case public servants (doctors, nurses etc.) violate the provisions of article 84 of Law 3386/2005, they will be disciplinary and criminally liable for having infringed their duties according to Article 84 § 4 of Law 3386/2005. In fact, the Greek Ministry of Health issued an urgent Circular that reiterates the above provision and strongly highlights the obligations

provisions clearly address the ('illegal'/ irregular) status of undocumented migrants. In particular, it becomes apparent from the wording of the aforementioned law provision that the ability of the migrants to prove their legal residence status in Greece is an essential element in order to access (primary and secondary) healthcare. However, the respective Law provisions explicitly recognize an exception for their access to hospitals and clinics in case of an emergency as well as in case of childbirth, which was added, belatedly perhaps, in Article 26 § 2(a) of Law 4251/2014.

In light of the above, undocumented migrants are granted limited access to health care due to their status, which also involves payment of specific components, such as laboratory tests and medicines.³⁵ However, since 2005, the respective law provisions do not define what constitutes emergency medical care (see Part I, section 4.3). The decision whether a situation should be regarded as an emergency or not is left to the discretion of the members of the medical profession, providing treatment.³⁶ In some cases, however, such difficulty can be particularly detrimental to undocumented migrants with chronic diseases, such as HIV/AIDS. A critical concern is the HIV/AIDS prevalence in Greece, since an increasing number of people died of HIV/AIDS from 2007-2009 combined with a 57% rise in 2011 in the number of reported HIV/AIDS infections as compared to 2010.³⁷ Although there is no evidence that undocumented migrants are mostly affected by HIV, it is noteworthy that even though access to HIV testing is free in public hospitals and screening centers and the need for antiretroviral drugs is considered a life-threatening emergency, in practice undocumented migrants' continuous access to antiretroviral therapy depends on the decision of the health professional.³⁸

and liability of public servants (Circular Y4a/oik.45610/02-05-2012). Further, the punishment of public servants is also provided under Article 26 § 4 of Law 4251/2014.

³⁵ ESC, ECSR, Conclusions XX-2 (2013) Greece, Council of Europe, January 2014, p. 36.

³⁶ For a definition of the term 'emergency' within Greek case law, see, *inter alia*: Council of State Decisions 632/1999, 866/1997, 5421/1995 and Administrative Court of Athens Decision 4494/2002. Pursuant to the aforementioned court decisions, 'emergency' is defined as a life threatening situation.

³⁷ UN CEDAW Committee, CO: Greece, UN Doc. CEDAW/C/GRC/CO/7, 1 March 2013, § 30; Greek Ministry of Health and KEELPNO, *HIV/AIDS Surveillance in Greece- Annual Report of the HCDCP*, No. 26, December 2011, p. 13; For HIV/AIDS prevalence in relation to migration, see European Centre for Disease Prevention and Control/WHO Regional Office for Europe, *HIV/AIDS Surveillance in Europe 2012*, Stockholm: European Centre for Disease Prevention and Control, 2013, pp. 6 and 18. Note that more than one third of the heterosexually acquired HIV cases were reported in migrant population coming from highly endemic countries, mainly sub-Saharan Africa.

³⁸ European Centre for Disease and Control, *Joint technical mission: HIV in Greece 28-29*

Meanwhile, in an effort to provide further clarification about the normative content of emergency medical care for undocumented migrants, the Greek Ministry of Health has issued two important Circulars in 2005 and in 2012 respectively, aiming at conceptualizing the respective law provisions within the health care policy context. Specifically, the 2005 Circular of the Greek Ministry of Health provides that undocumented migrants will receive necessary health care only in cases of an emergency and until their health has been ‘stabilized’.³⁹ Here, the strict notion of emergency medical care is supplemented by two more flexible notions of necessary health care and ‘stabilization’, which would enable treatment, such as regular follow-ups with the doctor, to be considered as part of the concept of emergency medical care. However, no legislative provision gives clarity with regard to the vague concept of the term ‘stabilization’ and, thereby, once again members of the medical profession are left to decide on this issue, namely on a case-by-case basis.

In 2012, due to high irregular migration flows combined with the rising costs of health care, the Greek Ministry of Health issued an urgent Circular (henceforth: 2012 Circular) with the aim of giving further explanations about access to the hospital, medical and pharmaceutical care system of the country by uninsured aliens, including undocumented migrants.⁴⁰ Particularly, the 2012 Circular stresses that recognized refugees, asylum seekers, beneficiaries of supplementary protection and those subject to the protection regime for humanitarian reasons may be subject to the system of free medical, pharmaceutical and hospital care of the country under certain conditions. Moreover, the same Circular provides for the inclusion in the system of free medical, pharmaceutical and hospital care of the legally residing third-country nationals.⁴¹ With respect to undocumented

May 2012, Stockholm: ECDC 2013, pp. 6 and 14; Médecins du Monde, *European Survey on Undocumented Migrants Access to Health Care*, European Observatory: Médecins du Monde 2007. <<http://www.mdm-international.org/IMG/pdf/rapportobservatoireenglish-2.pdf>>; Note that under a ministerial circular (Greek Ministry of Health), namely Y4a/oik 89-29/12/2005, undocumented migrants can receive antiretroviral therapy on condition that his/her physician can certify that such treatment is not available in the country of his/her origin.

³⁹ § 5, Circular OIK/EMP518/ 21-02-2005 on ‘Healthcare for Migrants’.

⁴⁰ Greek Ministry of Health, Circular Y4a/oik.45610/02-05-2012, ‘Clarifications with respect to the access of the uninsured and aliens to the system of medical, pharmaceutical and hospital treatment of the country’.

⁴¹ *Ibid.*; Note also that in 2006 the Greek Ministry of Health in line with the PD 266/1999 (Articles 15-17) issued a Ministerial Decision under the number 139491/16-11-2006 (*Official Government Gazette*- ΦΕΚ issue Β’ 1747/30-11-2006). More specifically, it provides the ‘requirements, definition, criteria and procedures for access to the system of nursing and health care uninsured and financially weak people’. Accordingly, only migrants who reside

migrants, it is noted that this population group is covered only in cases of an emergency (i.e., concerning a life threatening situation) and, particularly, when they are admitted through an emergency department of a hospital. The 2012 Circular, also, adds that access to health care for undocumented migrants is provided in critical cases of treatment of certain communicable diseases, including treatment for HIV/AIDS. In addition, it notes that such cases shall be covered until the ‘stabilization’ of the health of undocumented migrant patients, without though once again elaborately defining the content of this term. Nevertheless, this implies that undocumented migrants with HIV/AIDS or other communicable disease should be admitted if they are seriously ill and in immediate danger, but they will not be eligible for further care after their discharge from hospital. Thereby, the 2012 Circular explicitly asserts that undocumented migrants are not entitled to access health care beyond emergency situations, including treatment for certain communicable diseases that constitute a public health hazard.⁴²

Last but not least, as regards undocumented migrant women, beyond obtaining emergency care treatment and care during childbirth, there is no concrete legal obligation to ensure the provision of appropriate pre- and post-natal care. This means that under Article 26 § 2(a) of Law 4251/2014 these women are entitled to receive medical care solely linked to obstetric complications related to pregnancy, a condition that constitutes an emergency, and to childbirth, without having access to other forms of care, including pre-natal or post-natal care.

7.3.4. UNDOCUMENTED MIGRANT CHILDREN AND ACCESS TO HEALTH CARE

For undocumented migrant children, present within the Greek territory, the Greek State applies a different standard in comparison to undocumented migrant adults.⁴³ More specifically, Law 4251/2014 in Article 26 § 2 combined with the 2012 Circular makes a specific distinction regarding children unlawfully residing in Greece.⁴⁴ Accordingly, it is explicitly provided that children, whether accompanied

legally in Greece with a residence permit on humanitarian grounds are entitled to free medical care.

⁴² Ibidem supra note 40.

⁴³ Note that Greece defines children as all human beings below the age of 18, which is also in line with the CRC definition (see Article 121(1) of the Greek Penal Code in conjunction with Article 127 of the Greek Civil Code, where there is an implicit definition of children, and Article 1 CRC).

⁴⁴ Ibidem supra notes 33 and 40.

or not and regardless of their legal status or that of their parents, are entitled to receive the same health care under the same conditions as legal migrants and Greek nationals.⁴⁵

The introduction of this exception in line with the CRC which constitutes supreme national law, reflects that the legislature in Greece seems to acknowledge that children, by reason of their physical and mental immaturities, need special safeguards and care, including legal protection, and should not be discriminated on the basis of their dependency upon the status, activities of other people, such as their parents, legal guardians or family members.⁴⁶ The respective law provisions in principle recognize that children must be medically treated irrespective of their legal status and unimpeded access to health care must be ensured for this vulnerable population group.

In practice, however, the Committee on the Rights of the Child (CRC Committee) in its 2012 CO on Greece expressed its concern with regard to the limited level of access to health care for undocumented migrant children, primarily in light of the principle of 'economic accessibility' (see Part I, section 3.5).⁴⁷ Notably, in 2012 the CRC Committee reiterated its concern about the poor access to health care for undocumented migrant children, expressed in previous observations for Greece in 2002.⁴⁸ The Committee, then, had, also, suggested that undocumented migrant children should have sufficient access to health care, including psychological care.⁴⁹ In this respect, the Committee, having acknowledged that its recommendations have been insufficiently or partly addressed, urged once again Greece to ensure that undocumented migrant children have equal access to health without discrimination on any ground.⁵⁰ Nonetheless, it must be conceded

⁴⁵ Ibid.

⁴⁶ See, preamble and Article 2(2) CRC (20 November 1989, entered into force 2 September 1990 1577 UNTS 3); With respect to the notion of family, the jurisprudence of the ECtHR has recognised as family members non-married partners, children born out of wedlock, dependent adult children. The ECtHR in its case law affirms the existence of family ties regardless of the marital status, the gender identity or sexual orientation. For instance, see, *Onur v. the United Kingdom* (Application no. 27319/07) ECtHR 17 February 2009, § 43-44; *Ciliz v. the Netherlands* (Application no. 29192/95) ECtHR 11 July 2000, § 59; *Schalk and Kopf v. Austria*, (Application no. 30141/04) ECtHR 24 June 2010, § 91 and 94; Greece has ratified the CRC and incorporated it by Law 2101/1992, *Official Government Gazette-ΦΕΚ* issue A' 192/02-12-1992.

⁴⁷ UN CRC Committee, CO: Greece, UN Doc. CRC/C/GRC/CO/2-3, 13 August 2012, § 52.

⁴⁸ UN CRC Committee, CO: Greece, UN Doc. CRC/C/15/Add.170, 2 April 2002, § 56(e).

⁴⁹ Ibid., § 69(f).

⁵⁰ Ibidem supra note 47, UN CRC Committee 2012, §§ 7, 26, 27(b) and 53.

that the CRC Committee beyond general exhortations and recommendations has not addressed in detail the position of undocumented children in Greece (see also Part I, section 4.2.2). Perhaps, the Committee has tended to avoid this discussion and to be confined to reiteration of concerns rather than provide any real insight into the measures required by the Greek State in this respect.

7.3.5. THE CRITICAL ROLE OF NGOS

Increased irregular migration combined with limited access to health care for undocumented migrants have led to the proliferation of the number of Non Governmental Organizations (NGOs) working in the field of assistance and promotion of rights parallel to the Greek State.⁵¹ In Greece, NGOs, such as Médecins du Monde-Greece and Médecins Sans Frontières-Greece, have undertaken several activities-programmes dedicated to the promotion and protection of undocumented migrants' health in response to the limited access to health care provided by the Greek State. Thereby, NGOs have assumed an increasingly important role in granting undocumented migrants the needed health care, involving primary health care, preventive care, vaccinations, early diagnosis and medical follow up, maternal and reproductive care and psychological support (see also section 7.2).

Note by way of background that Médecins du Monde Greece (MdM-Doctors of the World), the Greek branch of MdM, has opened five polyclinics where volunteer health and social professionals treat undocumented migrant patients. The first of these clinics began its operation in Athens in 1997, while they are now available in Greece's five largest cities, namely in Athens, Chania (Crete-2007), Perama (next to Pireus-2010), Patras (2012) and Thessaloniki (2001).⁵² The working hours of the polyclinics are adapted to the health needs of the individuals and are open on a regular basis per week. Moreover, in December 2010, Médecins du Monde Greece responded to the increased irregular migration influxes and operated two mobile units to assist access to health care in Patras and Igoumenitsa, harbor towns located on the western coast of Greece.⁵³ Meanwhile, Médecins Sans Frontières (MSF) has been providing medical assistance to undocumented migrants in Greece from 1996 until 2004 and from 2008 until today. Mainly since 2008,

⁵¹ See, e.g., Médecins du Monde, *Access to Healthcare in Europe in Times of Crisis and Rising Xenophobia*, France: Médecins du Monde 2013, p. 4.

⁵² Ibid., p. 30; See also, Médecins du Monde-Greece, *Programmes of Medical and Psychological Support*, Greece: MdM <<http://www.mdmgreece.gr>>.

⁵³ Médecins du Monde, *Access to Health Care for Vulnerable Groups in the European Union in 2012*, France: Médecins du Monde 2012, p. 17.

Médecins Sans Frontières Greece responded to the lack of health care at the detention centers in regions of Evros (i.e., Filakio, Soufli, Tichero and Feres) and volunteered to treat detained undocumented migrants in serious need for health care and psychological support, principally related to the poor detention conditions and to the lack of access to regular medical care.⁵⁴

In light of the above, it appears that the initiatives undertaken by NGOs, such as the MdM-Greece and MSF Greece, are not organized and regulated on the basis of a formal (participatory) structure, but rather at personal level.⁵⁵ Particularly, during the course of their action these organizations have created unofficial networks of (specialist) physicians for providing their services (i.e., free access to adequate care and hospital referrals) on a voluntary basis by means of co-operation across Greece.⁵⁶ At this point, it is essential to stress that members of the medical profession, working in the public sector (i.e., state officials), in case they are caught to provide more than emergency medical care to undocumented migrants, are disciplinary and criminally liable due to the infringement of their duties pursuant to prior Article 84 § 4 of Law 3386/2005 and Article 26 § 4 of Law 4251/2014.⁵⁷ This might explain why the NGOs have tended to avoid developing formal mechanisms in preference for mechanisms primarily based on interpersonal relationships, as aforementioned.

Meanwhile, given the potential threats to individual and population health the NGOs have in several instances voiced their concerns about the limited access to health care granted to undocumented migrants (section 7.3.3).⁵⁸ Indeed, such organizations can help to raise awareness by means of information campaigns and

⁵⁴ Médecins Sans Frontières, *Medical Assistance to Migrants and Refugees in Greece*, Greece: MSF 2013; Médecins Sans Frontières, *Critical Conditions within the Detention Centers*, Greece: MSF, <<http://www.msf.org>>

⁵⁵ See as to the process followed by respective NGOs to achieve their goals: Website <<http://mdmgreece.gr/en/statute-resources/>>; Website <<http://www.msf.org/en/about-msf/msf-charter-and-principles>>; European Union Agency for Fundamental Rights, '*Migrants in an irregular situation: access to healthcare in 10 European Union Member States*', Luxembourg: Publications Office of the European Union 2011, pp. 30-31.; Note also that the Greek State has not developed a firm legislative framework to regulate and supervise the activities of NGOs.

⁵⁶ Ibid.

⁵⁷ Ibidem supra note 33.

⁵⁸ Ibidem supra note 53, p. 2. For instance, Médecins du Monde prepared and addressed a petition for signing to European health professionals, asking them to take a position on the limited access to health care for undocumented migrants by stipulating that they will not deny treatment to patients on any basis. Consequently, the petition was signed by 147 health professional bodies and submitted to the European Parliament.

strategies that involve health professionals, community leaders and citizens as to the long-term health consequences of such State legislative measures.⁵⁹ Ultimately, the active participation of civil society as a way of identifying health-related solutions and of combating exclusion of this vulnerable group will exert social pressure for political commitment against inhuman and degrading treatment of undocumented migrants and for State compliance with its treaty obligations.⁶⁰ Thereby, such participatory initiatives could lead not only to the alteration of national laws and policies, but also to the reinforcement of solidarity within the Greek society.

7.3.6. REMAINING ISSUES

The lesson to be drawn from the above analysis is that the recognition of an entitlement to health (care) for undocumented migrants does not automatically imply that this specific population group will obtain access to the same extent of health care and under the same conditions as Greek nationals. The constitutional referral to the term *citizens* in relation to the State's duty to provide health care in Article 21 § 3 in connection with access to mere emergency medical treatment for undocumented migrants generally creates a tension with the human rights framework. In particular, such developments raise issues of great concern in light of the State's compliance with the AAAQ framework, which, *inter alia*, requires that health care must be accessible to all without discrimination, as will be further elaborated below. Importantly, the CESCR has noted with concern in its 2015 report for Greece that undocumented migrants 'encounter difficulties in gaining access to health-care facilities, goods, services and information (art. 12)'.⁶¹ Here, it is essential to mention that while the concluding observations of the UN treaty monitoring bodies, like CESCR, are not legally binding, they tend to provide some authoritative material for underlining that Greece, in order to comply with its right to health obligations, must meet the specific and distinctive health needs and interests of undocumented migrants.

When looking at the availability of health care services for undocumented migrants, the CESCR has emphasized that the Greek State should ensure that undocumented migrants and their members of their families have access to basic health care, including health examinations upon their arrival in Greece as well as

⁵⁹ Ibid.

⁶⁰ For instance, Médecins du Monde Greece developed a project called '*Enough!*' in collaboration with the Greek Council for Refugees with the aim of reacting against the rise of xenophobia in Greek society, <<http://www.mdmgreece.gr>>.

⁶¹ UN CESCR, CO: Greece, UN Doc. E/C.12/GRC/CO/2, 27 October 2015, § 35.

the availability of translation services and information on health-care services whose lack is also a cause for concern regarding the quality of care given to these migrants.⁶² In practical terms, this means that the Greek State should strive to provide holistic health care, namely beyond the provision of solely emergency medical treatment, to undocumented migrants, including preventive treatment (early diagnosis and medical follow-up), child immunization, prenatal and neonatal care, and dental care in conformity with the broader understanding of the right to health primarily under Article 12 ICESCR as well as Article 5 § 5 of the Constitution of Greece (see Part I, section 4.2.3).⁶³ Instead, over the years under respective law provisions the Greek State has explicitly denied these people the right to preventive and almost all palliative health care with the exception of when their medical condition has reached the phase of emergency care which is permitted by law (see section 7.3.3).⁶⁴ In light of the limited access to health care, undocumented migrants with chronic diseases (e.g., asthma, diabetes, HIV/AIDS etc.) are formally excluded from accessing adequate health care as well as all forms of necessary preventive and curative health care (chronic disease management) and, consequently, they are deprived of their right to health (care) with serious effects to their well-being in the long-term. This situation raises concern in light of the principle of ‘availability’ under the ‘AAAQ’ and requires some considered and systematic attention on the part of the Greek State.

Specifically, this essential element of ‘availability’ under the ‘AAAQ’ requires due attention especially regarding undocumented migrant women and children who constitute particular vulnerable population groups as they are exposed to a greater extent than men to the possibility of deteriorating health due to their legal status and to their special health needs associated to gender, age and dependency upon the decisions of others. As such, when it comes to access to health care for undocumented migrant women, the Greek State must give attention to the provision of gender-specific care, namely maternal health care (pre-natal as well as post-natal care) to all women, irrespective of their status primarily pursuant to the CEDAW, which is binding for Greece. However, the prevailing practice, namely

⁶² Ibid., UN CESCR, CO: Greece 2015, § 36(c).

⁶³ The UN CESCR under § 34 of its GC No. 14 (supra note 21) on the right to health underlines that ‘[i]n particular, States are under the obligation to *respect* the right to health by, *inter alia*, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal immigrants, to preventive, curative and palliative health services; abstaining from enforcing discriminatory practices as a State policy...’.

⁶⁴ Ibidem supra note 33.

the limited access to health care for this vulnerable population group, constitutes a questionable development given that this state practice is not in accordance with Article 24 § 2 (d) CRC and Article 12 § 2 CEDAW (see Part I, section 2.2.2), which are both binding for Greece.⁶⁵ As a consequence, pregnant undocumented migrant women do not receive prenatal care and only seek medical attention on the day of delivery. Meanwhile, the European Parliament, repeatedly acknowledging the prevailing restricted policies for undocumented migrant women among EU Member States, like Greece, in its 2011 and 2014 resolutions, while not having strictly binding status, draws attention to the promotion of public policies that aim at gender-specific health needs of undocumented migrant women. In particular, the European parliament calls EU Members States, like Greece, to ensure sufficient access to reproductive and maternal health care, including safe motherhood, and the protection of all (pregnant) women regardless of their status.⁶⁶

As regards to undocumented migrant children, the respective law provisions recognize (in principle) that children must be medically treated irrespective of their legal status or that of their parents. Here, the Greek law is consistent with its treaty obligations as these children are explicitly via law entitled the same care as legal migrants and Greek nationals (see section 7.3.4). Such an approach is, also, adopted in the case law of the ECSR, which has, *inter alia*, focused on the position of children of illegally residing migrants and provides some useful insights with regard to their entitlement to health care. In fact, the Committee has pointedly noted that mere emergency medical care is not considered sufficient for this vulnerable group (see Part I, sections 2.3 and 4.3).⁶⁷ Nevertheless, it is notable that the provision of care to undocumented migrant children starting as from their birth is not explicitly addressed by the respective law provisions. Considering this, one perceives the possible tension created with the principle of ‘availability’.

⁶⁵ See Annex 2.

⁶⁶ *Ibidem supra* note 2, European Parliament resolution 2011, §§ 21 and 22; European Parliament resolution of 4 February 2014 on Undocumented Women Migrants in the European Union, (2013/2115 (INI)), §§ 9 and 10; Note that WHO provides guidance to States as to the processes and the practical measures to be developed with a view to ensuring the provision of appropriate pre- and post-natal care to all women (WHO, *Standards for Maternal and Neonatal Care*, Geneva: World Health Organization 2007).

⁶⁷ See, e.g., *International Federation of Human Rights Leagues (FIDH) v. France* (Complaint No. 14/2003, 3 November 2004) §§ 36-37 - Notably, the ECSR found a violation of Article 17 (Revised) ESC which provides an expansive protection (social, legal and economic protection) with respect to children; *Defence for Children International (DCI) v. Belgium* (Complaint No. 69/2011, 20 November 2012) § 152- The ECSR found a violation of Articles 11(1) and (3), and 17 (Revised) ESC.

In light of the principle of accessible health care without discrimination, which is one of the components of accessibility, it requires considered attention that the Greek State, through its law and policy, regulates access to health care for undocumented migrants upon the migration status (i.e., regular or irregular migration status), except from undocumented migrant children (whether accompanied or not).⁶⁸ This has led to limited access to health care for this vulnerable group, namely only to situations which involve an immediate threat to life. This also means that in virtue of the lack of legal status, undocumented migrants cannot enroll for health insurance schemes and as such, they seek informal channels of health care. This, however, in addition to the persistent health sector corruption (i.e. under the table payments), as observed in chapter 6, renders them more vulnerable to exploitation and increased health risks, in that it becomes even more difficult for them to access health care in Greece. As a result, such cases which are not regulated upon medical criteria (i.e. health status and health needs of discrete groups) raise concern in light of the aforementioned principle. Indeed, the CESCR in its 2015 report for Greece was concerned about ‘the persistent discrimination against persons with immigrant backgrounds’, especially in health care.⁶⁹

Another issue of high concern is economic accessibility (i.e., affordability of care), primarily as regards to undocumented migrants with chronic diseases, undocumented migrant (pregnant) women and children who require more care than others throughout their lives and often lack required financial resources due to high rates of poverty and lack of employment etc. In such cases, when care is available, costs associated with accessing this care, including increased user fees and high prices in medicines, constitute a significant barrier to such care. This could imply that these groups of patients are confronted with an excessive financial burden that threatens their affordability of health care and ultimately affects adversely their health status. For example, in cases of pregnancy, undocumented migrant women may give birth at full cost, as this matter is not addressed explicitly by the respective law (see section 7.3.3). This financial

⁶⁸ Note that such a practice is in conjunction with Article 13(4) of the RESC, which is binding for Greece and provides equality of medical treatment on the grounds of the legality of an individual’s presence. (Revised European Social Charter (RESC), 3 May 1996, entered into force 1 July 1999, E.T.S. 163) - Greece ratified and incorporated the Revised ESC by Law 4359/2016 (Annex 2). Nonetheless, it is worth noting that although the rights in the (revised) ESC, in principle, are granted solely to persons lawfully present within contracting Member States, the case law of ECSR is gradually expanding the scope of the respective provisions with regard to undocumented migrant children (see *supra* note 67).

⁶⁹ *Ibidem supra* note 61, UN CESCR, CO: Greece 2015, § 9.

burden could lead a number of undocumented migrant women in labor to seek unacceptable and risky solutions, such as to give birth at home primarily without medical support, which increases the risks of complications at birth and of deteriorating both the health of the mother and the newborn. It is on this basis that the CEDAW Committee expressed its concern in its concluding observations for Greece and urged Greece to adopt measures with a view to ensuring that this group has sufficient access to available health care.⁷⁰ Particularly, the Committee has drawn attention to the social exclusion and vulnerability of this group in conjunction with ‘the obstacles preventing them from enjoying basic rights such as access to health-care services ...’.⁷¹ As such, the Committee recommended ‘that the State party (a) takes all necessary measures to improve the economic situation of disadvantaged groups of women, thereby eliminating their vulnerability to exploitation, and to improve their access to health-care services and social benefits, irrespective of their status...’.⁷²

When looking also from the perspective of economic accessibility, another issue of concern arising is that in practice there is an apparent contrast between the legal provisions that recognize the same rights to health as Greek children and the prevailing policies that create obstacles to treatment of undocumented migrant children, such as the high costs of health care and could be prejudicial to their health.⁷³ In other words, there is an apparent gap between the law and the living reality of these children, as the Greek State fails to translate its right to health obligations in accordance with the socio-economic reality in which these children and their families live, namely fails to ensure affordable care to these children and their families. On this basis, the Greek State has repeatedly received critique from the CRC Committee, as already mentioned.⁷⁴ Even so, it is worth noting that no

⁷⁰ UN CEDAW Committee, CO: Greece, UN Doc. CEDAW/C/GRC/CO/7, 1 March 2013, §§ 32 and 33(a).

⁷¹ *Ibid.*, § 32.

⁷² *Ibid.*, § 33(a).

⁷³ Notably, the ECtHR has ruled that a State owes a duty to take adequate measures to provide care and protection for all children as part of its positive obligations under Article 3 ECHR. Thereby, inadequate care and protection of children, especially in cases of unaccompanied children due to their increased vulnerability, may amount to inhuman treatment pursuant to Article 3 ECHR. See, *inter alia*, *Mayeka and Mitunga v. Belgium* (Application no. 13178/03), ECtHR 12 October 2006, §§ 50, 53, 55, 58, 69; *Rahimi v. Greece* (Application no. 8687/08), ECtHR 5 April 2011, §§ 33, 87.

⁷⁴ *Ibidem supra* notes 47 and 48; See, for an analogous approach, e.g., UN CRC Committee, General Comment No. 3: *HIV/AIDS and the rights of the child*, UN Doc. CRC/GC/2003/3, 17 March 2003, § 21. Accordingly, the CRC Committee stressed that State parties must

individual is entitled to receive any type/form of health care free of charge in all circumstances.⁷⁵ Nevertheless, the Greek State should create favorable environments for the enjoyment of the right to health (care) through the functioning of its health system and health insurance schemes,⁷⁶ bearing in mind that good individual health is also to the benefit of the public, in that individuals with certain diseases (i.e., communicable diseases) constitute also a threat for others (see below section 7.4.2).

In addition to the serious concerns raised with regard to the ‘AAAQ’ requirements, participation and accountability, important elements of the right to health framework (see Part I, section 3.5) are not given considerable attention on the part of the Greek State in the formulation, implementation and assessment of health-related law and policies for undocumented migrants. Particularly, this can be illustrated when looking at developments-policies that link access to health care with immigration control, involving detention and expulsion of undocumented migrants with life-threatening conditions, compulsory medical testing, as will be further elaborated in section 7.4. Considering such questionable developments, the Greek State should ensure the establishment of participatory and accountability mechanisms sensitive to the undocumented status of this population group, namely mechanisms that are easy for them or for their representatives to access without fear of sanctions. Importantly, in many cases the fear of sanctions, namely the fear of being caught, detained and deported serves as a deterrent for undocumented migrants to file a complaint about malpractices or to report substandard care.

Significantly, it also became evident that while the Greek State has the primary and overall responsibility, in practice a number of NGOs have assumed greater role in realizing the right to health (care) for undocumented migrants in Greece through informal social protection structures that run parallel to the State (see section 7.3.5). At the same time, such development, though, constitutes a serious cause for concern, in that the Greek State might decide to absolve itself from its ultimate responsibility for realizing the right to health (care) for undocumented migrants given its hardly manageable costs of healthcare, scarcity of resources and large irregular migration flows. All in all, one may agree with the argument that the ‘virtual exclusion of

‘sufficiently take into account differences in gender, age and the social, economic, cultural ... context in which children live’ in the design and development of health-related policies.

⁷⁵ K. Tomaševski, ‘Indicators’, in: A. Eide, C. Krause and A. Rosas (eds), *Economic, Social and Cultural Rights. A Textbook*. 2nd revised ed. Dordrecht/Boston/London: Martinus Nijhoff Publishers 2001, pp. 531-543, p. 543.

⁷⁶ *Ibid.*; A. Hendriks, ‘The Right to Health in National and International Jurisprudence’, *European Journal of Health Law* 1998, Volume 5(4), pp. 389-408, p. 401.

illegals would appear to confirm that the present state of human rights focuses on citizens, and, rightly, tries to be accommodating to non-nationals, as long as they are lawfully present'.⁷⁷ Indeed, in Greece, irregular migration is a constantly pressing issue and the Greek State uses health care more as a mechanism, serving migration control reasons, namely discouraging the future entry of migrants in an irregular situation, rather than considering it from a right to health perspective.

Last but not least, given the 5-yearly economic crisis and the increasing attention to undocumented migrants within the EU, the Greek State needs to cooperate intensively with other EU Member States (in terms of solidarity and responsibility sharing among the States) as well as with international organizations (e.g., WHO) on the fulfillment of its right to health obligations for undocumented migrants (see Part I, section 4.4).⁷⁸ In this respect, a constructive dialogue and combined efforts are required for the adoption of a set of clear and practical implementation measures targeted to the distinctive health needs of undocumented migrants at the national and European level that will contribute to the effective implementation of these obligations within its jurisdiction.⁷⁹ Being perhaps the most striking example, on 20 and 21 April 2015 in an informal meeting the Ministers of Health of Greece, Italy, Malta and Cyprus addressed the significance of the inclusion of the health dimension in the European agenda for migration especially due to the growing irregular migratory flows in the Mediterranean countries of the EU. This initiative of the four Ministers of Health aimed at increasing awareness of the health dimension of migration as well as of shared responsibility, namely of a need for co-operation and collaboration among EU Member States in this regard and of adoption of a common approach to address health-related challenges posed by increasing irregular migration.⁸⁰

7.4. AREAS OF CONCERN AND STEPS FORWARD

In essence, the Greek experience illustrates the challenges when a country tends to abide by its right to health obligations -albeit not in a concrete manner- for every individual, including undocumented migrants, while at the same time tries to control the high influx of irregular migration and the rising costs of its health care.

⁷⁷ P. Van Krieken, 'Health and continued residence: reason or pretext' *European Journal of Health Law* 2000, 7(1) pp. 29-46, p. 35.

⁷⁸ *Ibidem* supra note 61, UN CESCR, CO: Greece 2015, § 12.

⁷⁹ UN Special Rapporteur, Crépeau (infra note 105), §§ 84 and 118.

⁸⁰ General Secretariat of the Council, *Employment, Social Policy, Health and Consumer Affairs Council meeting on 18 and 19 June 2015 - The importance of the health dimension in the European Agenda on Migration*, Brussels: Council of Europe, Doc. 9479/15, 4 June 2015.

When it comes to undocumented migrants, the effective enjoyment of their right to health (care) is being challenged by state actions and policies, which signal dangers for the individual and population health. Notably, as will be subsequently elaborated, the right to health of undocumented migrants is reinforced and supported by other rights which address integral components of the right to health and have notable right to health implications (see Part I, section 2.5).⁸¹ These rights in conjunction with the right to health oblige the Greek State to enhance the position of undocumented migrants by meeting their diverse health needs and provide them an unimpeded access to health care. Thus, particular areas of concern, which may threaten the objectives of the right to health and are also pointed out by respective human rights bodies, coupled with steps forward will be highlighted below.⁸²

7.4.1. EXPULSION OF SERIOUSLY ILL UNDOCUMENTED MIGRANTS

The way under which a migration law is enforced and applied has a direct impact on whether undocumented migrants with serious health care needs will receive appropriate medical treatment. A cause for concern from a human rights perspective is the expulsion of undocumented migrants with serious health problems by the Greek authorities. Article 19A § 2 (e) of Law 4251/2014 provides that a residence permit may be issued on humanitarian grounds to third-country nationals with serious health problems.⁸³ However, preconditions of such a permit are that the applicant should obtain a strong residence permit, indicative of his or her legal status, and a recent medical certificate. The medical certificate should clearly address the immediate need for medical or surgical treatment (health status), which cannot be deferred without prejudice to the applicant's health as well as the duration of such treatment. This means that an individual with serious health problems may be expelled to his or her country of origin if he or she does not fulfill both of the two aforementioned requirements.

At this point, it is essential to mention that the aforementioned law provision

⁸¹ Ibidem supra note 21, GC No. 14, § 3.

⁸² See, e.g., Ibidem supra note 61, UN CESCR, CO: Greece 2015, §§ 12 and 35 as well as respective Reports of two UN Special Rapporteurs on the right to health (UN Doc. A/HRC/4/28/Add.2) and on the human rights of migrants (UN Doc. A/HRC/23/46/Add.4) respectively, where the Rapporteurs have occasionally voiced their concern about the respective challenges that are discussed in the context of Greece in section 7.4.

⁸³ Ibidem supra note 33. As added by Law 4332/2015, Article 8 § 25, *Official Government Gazette*, ΦΕΚ issue Α' 76/09-07-2015. The duration of residence permit is two years which may be extended every two years on condition that the applicant continues to fulfill the requirements under the respective law.

should be read in conjunction with Article 37 § 4 (a) of Law 2910/2001, where it is explicitly stressed that undocumented migrants cannot receive a temporary residence permit for medical reasons if they have entered the country illegally. Consequently, those migrants are not entitled to obtain an expulsion delay for medical reasons, as their petition to the respective authority can be considered inadmissible.⁸⁴ Meanwhile, the aforementioned law provisions and the ensuing state decisions can be a cause for concern, as they do not integrate considerations about the availability of a required treatment in the undocumented migrant's country of origin as well as the accessibility of the treatment to the particular individual in question. As a result, these developments have significant right to health implications (see Part I, section 3.5), as they are inconsistent with the individual's right to health.

At the same time, the denial of health care combined with the expulsion of undocumented migrants has, also, been considered to be in conflict with the prohibition of inhuman and degrading treatment. In fact, the expulsion of a seriously ill undocumented migrant to his or her country of origin and exclusion from essential healthcare treatment may amount to inhuman or degrading treatment and, thereby, may constitute a violation of Article 3 ECHR, which is legally binding for Greece.⁸⁵ Indeed, there are several decisions of the ECtHR about whether the expulsion of an alien with a life-threatening illness would constitute inhuman or degrading treatment in the event that treatment was unavailable in the country of origin.⁸⁶ In this respect, the ECtHR in the landmark case of *D. v. the United Kingdom* (1997) pointed at the distressing conditions under which expulsion of a severely ill non-national and that these could constitute a breach of the prohibition of inhuman and degrading treatment under the European Convention on Human Rights (Article 3).⁸⁷ Accordingly, the Court noted that the expulsion of a person being in advanced stages of an incurable illness, to his country of origin, where no effective medical or palliative treatment for his illness was available coupled

⁸⁴ As amended by Article 8 § 2 of Law 3146/2003, *Official Government Gazette*, ΦΕΚ issue A' 125/23.5.2003.

⁸⁵ Article 3 ECHR (4 November 1950, ETS 5) stipulates that 'No one shall be subjected to torture or to inhuman or degrading treatment or punishment'. The ECHR was incorporated with Legislative Decree 53/1974, *Official Government Gazette*, ΦΕΚ issue A'256/20-09-1974.

⁸⁶ See, e.g. *N. v. the United Kingdom* (Application no. 26565/05), ECtHR 27 May 2008; *Salkic and Others v. Sweden* (Application no. 7702/04), ECtHR 29 June 2004, p. 10; *Ndangoya v. Sweden* (Application no. 17868/03) ECtHR 22 June 2004, p. 13; *Arcila Henao v. the Netherlands* (Application no. 13669/03), ECtHR 24 June 2003, p. 8; *Bensaid v. the United Kingdom* (Application no. 44599/98), ECtHR 6 February 2001, § 38.

⁸⁷ *D. v. the United Kingdom* (Application no. 30240/96) ECtHR 2 May 1997, §§ 49-54.

also with the lack of accommodation, family, moral or social support, mainly exposing him to the risk of dying, would amount to inhuman treatment. However, the Court emphasized the exceptional circumstances of such a case.⁸⁸ The Court, thereby, is rather hesitant to engage such a positive state obligation under the Convention concerning the non-expulsion of a seriously ill individual to his or her country of origin, where the available health care is less favorable than those already enjoyed in the host country; and it may result in the deterioration of his or her condition, without, though, his or her illness reaches a terminal stage (i.e., imminent death or serious physical and mental suffering).⁸⁹

Lastly, in terms of consistency with the right to health framework (see Part I, section 3.5) when judging an expulsion of a seriously ill undocumented migrant, Greek authorities must give special and more considered attention to the level of availability and accessibility to appropriate health care in the country to which the individual is to be returned, pursuant to the specific state of health of the individual (i.e., in the context of progression of the illness and possible complications). Otherwise, the Parliamentary Assembly of the Council of Europe has cautioned - in an effort to guide the coordination of national legislations and policies in a non-binding manner- that the expulsion of a seriously ill migrant will amount to a 'death sentence' for that person.⁹⁰

7.4.2. PUBLIC HEALTH ISSUES RELATING TO UNDOCUMENTED MIGRANTS

The regulation of access to health care upon the migration status combined with the imposition of (arbitrary) detention measures on the part of the Greek State has raised issues of concern, in that the respective law provisions and practice do not take into account the right to health perspective and create tension with the human rights framework. In Greece it appears that concerns about public health issues often underlay several strict policy decisions-measures on the part of the Greek State. Indeed, in response to the growing concern with respect to public health interests due to an HIV outbreak since the beginning of 2011 in Greece, the Greek

⁸⁸ Ibid., §§ 49 and 54; See Part I, section 2.3 ('3 *European Convention for the Protection of Human Rights and Fundamental Freedoms*') for the approach adopted by the ECtHR in similar cases.

⁸⁹ Ibidem supra note 87.

⁹⁰ Report 13391 of the Committee on Migration, Refugees and Displaced Persons of the Parliamentary Assembly of the Council of Europe on 'Migrants and refugees and the fight against AIDS', 2014, p. 3.

State issued Health Regulation YA GY39a/2012⁹¹ and Article 59 of Law 4075/2012.⁹² Accordingly, Article 59 of Law 4075/2012, in conjunction with Article 1 of the YA GY39a/2012 Health Regulation, provides for individuals, including undocumented migrants, to be detained and compulsory treated for reasons of safeguarding public health interests. Pursuant to the regulation, as a priority of forcible testing and isolation are considered cases that represent ‘a danger to public health’; ‘suffer from infectious diseases’; ‘belong to groups vulnerable to infectious diseases, especially because of the country of origin’; or live in ‘conditions which do not comply with the minimum standards of hygiene’.⁹³ Meanwhile, concerns were expressed about the extent of compatibility of such legislative provisions with human rights law as well as with the Constitution of Greece by several human rights organizations (Part I, section 4.2.3).⁹⁴ In fact, the provisions of the YA GY39a/2012 Health Regulation and Law 4075/2012 (Article 59) require the imposition of compulsory medical examination (i.e., obligatory even non-consensual HIV testing) and treatment; and the use of mandatory detention solely justified on the basis of an indication of a health risk. When considering the underlying rationale for mandating compulsory treatment and the process followed by the Greek State, namely that this policy is performed without informed consent (failing to respect the rights to autonomy, dignity and confidentiality of health information), we can conclude that this policy is incompatible with health-related human rights standards, including the right to health, and constitutes a human rights breach (see Part I, section 3.5 and Part II, section 6.4.3).⁹⁵

⁹¹ ‘Provisions on the Restriction of the Spread of Infectious Diseases’, *Official Government Gazette* - ΦΕΚ issue B’1002/02-04-2012. The regulation lists several diseases of public health importance, including influenza, tuberculosis, malaria, polio, syphilis, hepatitis, and HIV.

⁹² Article 59 of Law 4075/2012 amended Article 13(2) of the Presidential Decree 114/2010 and Article 76 (1) (d) of Law 3386/2005; See, also *supra* note 50. Accordingly, a 57% increase in 2011 in the number of HIV/AIDS cases was reported combined with a high increase in the number of people dying of HIV-AIDS from 2007-2009.

⁹³ *Ibid.*

⁹⁴ See, e.g., Joint United Nations Programme on HIV/AIDS (UNAIDS), *UNAIDS urges Greek authorities to repeal Sanitary Decree- Press Statement*. Accordingly, the UNAIDS requested for the repeal of the law as it ‘could serve to justify actions that violate human rights’. <http://www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2013/july/20130731greece/>; *Ibidem infra* note 105, § 44. Accordingly, the Special Rapporteur on the human rights of migrants noted that ‘these measures are discriminatory and target the most vulnerable migrants, and that they will lead to even more stigmatization’.

⁹⁵ For instance, as regards the consent of the patient this practice is not in accordance with Article 5 of the Biomedicine Convention, which is legally binding for Greece. Note that the

In January 2005, the ECtHR in the case of *Enhorn v. Sweden* set out the essential criteria for the justification of the detention of a person ‘for the prevention of the spreading of infectious diseases’. Accordingly, with regard to the criteria, the Court stressed that attention should be given on whether the spreading of an infectious disease is dangerous to public health or safety, and whether the detention of the person infected is the last resort in order to prevent the spreading of the disease. It, further, noted that the less severe measures should be considered first before applying more restrictive ones, such as detention.⁹⁶ Thereby, beyond considering the short-term outcomes of State health interventions, attention to human rights law can offer some guidance on how such interventions should be implemented in order not to threaten both the rights of individuals and public health in the long-term (see Part I section 3.5).⁹⁷ It is incumbent on the Greek State to strike the right balance between the need to protect individual rights (e.g., physical integrity, privacy) and the health of the general population-public interests (see Part I, section 3.3). For instance, the Greek State, instead of imposing mandatory (non-consensual) medical testing and arbitrary detention measures for undocumented migrants could increase availability of high-quality voluntary counselling services; anonymous routine HIV-testing and treatment provided within the ESY infrastructure, as a health-care continuum; and develop awareness-raising programmes.⁹⁸ Indeed, the European Centre for Disease Prevention and Control (ECDC) in its HIV testing guidance pointedly asserted that (undocumented) migrants, especially coming from countries with high HIV prevalence, should be offered an HIV test, which should be voluntary, confidential and conducted after previous informed consent.⁹⁹

Meanwhile, another issue of concern from a right to health perspective is the poor conditions of the mandatory detention of migrants irregularly entering Greece, including unaccompanied children and families. In fact, the poor detention conditions for irregular migration in Greece have been repeatedly brought before

Biomedicine Convention has become integral part of the national law under Law 2619/1998, (see Annex 2).

⁹⁶ *Enhorn v. Sweden* (Application No. 56529/00) ECtHR 25 January 2005, § 41.

⁹⁷ S. Gruskin & D. Tarantola, ‘Health and Human Rights’ in: S. Gruskin, M.A. Grodin, G.J. Annas & S.P. Marks (ed.), *Perspectives on Health and Human Rights*, New York and London: Routledge 2005, pp. 3-57, p. 43.

⁹⁸ *Ibidem supra* note 21, GC No. 14, §§ 28-29.

⁹⁹ European Centre for Disease Prevention and Control, *ECDC Guidance. HIV testing: increasing uptake and effectiveness in the European Union*, Stockholm: ECDC, December 2010.

the ECtHR which has made decisions and declared cases admissible under Article 3 ECHR, whose respect (or not) has implications on the enjoyment of the right to health and ultimately on undocumented migrants' state of health.¹⁰⁰ Particularly, on several instances the Court has pointedly noted that the appalling conditions in the detention centers in Greece, which do not secure the health and well-being of individuals, can amount to degrading treatment and, thus, may constitute a violation of Article 3 ECHR.¹⁰¹ In fact, in 2011 in the case of *M.S.S. v. Belgium and Greece* it was ruled that Greece did not comply with the minimum standards of treatment (e.g. several sanitary and hygiene problems) and, as a consequence, undocumented migrants who travel from Greece to other European countries cannot be returned to Greece - the point of entry - which is the procedure normally followed under EU law, namely under the Dublin II Regulation.¹⁰² Additionally, in the case of *M.S.S. v. Belgium and Greece* the Court in its ruling acknowledged the difficulties that Greece experiences, mainly the economic pressures and the heightened influxes of migrants, without, though, absolving the Greek State from its obligations under Article 3 ECHR.¹⁰³

In response to the criticism, Greece adopted new legislation, namely Law 3907/2011, which, *inter alia*, specifies the establishment of Initial Reception Centers for undocumented migrants, who have illegally entered the country, and regulates issues related to the fulfillment of their basic needs, involving the provision of medical care, psychosocial support etc.¹⁰⁴ However, since the enactment of the

¹⁰⁰ See, e.g., *M.S.S. v. Belgium and Greece* (Application no. 30696/09) ECtHR 21 January 2011; *B.M. v. Greece* (Application no. 53608/11) ECtHR 19 December 2013; *De los Santos and de la Cruz v. Greece* (Application nos. 2134/12 and 2161/12) ECtHR 26 June 2014; *S.D. v. Greece*, (Application no. 53541/07), ECtHR 11 June 2009.

¹⁰¹ See, e.g., *ibid.*, *M.S.S. v. Belgium and Greece*, §§ 221-222 & 263-264; *S.D. v. Greece*, §§ 49-54.

¹⁰² *Ibid.*, *M.S.S. v. Belgium and Greece*, §§ 222 & 339-340 read in conjunction with § 368.

¹⁰³ *Ibid.*, *M.S.S. v. Belgium and Greece*, §§ 223-224; With respect to the poor detention conditions of children, see, *Rahimi v. Greece* (Application no. 8687/08), ECtHR 5 April 2011, §§ 33, 87 and 104 -106. Accordingly, the ECtHR held that the detention conditions, particularly concerning the accommodation, hygiene and infrastructure, had been so severe as to undermine the very meaning of human dignity and that the Greek State owed a duty to take adequate measures to provide care and protection as part of its positive obligations under Article 3 of the Convention.

¹⁰⁴ Law 3907/2011, *Official Government Gazette* – ΦΕΚ issue Α' 7/26-01-2011, on the 'Establishment of the Asylum Service and the Initial Reception Service, adaptation of the Greek legislation to the provisions of Directive 2008/115/EC (EU Returns Directive) on common standards and procedures in Member States for returning illegally staying third-country nationals, and other provisions'. Of note, this legislative initiative taken by the

respective legislation, the conditions in the detention centers in Greece were not significantly improved due to weak law enforcement, which was also identified by the UN Special Rapporteur on the human rights of migrants, François Crépeau, during his official visit to Greece in 2012.¹⁰⁵ Moreover, as regards to the health status of the undocumented migrants under detention, Crépeau noticed that ‘the majority of the medical problems migrants in detention suffer from are caused by, or directly linked to, their detention conditions in Greece’.¹⁰⁶ Indeed, given the poor detention conditions (i.e., lack of basic hygiene, water and quality food) and the fact that detention centers are often overcrowded, the transmission of contagious diseases is facilitated, thereby putting at extremely high risk not only the health of this group, but also the health of the general population.¹⁰⁷ At the same time, Crépeau expressed concern about the availability and quality of the medical treatment in the detention centers by stressing that ‘the medical services offered in some of the facilities by KEELPNO (Hellenic Centre for Disease Control and Prevention) were highly insufficient. Some of the detention centers had no permanent medical staff, and relied on daily visits by KEELPNO only’.¹⁰⁸ Added to the above, it was brought to his attention that detained undocumented migrants, who suffered from several health problems, had not received appropriate medical treatment. As such, he emphasized the need for specialized staff in each detention facility, such as doctors, nurses, psychologists, social workers and interpreters.¹⁰⁹ Last but not least, he called on the Greek State to operationalize law 3907/2011 and enhance detention conditions by, *inter alia*, ensuring that ‘all detained migrants have access to proper medical care, an interpreter, adequate food and clothes, hygienic conditions...’.¹¹⁰ All in all, such expressions of concern and calls for action (i.e., covering both access to health care and access to the underlying determinants of health) are considered to offer some principal guidance as to the process (practical measures) required by the Greek State (see Part I, section 4.2.3)

Greek State was welcomed by the CAT (CO: Greece, UN Doc CAT/C/GRC/CO/5-6, 27 June 2012, § 5).

¹⁰⁵ UN, *Report of the Special Rapporteur on the human rights of migrants, François Crépeau, Mission to Greece, HRC, 23rd Sess., Agenda item 3, UN Doc. A/HRC/23/46/Add.4, 17 April 2013, § 21.*

¹⁰⁶ *Ibid.*, § 44.

¹⁰⁷ *Ibid.*, §§ 49-52.

¹⁰⁸ *Ibid.*, § 49.

¹⁰⁹ *Ibid.*; See, also, Medecins Sans Frontieres, *Medical Assistance to Migrants and Refugees in Greece*, Greece: MSF 2013.

¹¹⁰ *Ibidem supra* note 105, UN Special Rapporteur, §§ 88 and 99(a).

to secure the realization of the right to health of undocumented migrants. At the same time it should be acknowledged that this right is inextricably connected to the enjoyment of other rights (see Part I, section 2.5), notably the right to freedom from inhuman and degrading treatment as found by the ECtHR, and altogether are essential for ensuring individual and population health.

7.5. CONCLUSIONS

Seen from a health and human rights perspective, undocumented migrants, given their particular vulnerable position (primarily on account of the migration process and their clandestine/irregular status) have discrete and special health needs that require systematic and considered (migrant-sensitive) attention in domestic policy-making and legislative actions (see Part I, section 4.2.3). Nevertheless, high levels of influxes of undocumented migrants combined with the increasing costs of health care have led the Greek State to view this particular population group pursuant to its security and economic interests, and as such, to link access to health care with immigration control. Thereto, the Greek State barely considers the implications of the right to health within the adoption of national laws and policies addressed to undocumented migrants and their families in a consistent and coherent way. Certainly, such an approach demonstrates a clear limitation of the enjoyment of the right to health (care) of undocumented migrants. Indeed, for this reason, the CESCRC and CRC Committee have repeatedly emphasized that this group should enjoy an unimpeded access to basic health care (see sections 7.3.4. and 7.3.6).

Nonetheless, the measures taken on the part of the Greek State create several obstacles to needed care for undocumented migrants, especially regarding individuals with certain diseases who are also threat for others. While the right to health framework might be imprecise in some respects primarily as to the nature of entitlements to health care for undocumented migrants, it still provides the standards against which national policies should be measured. This study revealed several shortcomings in the provision of health care for undocumented migrants when assessed against the ‘AAAQ’ requirements. Such disturbing observations illustrate that the Greek State has not effectively and in a systematic manner addressed the implications of ‘AAAQ’ with the adoption of laws and policies in relation to undocumented migrants. In light of its available resources the Greek State fails to consider the diverse health needs of undocumented migrants and adopt migrant-sensitive policies in line with the living reality (e.g., lack of legal status) of these people (see Part I, section 4.2). By doing so, undocumented migrants become more vulnerable to exploitation and increased health risks. Considering these alarming developments from a right to health perspective, in light of its

available resources the Greek State must acknowledge a minimum level of health care to be available for undocumented migrants (see Part I, section 3.4) and as such it should provide a package of minimum health care services for this group. At the same time the Greek State should also develop a system for the collection of reliable disaggregated data on the situation of undocumented migrants in order to identify their most pressing health needs for policy development and for planning targeted health measures (see Part I, section 3.6). All in all, this means that beyond access to mere emergency medical care, undocumented migrants should not be denied access to (basic) health care and as such they should benefit from disease prevention measures, including early diagnosis and intervention in diseases. Arguably, the implementation of such context-sensitive national health policies, in turn, may enhance individual and population health outcomes.

Meanwhile, it was argued that beyond access to health care the right to health of undocumented migrants cannot be effectively realized without respect for other human rights, which address integral components of the right to health.¹¹¹ As was earlier elaborated, the case law of the ECtHR in connection with Articles 3, 5 and 8 ECHR has revealed that other human rights have significant right to health implications, namely play a role in the progressive realization of the right to health of undocumented migrants and in regulating, *inter alia*, an unimpeded access to health care for this group (see section 7.4).¹¹² It seems that health-related rights (see Part I, section 2.3.1) tend to offer better protection than the right to health itself to undocumented migrants. As such, the Greek State is compelled to acknowledge the interdependence of all human rights within its legal and policy context for undocumented migrants, and reject questionable law-policies that could displace their special health needs by virtue of their legal status. This means that despite budgetary and other considerations (i.e., legal status) the Greek State is required to review the way under which national health interventions for undocumented migrants are being designed and implemented; and to abolish interventions that impose expulsion of undocumented migrants with life-threatening conditions, forcible medical examination and use of mandatory detention. Admittedly, such interventions result in the neglect of the aforementioned human rights, primarily of the right to private life and the right to freedom from inhuman and degrading treatment.

¹¹¹ Ibidem supra note 21, GC No.14, § 3.

¹¹² See generally, e.g., A. Hendriks, 'The Council of Europe and Health and Human Rights', in: B. Toebes, M. Hartlev, A. Hendriks & J. Rothmar Herrmann (eds.), *Health and Human Rights in Europe*, Cambridge/Antwerp/Portland: Intersentia 2012.

Furthermore, with respect to the detained undocumented migrants, the Greek State must draw more considered and systematic attention to the poor detention conditions which are a serious cause for concern for individual and population health. By doing, so, the Greek State should ensure that the detained have adequate and regular access to health care, consensual medical check-ups, psychological support, hygiene conditions, as well as enjoy adequate living conditions.¹¹³ Such requirements, at a large extent, constitute the underlying determinants of health (see Part I, section 3.2), which raise significant human rights concerns and therefore they should not remain unaddressed by the Greek State.¹¹⁴

All in all, it is crucial that for the right to health of undocumented migrants to be progressively realized, the Greek State must actively assume responsibility. The point to stress therefore is that when the Greek State decides to fully comply with its binding right to health obligations, their operationalisation within national law-policy context could make a positive contribution to the prevailing position of undocumented migrants; by meeting their pressing health needs, while taking into account their vulnerable living reality. In essence, this issue remains in the hands of Greek authorities and will be practically determined at the national level. Even if this appears to be an aspiration given the 5-yearly economic recession, the hardly manageable health care costs and the resource scarcity, it constitutes Greek State's ultimate responsibility. Thus, the most crucial decisions for undocumented migrants are still to be taken and a possible delay of such decisions on the part of the Greek State could lead to severe consequences for undocumented migrants' health and well-being in the long-term.

¹¹³ *Ibidem supra* note 105, UN Special Rapporteur, § 99(a). For instance, the detainees should have access to appropriate medical care, adequate living conditions, adequate food, hygienic conditions and security, which are preconditions for respecting undocumented migrants' right to health.

¹¹⁴ *Ibidem supra* note 21, GC No.14, § 11.

