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

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Summary

Seven decades since its recognition in the preamble to the Constitution of the World Health Organization (1946), the right to health has increasingly attained a prominent position in human rights law. As a result, this right has the capacity to influence the health and well-being of all individuals worldwide. Despite the absence of worldwide consensus as to its meaning and various aspects, this thesis seeks to move from its conception and recognition to its realization, namely beyond the international formulation of the right to health. This requires a better understanding of the State measures required with the aim of bringing the right to health closer to national realities and in the daily lives of individuals. With this foundation as a basis, this study aims to examine the national implementation of the right to health and particularly the Greek context as it relates to the right to health. For this reason, this study has been built upon two interconnected parts (Part I and Part II) that each deals with one research question. Accordingly, the following two main questions are analyzed:

- (a) *What primary standards derive from the right to health on the basis of human rights law?*
- (b) *Is the right to health being (effectively) implemented in Greece (or not)?*

Part I contains 3 substantive chapters (i.e. chapter 2, 3 and 4) that target to frame the right to health, primarily by identifying the normative content of the right to *highest attainable standard of health* in human rights law as well as its implications for a State in terms of its operationalisation within a State's jurisdiction. More specifically, chapter 2 presents an account of the development of the articulation of the right to health as it appears in international, regional and national contexts.

Chapter 3 closely looks into the nature and scope of the right to health, the State obligations arising from it as well as two concepts which signal dangers for

its realization (i.e. privatization and corruption) primarily within healthcare settings. The purpose of this chapter is to provide an understanding of the various aspects of the content of the right to health, namely to turn the broad and abstract notion of '*the highest attainable standard of health*' into concrete concepts that can be utilized for its effective realization worldwide and especially when it comes to implementing this right at the national level. It is this particular aspect of the right to health that constitutes the basis of the discussion in chapter 4.

Chapter 4 focuses on the meaning of realizing the right to health on the part of the State by examining the extent of contribution of respective monitoring bodies. The purpose of this chapter is to define the type of measures and policies that a State needs to adopt for the realization of the right to health.

Having discussed in Part I what 'the right to the highest attainable standard of health' entails (i.e. the standards that derive from the right to health framework), Part II, consisting of chapters 5, 6, 7 and 8, reflects on the scope of this framework at the national level (i.e. Greece). More specifically, chapter 5 demonstrates that a primary recognition of Greece's commitment to the internationally guaranteed right to health is found in its Constitution. Additionally, the Constitution contains two Articles, that complement each other and entrench health both as a right and as a State's duty with particular consideration for the youth, elderly, disabled persons and for the relief of the needy. This constitutional framework is a valuable statement on which national legislation and policy practices should be based, while at the same time it indicates the State's overall commitment to the right to health. Nevertheless, this must also be accompanied by specific measures taken by the Greek State to implement such a commitment for the effective realization of the right to health by every individual in practice. In this regard, chapters 6, 7 and 8 focus on a selection of key themes that are of particular relevance to the country in question (i.e. Greece). Specifically, these Chapters explain how Greece's right to health commitment is reflected (or not) in practice and particularly in relation to the organization of its health infrastructure and to two vulnerable population groups, undocumented migrants and Roma children.

Chapter 6 illustrates that there is an apparent contrast between the international standards that Greece has ratified and what is being ultimately implemented by the Greek State within healthcare settings. Particularly, the Greek State designed and developed the national health system and its ensuing policy measures with the absence of the right to health framework. Meanwhile, especially from 2010 onwards notions underpinning the right to health do not receive considered and systematic attention in Greek law, policy and practice. Nonetheless, under its obligation to progressively realize the right to health (care) and in light of its

available (limited) resources the Greek State is required to strengthen its health infrastructure by placing emphasis on its primary structure (primary health care) and prioritize the needs of vulnerable individuals or groups. This implies that the Greek State must make a reasonable determination as to redress the existing health inequalities by setting concrete priorities and as to the way of allocating its scarce resources rather than using them as an excuse for its failure to do so. Last but not least, the Greek State retains ultimate responsibility to address two serious challenges that emerge and adversely influence the realization of the right to health (care) of individuals, when the health sector is poorly regulated and monitored: the growing presence and role of private health care providers within the public system; and the persistent corruption within this system.

Chapter 7 focuses on how the right to health (care) is being upheld for undocumented migrants residing in Greece. This chapter presents that the Greek State due to high levels of influxes of undocumented migrants combined with the increasing costs of health care has legislated limitations in access to health care for undocumented migrants. By this way, though, health-related policy-making and legislative action are linked with immigration controls and are dependent upon lawful residency within Greek territory. Seen from the perspective of the right to health framework such developments constitute a serious cause for concern and certain alarming issues can be detected as a result. The Greek State fails to consider the diverse health needs of undocumented migrants and to adopt context-sensitive policies to address them together with the living reality of these people (i.e. migrant-sensitive policies). Importantly, the denial of access to health care for undocumented migrants until an emergency situation arises, with the exception of undocumented migrant children, is inconsistent with the right to health framework. A continuous access to treatment and medicines for undocumented migrants is not ensured, exposing them to increased health risks. Lastly, chapter 7 highlights that along with the serious concerns raised in light of the internationally guaranteed right to health threats to the enjoyment of other human rights are also evident that have significant right to health implications.

Chapter 8 analyses the position of Roma children in relation to their right to health and access to health care. This chapter demonstrates that explicit integration of the internationally guaranteed right to health into national health law-policies for Roma children appears to be at a rudimentary level. Differences in life expectancy between Roma children and the general infantile population reflect the health inequalities of this group, which are of grave concern from a right to health perspective. At the same time they constitute a clear indication of the failure of the Greek State to comply with its right to health obligations concerning this

group. From a right to health perspective the Greek State does not take into account particular vulnerabilities and dependencies, relating to Roma children and their families, especially the circumstances in which they live, when health policies for this group are planned, designed and implemented. Importantly, it becomes apparent that realizing the right to health of Roma children is dependent not only on resource availability aligned with well-considered health-related decisions and actions on the part of the Greek State, but also on ensuring the enjoyment of the essential determinants of health. As such, the State's attempt to address the rising socio-economic health inequalities, which this vulnerable group experiences, is a both a pressing and a challenging task, if the Greek State wants to fully abide by its right to health obligations.

On the basis of the aforementioned findings, chapter 9 presents the conclusions of the study and contains a list of recommendations, involving the adoption of a framework law, containing certain elements underpinning the internationally guaranteed right to health and serving as a foundation for national legislation, regulations, ministerial decisions and protocols.