

**Greek National Commission
for Human Rights**



**GNCHR Written Observations
on the Second Periodic Report of the Hellenic Republic for the
International Covenant on Civil and Political Rights (ICCPR)**

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GNCHR Written Observations on the Second Periodic Report of the Hellenic Republic on the implementation of the International Covenant on Civil and Political Rights (ICCPR)

I. Introduction

On 3.9.2013, the Ministry of Foreign Affairs of the Hellenic Republic sent a Draft of the Second Periodic Report of the Hellenic Republic to the Greek National Commission for Human Rights (hereinafter GNCHR) regarding the implementation of the International Covenant on Civil and Political Rights. In accordance with its founding Law (Law 2667/1997), the GNCHR delivered an opinion regarding this Draft Report.

After examining the content of the Draft Report (hereinafter Report), the GNCHR submitted to the Ministry of Foreign Affairs its observations which had been unanimously adopted by its Plenary (5.12.2013)¹. The Ministry of Foreign Affairs took into consideration some of the GNCHR's observations before submitting the Second Periodic Report of the Hellenic Republic (CCPR/C/GRC/2, 17.1.2014) to the Human Rights Committee (hereinafter HRC).

In view of the upcoming adoption of a list of issues on the second report by Greece to the HRC, which will take place at the HRC's next (113th) session in March 2015, in Geneva, the GNCHR submits to the HRC written information prior to the adoption of the list of issues regarding the implementation of the Covenant.

The information herein provided reflects opinions expressed in reports adopted by the GNCHR Plenary until December 2014.

The GNCHR particularly stresses that the submission of the Report on the implementation of the Covenant comes at a time when Greece is plagued by a deep financial crisis. The GNCHR recalls that already since 2010 it has drawn the attention of the State to "*The need for constant respect of human rights during the implementation of the fiscal and social exit strategy from the debt crisis*", whilst a year and a half later it issued a Recommendation "*On the imperative need to reverse the sharp decline in civil liberties and social rights*". The most recent GNCHR document is its "*Recommendation and decisions of international bodies on the conformity of austerity measures to international human rights standards*", adopted by the Plenary on 27.6.2013².

We also note that the European Network of National Human Rights Institutions (ENNHRI) sent, in January 2014, open letters to Mr. J.-M. Barroso, then President of the European Commission, and Mr. M. Draghi, President of the European Central Bank (ECB), "*On the upcoming Troika visit to Greece*", to which the above 2010 and 2011

¹ GNCHR, "Observations on the Draft of the Second Periodic Report of the Hellenic Republic for the International Covenant on Civil and Political Rights (ICCPR)", 5.12.2013, available at: http://www.nchr.gr/images/English_Site/EllinikesEktheseis/English_Observations_on_Draft_Report.pdf.

² All GNCHR's reports on the impact of financial crisis on the enjoyment of human rights are available at: <http://www.nchr.gr/index.php/en/2013-04-03-10-23-48/2013-04-03-10-41-02>.

GNCHR Recommendations were *inter alia* attached. In these letters, ENNHRI drew attention to the adverse effects of the crisis and austerity measures on the enjoyment of human rights, in particular social rights, in our country. ENNHRI recalled that the EU Member States are bound by human rights obligations and that both EU Member States and EU institutions are bound by the EU Charter of Fundamental Rights (hereinafter the EU Charter). It stressed that “only by connecting macro-economic decision-making processes and human rights can we decelerate, perhaps even invert, the transformation of the financial crisis into a humanitarian crisis” and called on the European Commission and the ECB to carry out a systematic *ex ante* human rights impact assessment of all austerity measures; to make sure they do not lead to human rights violations; and to integrate human rights institutions and experts in the process of macro-economic decision-making³.

In this regard, the GNCHR cannot but highlight the need to refer to the impact of the deep financial crisis and the financial austerity measures, which have seriously affected the rights guaranteed by the Covenant.

In particular, the GNCHR once more expresses its deep concern that “*the avalanche of unpredictable, complicated, conflicting and constantly modified ‘austerity measures’ of immediate and often retroactive effect, which exacerbate the general feeling of insecurity*”, as deplored in its Recommendation of 8.12.2011, is continuing and constantly growing. Therefore, the Greek legislation does not have the “*quality*” required by the European Convention on Human Rights (hereinafter ECHR).

The GNCHR 2011 Recommendation “*On the imperative need to reverse the sharp decline in civil liberties and social rights*” was quoted by the European Committee of Social Rights (hereinafter ECSR) in seven decisions finding violations of the European Social Charter by Greece⁴. The ECSR’s example was followed by other European and international bodies, such as the Council of Europe (hereinafter CoE) Committee of Ministers⁵, the CoE Commissioner for Human Rights⁶, the ILO Committee of Experts on

³ The ENNHRI open letters and the attachments thereto are available at: <http://www.nchr.gr/index.php/en/2013-04-03-10-23-48/2013-04-03-10-41-02>.

⁴ ECSR 23.05.2012, Complaints Nos. 65/2011, *General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants’ Trade Unions (ADEDY) v. Greece* and 66/2011, *General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants’ Trade Unions (ADEDY) v. Greece*, as well as ECSR 07.12.2012, Complaints Nos. 76/2012, *Federation of employed pensioners of Greece (IKA-ETAM) v. Greece*, 77/2012, *Panhellenic Federation of Public Service Pensioners (POPS) v. Greece*, 78/2012, *Pensioners’ Union of the Athens-Piraeus Electric Railways (I.S.A.P.) v. Greece*, 79/2012, *Panhellenic Federation of pensioners of the Public Electricity Corporation (POS-DEI) v. Greece*, 80/2012, *Pensioners’ Union of the Agricultural Bank of Greece (ATE) v. Greece*.

⁵ Council of Europe, Committee of Ministers, *Resolution CM/ResCSS(2013)21 on the application of the European Code of Social Security by Greece (Period from 1 July 2011 to 30 June 2012)*, adopted by the Committee of Ministers on 16 October 2013 at the 1181st meeting of the Ministers’ Deputies, available at: [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/ResCSS\(2013\)21&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/ResCSS(2013)21&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383).

⁶ Council of Europe, Commissioner for Human Rights, *Safeguarding human rights in times of economic crisis*, November 2013, p. 52, available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2530030&SecMode=1&DocId=2144886&Usage=2>.

the Application of Conventions and Recommendations (hereinafter CEACR)⁷ and the UN Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Dr. Cephias Lumina⁸.

It is in the light of the above that the GNCHR's more specific observations on the respect for the rights dealt with in the Greek Report under examination must be read.

II. Specific Observations on the Report of the Hellenic Republic

Articles 2 and 26

Civil Unions

On 18.12.2013⁹, following the judgment of the Grand Chamber of the European Court of Human Rights (hereinafter ECtHR) of 7 November 2013, in the case *Vallianatos and others v. Greece*, the GNCHR sent a letter to the Minister of Justice, Mr. Charalambos Athanasiou, by which it recalled its previous positions regarding the necessity for legal recognition of same-sex civil unions. Also, in view of the Minister's statement during the discussion of the anti-racism bill in the competent Parliamentary Committee that the Ministry should take into account the ECtHR judgment, GNCHR invited the Minister to take a legal initiative for the recognition of same-sex civil unions. Moreover, the GNCHR noted that in its judgment, the Grand Chamber of the ECtHR repeatedly quoted and took into consideration the positions of the GNCHR (see paras. 12, 15, 21-24, 87 and 89 of the judgment).

Education and non-discrimination

The GNCHR Plenary unanimously adopted at its 9 October 2014 session a report on the "*International Convention on the Rights of Persons with Disabilities: Problems regarding its implementation*"¹⁰, which reads as follows:

"The GNCHR considers the ratification of the United Nations Convention on the Rights of Persons with Disabilities (Convention) and its Optional Protocol (Protocol) by Greece an important step for the protection of fundamental human rights in our country. However, it deems it necessary to point out indicatively some serious problems arising

⁷ CEACR, in Reports to the International Labour Conference (ILC) 2013 finding violations of ILO Conventions Nos. 95 (protection of wages) and 102 (social security *minimum* standards) by Greece.

⁸ UN Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Cephias Lumina, in his Report *Mission to Greece (22–27 April 2013)*, to the UN Human Rights Council 25th Session, 11 March 2014 (A/HRC/25/50/Add.1).

⁹ GNCHR, "The National Commission for Human Rights invites the Minister of Justice, Mr. Charalambos Athanasiou to take a legal initiative regarding the recognition of same-sex civil unions", 18.12.2013, available at: http://www.nchr.gr/images/English_Site/NEWS/same-sex%20civil%20union%20final.pdf.

¹⁰ GNCHR, "International Convention on the Rights of Persons with Disabilities: Problems regarding its implementation", 9.10.2014, available at: <http://www.nchr.gr/images/pdf/apofaseis/amea/EfarmoghDSAA.pdf>.

from the Law sanctioning the Convention and the implementation of the Convention in practice, with a view to readdressing the issue at a later date.

1. The Convention and the Protocol were sanctioned on 31 May 2012¹¹ by Law 4074/2012; they were then ratified and entered into international force for Greece on 31 June 2012, in accordance with Article 45(2) of the Convention and Article 13(2) of the Protocol. Therefore, since 31 June 2012, Greece is subject to the monitoring of the implementation of the Convention conducted by the Committee for the Rights of Persons with Disabilities (Committee), which was established pursuant to Article 34 of the Convention. Furthermore, since 31 June 2012, the Committee is competent to receive and consider “communications” from or on behalf of individuals or groups of individuals subject to the Greek State's jurisdiction claiming to be victims of a violation of the Convention (Article 1 of the Protocol).

A. Obligations imposed by the Convention on national implementation and monitoring

2. Article 33 of the Convention imposes on States Parties the following obligations regarding the monitoring of national implementation:

a) “States Parties, in accordance with their system of organization, shall designate one or more focal points within government for matters relating to the implementation of the present Convention, and shall give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels” (Article 33(1)).

b) “States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights” (Article 33(2)).

c) “Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process” (Article 33(3)).

B. Incomplete compliance with the obligations imposed by the Convention

a. Incomplete legislative compliance

3. Article 3 of Law 4074/2012 reads as follows: “By decision of the Prime Minister, in accordance with Article 33(1) of the United Nations Convention on the Rights of Persons with Disabilities, a focal point is designated in the government for monitoring the implementation of the Convention along with a coordination mechanism for facilitating

¹¹ For the ratification status of the Convention on the Rights of Persons with Disabilities and its Optional Protocol see: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=68&Lang=en.

related action.” This enabling provision constitutes inadequate compliance with the obligations undertaken by the Greek State upon ratification of the Convention, as it enables the Prime Minister to implement Article 33(1) of the Convention only and not the remaining paragraphs thereof.

4. Pursuant to this enabling provision, the Prime Minister issued Decision No. 426/02.20.2014 “Designation of a focal point for monitoring the implementation of the United Nations Convention on the rights of persons with disabilities (Law 4074/2012, OJ A 88) along with a coordination mechanism for facilitating related action” (OJ B 523/02.28.2014). In the Sole Article of this decision, a focal point is designated for monitoring the implementation of the Convention along with a coordination mechanism for facilitating related action. This focal point shall be the Ministry of Labour, Social Security and Welfare and more specifically the Ministry's Directorate of International Relations of the General Directorate of Administrative Support. Moreover, the decision reproduces word for word Article 33(3) of the Convention (above No. 2(c)).

5. Thus, due to the inadequacy of the enabling statute, independent mechanisms, which shall promote, protect and monitor the implementation of the Convention, have not been established, as required by Article 33(2) of the Convention. A specific mechanism may be established or this mission can be assigned to an existing independent body; it is sufficient for this body to be independent and to dispose of the necessary means (adequate specialised staff and funding) for executing this mission. This omission constitutes a serious violation of the Convention as it considerably reduces its effectiveness. Therefore, the enabling statutory provision must be completed.

6. Besides, the word for word reproduction of Article 33(3) of the Convention in the aforementioned Prime Minister's Decision is pointless. A statutory provision enabling an administrative authority to take particular measures which shall grant civil society, in particular persons with disabilities and their representative organizations, the possibility to be involved and to fully participate in the monitoring process of the Convention is necessary.

b. Examples of incomplete compliance in practice

7. The substantive provisions of the Convention establish the rights of persons with disabilities and impose relevant obligations on States Parties. Among these rights is the right to access, on an equal basis with others, public or private facilities and services which are open or provided to the public; *inter alia*, roads, transportation, buildings, housing, medical facilities, workplaces, monuments, sites of cultural importance etc. (Article 9 and Article 30(1) of the Convention), a right which is of utmost importance for preventing social exclusion of these persons. It is obvious to everyone that, in Greece, many if not most of the facilities and services in question are very difficult or impossible to access for persons covered by the Convention.

Consequently, GNCHR addresses the following, first and urgent, recommendations to the State regarding the implementation of the Convention:

- To promulgate additional enabling statutory provisions enabling administrative measures for the implementation of Article 33(2 and (3) of the Convention.
- To take measures in order to render public or private facilities and services accessible to persons with disabilities, as required by the Convention.

Besides, the GNCHR addressed specific “Recommendations regarding the Bill on Special Education”,¹² in which the following were *inter alia* stressed:

The current national framework of protection of the right to education for persons with special educational needs: a challenge for equal inclusion or one more lost opportunity?

In Greece, the right to education is a constitutional right which enjoys increased guarantees. More specifically, Article 16(2)-(4) of the Constitution provides for the right to free education for all and fixes the number of years of compulsory education to at least nine. In addition to respecting and ensuring the right to free access to education, the State is explicitly required to support those in need of assistance or special protection, such as the young, the elderly and the disabled¹³

More specifically, Article 21(6) of the Constitution responds to the need to strengthen the protection of persons belonging to vulnerable groups, so that the effective enjoyment of their rights and real equality may be achieved, by providing that “*people with disabilities have the right to benefit from measures ensuring their self-sufficiency, professional integration and participation in the social, economic and political life of the country.*” However, the objectives of this provision cannot be fulfilled unless measures guaranteeing effective access to education for children with disabilities are adopted and implemented. Nevertheless, the implementation of this provision is inadequate, as the relevant legislation is, fragmented and adopted without any strategic planning.

Moreover, the integration of children with special educational needs in the educational system is provided by Law 2817/2000, which requires integration classes in parallel with individualised special educational support. This institutional framework was completed by Law 3699/2008. More specifically, Article 1(1) of Law 3699/2008 stipulates that “*the State commits itself to establishing and constantly upgrading the compulsory character of special education as an inherent part of compulsory and free public education and to guaranteeing the provision of free public special education to persons with disabilities of*

¹² Adopted unanimously by the GNCHR Plenary on 10 July 2014. Rapporteurs: K. Papaioannou, GNCHR President, E. Varchalama, GNCHR Second Vice-President, A. Tsampi, GNCHR Legal Officer and R. Fragkou, GNCHR Legal Officer. It is also noted that the present Recommendations have been developed in collaboration with the Deputy Ombudsman in charge of children’s rights, G. Moschos.

¹³ Article 21(3) of the Constitution.

all ages and at all stages of education". Therefore, the incorporation of special education into general public and free education, which is provided in Article 2(1) of Law 3699/2008, constitutes a fundamental obligation of the State.

Moreover, Law 3699/2008 states in Article 6(4) that education shall be provided within special education school units to students for whom attending general schools or integration classes is particularly difficult. It is, however, doubtful whether, in the current circumstances, the educational system is able to provide essential education to persons with special educational needs within general schools.

Special Education in Greece

In the light of the above, the concern constantly expressed by interested actors, is whether the Greek educational system complies with the principles of international and European law regarding special education.

GNCHR observes that, even though the problems related to special education persist, Greek legislation is characterized by institutional gaps in this respect, with the result that it does not adequately ensure that disabled children fully enjoy their established right to education. It is not only the content of Greek legislation that raises concerns, but also its inadequate implementation. In practice, discrimination against these children persists, while the way in which their special needs are addressed, in order for their rights to be respected on an equal basis with their peers, is not effective.

In its *Conclusions* of 24 October 2008, the European Committee of Social Rights, examining the annual reports of States Parties to the European Social Charter (ESC) has considered that Greece does not comply with the requirements of Article 15(1) of the ESC, as no legislative steps were taken towards establishing the lifelong learning of persons with disabilities. More specifically, the Committee has noted that there was no particular provision for persons with disabilities neither in the public educational system nor later regarding the establishment of the right to vocational training, reintegration and social integration. In fact, in the same Report, the Committee of Social Rights highlighted the lack of and failure to present more specific statistical data that would allow an appraisal of the compliance of Greece with ESC requirements¹⁴. The situation does not seem to have significantly improved, since in the most recent *Conclusions* (7 December 2012), the Committee considered that the absence of the information required for the evaluation of the condition of persons with disabilities in Greece and their ability to access education, amounts to a breach of the reporting obligation entered into by Greece under the 1961 Charter¹⁵.

¹⁴ Council of Europe, European Committee of Social Rights, *Final Observations XIX-1*, 24 October 2008, Articles 15,15(1), p. 12, available at: http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/GreeceXIX1_en.pdf.

¹⁵ Council of Europe, European Committee of Social Rights, *Final Observations XX-1*, 7 December 2012, Article 15(1), p. 22, available at: http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/GreeceXX1_en.pdf.

Pending receipt of the information requested, the Committee defers its conclusion. The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Greece under the 1961 Charter. The Government consequently has an obligation to provide the requested information in the next report on this provision

The current economic and social crisis is exacerbating the chronic problems observed in the education of children with special needs. GNCHR has already voiced its concern for the discriminatory impact of austerity measures at multiple levels and for the sharp decline in social rights¹⁶.

According to the Unicef Report on *The State of the World's Children 2013*, the bond between poverty and disability is strong. More specifically, household survey data from 13 low- and middle-income countries showed that children with disabilities aged 6-17 years are significantly less likely to be enrolled in school than their peers without disabilities¹⁷.

In a recent Report, the Greek Ombudsman, a body entrusted with the promotion of equal treatment¹⁸, draws attention to this state of affairs and mentions a series of characteristic examples of chronic problems. Some of them are the school year delay in special schools, the constantly delayed hiring of substitute teachers instead of permanent educational and special educational staff, the significant delay or the non-appropriate provision for parallel support, and the lack of realisation thereof, especially in kindergarten school and primary education, the insufficient staffing of integration classes and special schools, especially in the periphery, which result in hindering the equal access to education for many children with disabilities or/and special educational needs.

Another cause for concern is the State's insufficient, hesitant and delayed response to reactions coming from a part of the school community aiming at discouraging the enrollment and integration of children with special needs in general education. The State shares a wider responsibility concerning combating the marginalization of children with disabilities. The significant divergence between the rates of children's attendance of special kindergarten classes and the corresponding rates of attendance of elementary

¹⁶ See GNCHR, "GNCHR Recommendation and decisions of international bodies on the conformity of austerity measures with international human rights standards", *op.cit.*, GNCHR, "Decision on the need for constant respect of human rights during the implementation of the fiscal and social exit strategy from the debt crisis", *op.cit.* and GNCHR, "GNCHR Recommendation: On the imperative need to reverse the sharp decline in civil liberties and social rights", *op.cit.*

¹⁷ More specifically, it is stated that "as long as children with disabilities are denied equal access to their local schools, governments cannot reach the Millennium Development Goal of achieving universal primary education (MDG 2), and States parties to the Convention on the Rights of Persons with Disabilities cannot fulfill their responsibilities under Article 24". See Unicef, *The state of the World's children 2013. Children with disabilities*, May 2013, available at: <http://www.unicef.gr/uploads/filemanager/PDF/info/swcr13.pdf>, p. 20 *et seq.*

¹⁸ The Greek Ombudsman, *Special Report 2013*, p. 108.

classes is yet another cause for concern¹⁹. The absence of relevant special quality indexes does not allow the identification of the factors that discourage parents from enrolling their children in kindergarten. As a result, important aspects of the marginalisation in the education of children with disabilities are left unseen.

Unicef notes in its recent Report on the *State of World Children 2013* that “exclusion denies children with disabilities the lifelong benefits of education: a better job, social and economic security, and opportunities for full participation in society.” On the contrary, the same Report places particular emphasis on the potential contribution of investments in the educational system of children with disabilities to the future productivity of these children as members of the workforce²⁰. Unfortunately, in Greece the lack of supporting infrastructure for children with disabilities extends to the fields of training, lifelong learning and professional integration, thus widening their social exclusion. This illustrates the lack of association between education and professional prospects, which cannot be deemed to be covered by legislation on compulsory hiring of persons with disabilities in the workplace²¹. GNCHR expresses its concern about the absence of data regarding the vocational training of children with disabilities, even within the context of third-degree studies.

Articles 3 and 23

Work and gender equality²²

The GNCHR has repeatedly expressed in the recent past, its position on issues related to employment and gender equality in Greece, especially during the period covered by the Report²³. Since no progress has been made ever since, the GNCHR repeats the following remarks:

¹⁹ KANEP-GSEE, *The fundamentals of education – 2010*, Vol. A, January 2011, available in Greek language at: http://www.kanep-gsee.gr/erevnes-meletes-ekdoseis/ethsies-ektheseis-ekpaideushs/ethsia-ekthesh-gia-thn-typikh-ekpaidevsh-2010_pp.15_and_20.

²⁰ See UNICEF, *The state of the World's children 2013. Children with disabilities*, *op.cit.*, p. 37. It is also mentioned that one year of schooling increases an individual's earnings by 10%. See United Nations Educational, Scientific and Cultural Organization, *Building Human Capacities in Least Developed Countries to Promote Poverty Eradication and Sustainable Development*, UNESCO, Paris, 2011, p. 8.

²¹ Law 2643/1998 (OJ 220/A/9.28.1998), as amended and in force.

²² See GNCHR, “Observations on the 24th Greek Report on the application of the European Social Charter and on the 9th Greek Report on the application of the Additional Protocol to the European Social Charter”, 9.4.2014, available at: http://www.nchr.gr/images/pdf/apofaseis/ellinikes_ektheseis_en_ell_org/CoE/GNCHR_Observations_24thReportf.pdf.

²³ GNCHR, “Comments on the Bill "Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation-Harmonization of Legislation with Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006", 2008, available at: http://www.nchr.gr/images/English_Site/ERGASIA/paratiriseis_od_2006%2054%202008.pdf; GNCHR, “Comments on the Bill “Implementation of the Principle of Equal Treatment for Men and Women as Regards Access to Employment, Vocational Training and Promotion, and Working Conditions”, 2006, available at http://www.nchr.gr/images/English_Site/ERGASIA/Nomosxedio%20gia%20ish%20metaxeirish%202006.pdf and GNCHR, “Observations on the 7th Greek Report (2005-2008) to the Committee on the Elimination of the Discrimination Against Women (CEDAW)”, 2010, available at: http://www.nchr.gr/images/English_Site/EllinikesEktheseis/NCHR_CEDAWeng.pdf.

The GNCHR welcomed the adoption of Law 3896/2010, which transposed Directive 2002/73/EC on equal treatment of men and women in employment and the fact that several of its observations regarding the relevant Bill were taken into account. It noted, however that this Law is inadequate in certain respects. Firstly, the definition it provides for “vocational training” is neither clear nor consistent with EU law, something which undermines legal certainty.

Moreover, Article 19 on “Positive Measures” does not comply with Article 116(2) of the Greek Constitution which imposes an obligation on all state authorities²⁴. According to well-established jurisprudence of the Council of State Supreme Administrative Court), this constitutional provision “obliges the legislator and all other state authorities to adopt in all fields the positive measures in favour of women that are appropriate and necessary for achieving the best possible result” with a view to minimising inequalities and with the ultimate goal to achieve substantive gender equality²⁵. Furthermore, Article 116(2) of the Greek Constitution stipulates that the positive measures should aim to eradicate “inequalities” (a term which is broader than the term «*discrimination*» used in Article 19 of Law 3896/2010)²⁶.

Furthermore, the GNCHR noted, in its observations on the Bill for the transposition of Directive 2002/73/EC (which became Law 3488/2006), that there is no autonomous individual right to parental leave for male and female workers²⁷ and that Article 3(4) of this Act regarding the protection of maternity does not comply with the provisions of Article 21(1) and (5) of the Greek Constitution, which guarantee the effective protection of maternity²⁸.

²⁴ Article 116 (2): “*Adoption of positive measures for promoting equality between men and women does not constitute discrimination on grounds of sex. The State shall take measures for the elimination of inequalities actually existing, in particular to the detriment of women*”.

²⁵ Council of State, decisions Nos 2831/2003, 2832-2833/2003, 3027-3028/2003, 3185, 3187-3189/2003 and 192/2004.

²⁶ See as noted by the GNCHR in *Comments on Bill titled “Application of the Principle of Equal Treatment Irrespective of Racial or Ethnic Origin, Religious or Other Beliefs, Disability, Age or Sexual Orientation”*, 2003: The Greek Constitution, Article 4(2), guarantees substantive gender equality (Council of State judgment No. 1933/1998). On the occasion of the constitutional revision of 2001, the provision of Article 116(2) allowing derogations was repealed and replaced with a provision which requires positive measures as a means for achieving gender equality and the abolishment of all inequalities in practice, especially those affecting women. Consequently, as of the entry into force of the revised Constitution (18.4.2001), all provisions allowing derogations were null and void, while any provision introducing derogations in the future shall be invalid. This is why neither Law 3488/2006 transposing Directive 2002/73/EC, nor Law 3896/2010 transposing Directive 2006/54/EC, allow derogations from gender equality in employment. Besides, both these Directives allow member States to introduce or maintain national provisions more favourable than their own and do not allow the reduction in the level of protection of workers in the areas which they cover. The GNCHR underlined that “according to fundamental principles of international and European law as well as to the explicit provisions of the Directives, the provisions of Article 116(2) of the Greek Constitution prevail as more protective”.

²⁷ GNCHR, *Resolution on the Reconciliation between Professional and Family Life in view of the transposition of EU Directive 2002/73/EC into Greek law*, 2005: http://www.nchr.gr/images/English_Site/NomothetikesProtaseis/NationalLegislation/Professional_family_life_%202006.pdf.

²⁸ Article 21(1): “*The family, being the cornerstone of the preservation and the advancement of the Nation, as well as marriage, motherhood and childhood, shall be under the protection of the State*” and Article 21(5):

Especially in the private sector, women undergo unfavourable treatment during the hiring and negotiation process, not only when they are pregnant or have just given birth to a baby, but also when they have young children or are married and at child-bearing age²⁹.

The GNCHR has also underlined that the legal framework (Law 3488/2006 and Law 3896/2010, which transpose Directives 2002/73/EC and 2006/54/EC, respectively)³⁰ is inadequate for ensuring effective judicial protection to victims of discrimination, most of whom are women. In particular, legal entities are not granted standing to engage in their own name in legal proceedings for the protection of the rights of the victims.

The GNCHR is constantly repeating a general observation, regarding the provisions transposing the EU gender equality Directives: the procedural provisions (mainly on the standing of legal entities and the burden of proof) are not incorporated into the relevant Codes of Procedure. As a consequence, they remain unknown to judges, lawyers and the persons concerned. Therefore, the transposition of the EU Directives is inadequate, since it does not establish the required legal certainty and transparency which would allow the victims of discrimination to be aware of their rights and to claim them before the courts and other competent authorities, as required by the Court of Justice of the EU.

Despite the adoption of Law 3896/2010 and the measures mentioned in the Greek Report under examination, the deregulation of employment relationships due to the growing financial crisis and the successive austerity measures continue to aggravate the position of women in the labour market, rendering them even more vulnerable. Taking into account the recent concluding observations of the UN Committee on the Elimination of Discrimination against Women³¹, the GNCHR expresses its concern for the marginalization of women in the labour market as reflected *inter alia* in the high female unemployment rates. The application of Law 4042/2011 and the drastic pension cuts regarding widows and other categories of women have also had a negative effect.

Furthermore, the reversal of the hierarchy of CAs and the weakening of the National General CA and the sectoral CAs affect women in particular, mainly regarding equality in pay, and thus lead to the widening of the pay gap, as CAs used to be the best means to promote and protect uniform pay and employment conditions, without any discrimination.

“Planning and implementing a demographic policy, as well as taking of all necessary measures, is an obligation of the State”.

²⁹ GNCHR, *Resolution concerning the Reconciliation between Professional and Family Life in view of the Incorporation of EU Directive 73/2002/EC into Greek Legislation*, 2005, available at: http://www.nchr.gr/images/English_Site/NomothetikesProtaseis/NationalLegislation/Professional_family_life%202006.pdf.

³⁰ GNCHR, “Comments on the Bill “Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation-Harmonization of Legislation with Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006”, available at: http://www.nchr.gr/images/pdf/apofaseis/isothta_fullwn/EEDA_YpErgasias_2006.54_2010.pdf and http://www.nchr.gr/images/pdf/apofaseis/isothta_fullwn/paratiriseis_sx.Nomou_2006_54.pdf.

³¹ Committee on the Elimination of Discrimination against Women, *Concluding Observations: Greece*, CEDAW/C/GRC/CO/7 (26.4.2013), par. 28.

Another source of concern is the continuous reduction of the (already insufficient) day-care structures for children and dependent persons as well as other social structures, which limit women's ability to take up employment or keep them in jobs with reduced rights, at the same time perpetuating gender stereotypes, as men are not encouraged to participate in such care. The harmonisation of family and professional life should be a matter for both men and women. There is also a disturbing rise in discriminatory practices, especially on multiple grounds, to the detriment of women employed within the framework of sub-contracting or temporary employment. In such cases, women are especially targeted if they are engaged in trade union activity³².

The CEACR expresses its concern at the "disproportionate impact" of the crisis and austerity measures on women and the widening of the pay gap to their detriment. The CEACR stresses in particular that "the combined effect of the financial crisis, the growing informal economy and the implementation of structural reform measures adversely affected the negotiating power of women, and would lead to their over-representation in precarious low-paid jobs". The CEACR, with reference to the information received from the Greek Ombudsman, (hereinafter the Ombudsman) observes that since the vast majority of employees in the wider public sector are women, the measures of "labour reserve" and those introduced by Law 4024/2011 (a new public service statute, a new job classification and a new harmonized wage scale resulting in wage cuts of up to 50 per cent in certain cases) is likely to have an impact on female unemployment. The CoE Commissioner for Human Rights has also emphasized the serious impact of the crisis and austerities measures on women³³.

In the private sector, the rapid growth of **flexible forms of employment** as well as the replacement of contracts of indefinite duration by fixed term contracts lead to a significant reduction in wages. The CEACR stresses, referring to the Greek Ombudsman's findings, that flexible forms of employment, mainly part-time and rotation work, are more often offered to women, especially during pregnancy and upon return from maternity leave, reducing their levels of pay, while layoffs due to pregnancy, maternity and sexual harassment increase. "Flexibility had been introduced without sufficient safeguards for the most vulnerable, or safeguards which had been introduced by law were not effectively enforced"³⁴.

In fact, unemployment, especially among women and young people, is especially high and as the CEACR notes, "a large number of women have joined the ranks of the 'discouraged' workers who are not accounted for in the statistics", while "small and

³² GNCHR, *Workers' rights and conditions of work in the framework of sub-contracting*, available at: http://www.nchr.gr/images/pdf/apofaseis/ergasia/fin_EEDA_ergolavikes_anatheseis_ioul09.pdf.

³³ Council of Europe, Commissioner for Human Rights, *Safeguarding human rights in times of economic crisis*, November 2013, *op.cit.*, p. 23, and *Protect women's rights during the crisis*, available at: www.commissioner.coe.int.

³⁴ Observation (CEACR) - adopted 2011, published 101st ILC session (2012), *Equal Remuneration Convention, 1951 (No. 100)*, Greece (Ratification: 1975), available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2699054.

medium-sized enterprises, which are an important source of employment for women and young people, close down massively"³⁵.

Moreover, fiscal consolidation decisions and austerity measures are taken **without any ex ante or even ex post impact assessment**, as the ECSR and other treaty-bodies are deploring³⁶.

Also, "recalling that CAs have been a principal source of determination of pay rates, the Committee refers to its comments on Convention No. 98 and calls upon the Government to bear in mind that **collective bargaining** is an important means of addressing equal pay issues in a proactive manner, including unequal pay that arises from indirect discrimination on the ground of sex"³⁷.

To the abovementioned observations the GNCHR adds the need to strengthen the Labour Inspectorate (SEPE) and the Ombudsman, something crucial at a time when both bodies are suffering major budget cuts. This is all the more so as the number of workers who cannot afford recourse to the courts for financial reasons is in constant increase, as stressed hereabove.

More generally, the GNCHR shares the Ombudsman's fear that **any progress** achieved so far in employment and gender equality **may be reversed**, something which would result in failure to draw on valuable human resources, as well as in violation of the rule of law and democratic principles³⁸. The insufficiency of policy measures aiming at combating high female unemployment, the failure to encourage men's participation in family care, the gender pay gap to the detriment of women and the so-called "glass ceiling" on women's professional evolution indeed constitute problems of human rights and democracy.

³⁵ Observation (CEACR) - adopted 2011, published 101st ILC session (2012), *Equal Remuneration Convention, 1951 (No. 100)*, Greece (Ratification: 1975), available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2699054. See also Observation (CEACR) - adopted 2012, published 102nd ILC session (2013) *Discrimination (Employment and Occupation) Convention, 1958 (No. 111)* – Greece, available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3084473.

³⁶ See GNCHR, "Recommendation and decisions of international bodies on the conformity of austerity measures to international human rights standards (2013)", GNCHR, *NCHR Recommendation: On the imperative need to reverse the sharp decline in civil liberties and social rights (2011)* and GNCHR, *The need for constant respect of human rights during the implementation of the fiscal and social exit strategy from the debt crisis (2010)*, *op.cit.*

³⁷ Observation (CEACR) - adopted 2011, published 101st ILC session (2012), *Equal Remuneration Convention, 1951 (No. 100)*, Greece (Ratification: 1975), available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2699054. See also Observation (CEACR) - adopted 2012, published 102nd ILC session (2013) *Discrimination (Employment and Occupation) Convention, 1958 (No. 111)* – Greece, available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3084473.

³⁸ Ombudsman, Special Report 2012, "Gender and labour relations", available at: <http://www.synigoros.gr/resources/docs/11eidikes-fvlo--2.pdf>.

Article 9 and 10

Changes in the Asylum System

In view of the Revised National Action Plan on the reform of the asylum system and migration management, the GNCHR welcomes the recent legislative progress³⁹.

Furthermore, it is important to highlight **that the intense interest shown by the GNCHR**, as an advisory body to the State regarding issues of protection and promotion of human rights, for matters which are relevant to the protection of aliens and, more specifically, of the procedure for the granting of international protection, **has indeed been recognized by the legislator through the institutionalization of its contribution to the recruitment and function of the Appeals Committees** (both the new Appeals Authority and the Committees which have been enacted pursuant to the PD 114/2010).

The **Appeals Authority** was established by Law 3907/2011, by which was also established the new autonomous **Asylum Service**. Both services are part of the **Revised Action Plan**, which focuses on a new autonomous procedure, having as a sole task the granting of asylum or subsidiary protection in a short period of time. More specifically, the Asylum Service consists in the first autonomous structure in our country which is in charge of the examination of asylum claims, and more broadly of the international protection claims. It reports directly to the Minister of Public Order and Citizen Protection and is operated by civil (not police) personnel, trained by specialists in the field with the cooperation of the UNHCR and the European Asylum Support Office. The Appeals Authority, on the other hand, consists in the second instance of examination of the asylum claims.

It should also be noted, at this point, that before the establishment of the new autonomous Asylum system, at the end of 2010, **Presidential Decree 114 introduced the so-called transitional system**, which would be valid until the new asylum system was enacted. **These Committees are still functioning, resolving pending asylum cases and expediting the remaining appeals.**

As far as the **composition of these second instance Appeals Committees is concerned**, we note that the Appeals Authority is composed of three-member independent appeals committees. Each committee consists of an esteemed person, specialised and experienced in refugee law or human rights law or international law, acting as Chair, a Greek citizen proposee by the UNHCR and a university graduate with a degree in law, political or social sciences, specialized in international protection and human rights issues, as members, along with their alternates. According to Article 3(3)

³⁹ See *inter alia* PD 141/2013 on the recognition and the status of "international protection" of foreigners or PD 113/2013 *On the establishment of a single procedure for granting the status of refugee or of beneficiary of subsidiary protection to aliens or to stateless persons in conformity with Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status (L 326/13.12.2005)*.

of Law 3907/2011 on the *Establishment of the Asylum Service and the First Reception Service*, **the chairman and the third member of the Committee** created and functioning within the framework of the new Appeals Authority, as well as their alternates, **are appointed by the Minister of Citizen Protection from a list drawn up by the National Commission for Human Rights**, in accordance with its Rules of Procedure. Similar to the abovementioned provision of Article 3(3) of Law 3907/2011 is the provision of Article 26 of the PD 114 on the *Procedure for the recognition to aliens and stateless persons of the status of refugee or beneficiary of subsidiary protection*, by virtue of which **the choice of lawyers, as well as their alternates**, with specialization in refugee law or human rights law, who participate in the Appeals Committees functioning under the Ministry of Citizen Protection, **is performed from a list established under the responsibility of the GNCHR**.

Unfortunately, recent acts on the part of the Ministry for Public Order and Citizen Protection have seriously undermined the GNCHR's trust in the new Appeals Committees. This is the reason which led the GNCHR to issue a Public Statement dated 9th October 2014 in order to express its deep concern about the most serious and multiple consequences of the obvious legality issues arising from the recent procedure regarding the establishment of the Appeals Committees under Law 3907/2011, as amended by Law 4249/2014⁴⁰.

More specifically, pursuant to Article 3(3) of Law 4249/2014 on the selection procedure:

*“The Appeals Committees are composed of three members; an esteemed person, specialized and experienced in refugee law or human rights law or international law, acting as Chair and two persons holding a university degree in Law, Political or Social Sciences, specialized in international protection and human rights issues, as members, along with their alternates. **The Committee members shall be of Greek nationality. The chairman and the third Committee member, as well as their alternates, shall be appointed by the Minister of Public Order and Citizen Protection from a list drawn up by the National Commission for Human Rights, according to its Rules of Procedure, and shall be submitted within thirty (30) days from the submission of the relevant demand. The second member and his/her alternate shall be proposed by the UN High Commissioner for Refugees. The National Commission for Human Rights shall ensure that the relevant list includes at least double the number of people than the selection of Committee members required. In case of lapse of the aforementioned deadline or failure to draw up a list with the aforementioned number of proposed members, the relevant list is drawn up and submitted to the Minister by the Appeals Authority within ten (10) days from the submission of the relevant demand. The Appeals Authority draws up the list on the basis of the same criteria as those applied by the National Commission for Human Rights. **If the Appeals*****

⁴⁰ GNCHR, *Public Statement on the procedure regarding the establishment of the Appeals Committees under Law 3907/2011*, available at: http://www.nchr.gr/images/English_Site/NEWS/GNCHR_PublicStatement_AppealsCommittees.pdf.

Authority fails to respond, for any reason whatsoever, within the deadline and with double the number of persons required, the third Committee member and his/her alternate shall be appointed by the Minister of Public Order and Citizen Protection on the basis of the same criteria as those applied by the National Commission of Human Rights”.

Pursuant to this legislation, the GNCHR, in response to an invitation by the competent Ministry for Public Order and Citizen Protection, drew up, by the deadline provided by law, a list of suggested members for 8 Appeals Committees, following a relevant selection procedure conducted by a Selection Committee composed of eminent members of the GNCHR. After several months of undue delay, during which the international protection of second degree was actually non-existent, while the GNCHR had not been officially informed, Ministerial Decision No 9541/25.9.2014 (OJ 583/25.9.2014) was issued, which resulted in:

1. The establishment of the Committees with the participation of persons not included in the list submitted by the GNCHR, by the deadline provided by law.
2. The increase of the number of Appeals Committees by two, without the GNCHR having ever been asked to contribute thereto by proposing additional Chairmen and members, as provided by law in order for these Committees to be legally established. It must be pointed out that the law provides that in only two cases (expiry of the deadline for submitting the list or failure of the GNCHR to draw up the list) the Appeals Authority or the Minister for Public Order and Citizen Protection is competent to conduct the selection procedure, obligatorily applying the same criteria as the GNCHR, so as to ensure the protection of the rights of the applicants for international protection.

In the above cases, however, the aforementioned exceptional conditions for the continuation of the procedure without the GNCHR contribution were not met. Therefore, it is obvious that the Ministry acted beyond its lawful competence, exercising unlimited discretion and following a procedure that raises serious questions of legality and of operational and substantive independence of the Appeals Committees. It is clear that the participation of the GNCHR (as well as of the Office of the UN High Commissioner for Refugees) in the establishment of these Committees, as provided by law, is precisely aimed at avoiding such phenomena.

The GNCHR attaches particular importance to the institution of international protection and has issued a series of relevant Decisions and Recommendations. To this effect, it has also demonstrated in practice its active support to the new Asylum Service and has actively participated in the procedures laid down by law, thus expressing its trust, in particular in the work of the Appeals Authority.

The GNCHR, in the context of its institutional role as an independent advisory body to the State on Human Rights issues, will continue to closely monitor the issues of international protection.

Moreover, as far as the shift in the migrant path to the Aegean Sea is concerned, the GNCHR issued on February 2014 a Press Release *On the need to essentially investigate the circumstances of the tragedy at Farmakonisi*.

In particular, the GNCHR felt the need to both express its deepest sympathies and concern for the continued loss of human lives at sea and highlight the need to effectively investigate the circumstances of the recent Farmakonisi tragedy. In fact, it is imperative to ensure the transparency and independence of both the internal investigation in the context of official inquiry and the judicial investigation of complaints regarding any illegal practices of repulsion at sea and refoulement of aliens.

The GNCHR wishes to express its concern about the positions of competent institutional actors which could potentially create the impression that the need to investigate such events is questioned or that it is attempted to anticipate the outcome of the investigation. Furthermore, the GNCHR, as part of the international institutional framework for human rights protection, wishes to stress that the best defense of our country's image, when criticisms and recommendations by international monitoring bodies are formulated, is to reinforce accountability and to fully comply with the rules of law.

More generally, the GNCHR recognises the strong immigration pressure the country receives due to its geographical position, the difficulty to control sea transport and its proximity to the main countries of origin. However, it repeats the opinion it has already formulated in its Observations⁴¹ of 12.5.2013: It is imperative to essentially and deeply investigate the claims and testimonies included in reports by international and European bodies, according to which operations of repulsion and refoulement of third country nationals constitute standard policy for addressing the immigration problem in our Country. These practices, being contrary to the international, European and national legal framework that governs the international protection of asylum seekers or recognised refugees entitled to protection in our country, constitute a flagrant violation of human rights.

Returning to its oral statement of 27 May 2014 on the UN Special Rapporteur's Report on the human rights of migrants, the GNCHR highlights the need to strengthen solidarity and distribute responsibilities in a fairer way among EU member States regarding the managing of migration flows.⁴² In order to effectively protect human rights, which is one of EU fundamental values, providing Greece with financial support is not enough. It is imperative that the asylum system be redesigned, focusing on the protection of human dignity and human rights and not on practices of "storing" people in certain Member States.

⁴¹ GNCHR, "GNCHR Observations on the Draft of the Second Periodic Report of the Hellenic Republic for the International Covenant on Civil and Political Rights (ICCPR)", *op.cit.*

⁴² UN General Assembly, Human Rights Council, 23d session, Submission by the Greek National Commission for Human Rights (NCHR) on the Report of the Special Rapporteur on the human rights of migrants, François Crépeau, Mission to Greece, 27 May 2013.

Detention conditions in penitentiary institutions (par. 12 of the HRC Concluding Observations)

On July 4, 2014, the GNCHR issued a Press Release concerning the death of a detainee in the Nigrita prison, in which it recalled the following principles which are fundamental to European culture:

- Everyone has the right to life as well as to physical and mental integrity, which all state authorities have the duty to safeguard.
- Everyone has the right to a fair trial and, in case of criminal conviction, to detention conditions which guarantee his/her physical and mental integrity and protect him/her from any inhuman or degrading treatment.
- The death penalty has been abolished for all crimes and it cannot be replaced by self-redress.

The GNCHR recalls that Greece has been repeatedly condemned by the European Court of Human Rights for inhuman detention conditions.

The State is bound, apart from fully investigating the heinous acts in the Nigrita prison and punishing the perpetrators, as provided by our legislation, to take effective measures for purging our correctional system of state bodies that violate the aforementioned principles.

Finally, it is highlighted that the accumulated and chronic problems of the correctional system have shaped a state of lack of security and violation of fundamental human rights in our country's prisons.

Article 14

Acceleration of judicial proceedings

The GNCHR participated in the session of the Standing Committee of Public Administration, Public Safety and Justice of the Parliament on the 29th January 2014, where it submitted observations with regard to the bill "Fair satisfaction due to excess of the reasonable length of proceedings in civil and criminal courts and the Court of Audit".

The GNCHR avails itself of the opportunity to remind its positions regarding the drastic increase in litigation costs for lodging legal remedies, and to once again emphasize how inappropriate this choice is as a means to resolve the problem of the excessive length of proceedings. The GNCHR, invoking ECtHR case law, has emphasized that such measures severely violate the right to access to Justice and judicial protection of a great number of individuals. This is the more so as a large and dramatically increasing part of the Greek population is exposed to poverty and social exclusion, as several treaty bodies have found.

It is an undeniable fact that the economic crisis in Greece is unprecedented in intensity and duration⁴³. According to Eurostat, in 2013 the Gross Domestic Product (GDP) of Greece had shrunk by 20.6% in comparison to 2009 (or even by 23.2% in comparison to 2007)⁴⁴, while the Group of Analysis of Public Policy of the Athens' University of Economics notes that the poverty threshold based on a fixed rate has sharply risen, to 39% in 2012 and 44% in 2013⁴⁵. According to the Greek Statistical Authority (hereinafter ELSTAT), in 2012, 34.6% of the population (now obviously more) were at risk of poverty and social exclusion⁴⁶.

Moreover, pursuant to the 2nd MoU, the *minimum* wages under the National General CA of 15.7.2010 were reduced by 22% for all employees, except for those under the age of 25, for whom the *minimum* wages were reduced by 32%. Thus, the *minimum* monthly salary has reached 586.08 Euros and for the workers under the age of 25, 510.95 Euros, while the poverty threshold is 580 Euros⁴⁷. The ECSR found that this reduction of the young workers' salary constitutes a violation of the ESC. Indeed, in a period, of turbulence of growing intensity in the labour and social security field and of restrictions and deprivation of fundamental social rights, when a greater number of people than ever need effective judicial protection, the mounting barriers to access to Justice constitute a human rights violation of particular gravity.

For this reason and in order not to restrict access to Justice for individuals only, since it is only they who pay litigation costs, the GNCHR has recommended that, in case a legal remedy lodged by the State or legal persons governed by public law is dismissed, considerably increased litigation costs and pecuniary penalties be imposed, which will have a deterrent effect⁴⁸. As it is mainly the unjustified legal remedies lodged by the State and other public entities which burden the system of Justice, this is a way to reduce the courts' backlog without creating a problem of inequality of the parties.

The GNCHR, in its comments concerning the Bill which became Act 4055/2012, invoked a specific opinion formulated in Opinion No. 4/2010 of the Administrative Plenary of the

⁴³ See Athens University of Economics, Analysis Group for Public Policy, *Dimension of poverty in Greece of the crisis*, Newsletter 1/2012, M. Matsaganis, Ch. Leventi, E. Kanavitsa (dir.), available at: http://www.paru.gr/files/newsletters/NewsLetter_01.pdf and *The anatomy of poverty in Greece in 2013*, Newsletter 5/2013, M. Matsaganis, Ch. Leventi (dir.), p. 3-4, available at: http://www.paru.gr/files/newsletters/NewsLetter_05.pdf.

⁴⁴EUROSTAT, Real GDP growth rate – volume, available at: <http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&plugin=1&language=en&pcode=tec00115>.

⁴⁵ See Athens University of Economics, Analysis Group for Public Policy, *The anatomy of poverty in Greece in 2013*, Newsletter 5/2013, M. Matsaganis, Ch. Leventi (dir.), available at: http://www.paru.gr/files/newsletters/NewsLetter_05.pdf.

⁴⁶ ELSTAT, *Living conditions in Greece* July 2014, Labour market, Table 8, Poverty-inequality, Table 6, available at: http://www.statistics.gr/portal/page/portal/ESYE/PAGE-themes?p_param=A0101&r_param=SJO01&y_param=TS&mytabs=0.

⁴⁷ ECSR 23.05.2012, Complaint No. 66/2011, *General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece*.

⁴⁸ GNCHR, *Comments on the Bill of the Ministry of Justice titled "Acceleration of proceedings in administrative courts and other provisions"*, Report 2010, p. 123, available at: http://www.nchr.gr/images/English_Site/DIKAIHDIKH/2010_Dioikhtikh_Dikh.pdf.

Council of State (Supreme Administrative Court), according to which “it is absolutely impossible to achieve an important reduction of the length of proceedings before the Council of State without drastically reducing the number of cases brought before it. This reduction cannot of course be achieved by legislative measures which would annihilate or seriously impede the right of individuals, as guaranteed by the Constitution and the ECHR, to seek the annulment of illegal acts or omissions of the Administration. Consequently, the only measure available to the legislator for achieving a significant reduction of the cases brought before the Council of State, is the drastic reduction of the legal remedies lodged by the State and legal persons governed by public law, which, as they exercise public power, do not have a right to judicial protection, the latter being only guaranteed to individuals”⁴⁹.

Moreover, the GNCHR has recommended as a measure of support to those heavily afflicted by unemployment, job insecurity and the weakening of CAs, in line with Articles 21, 22(1) and (5), and 25 of the Constitution, that litigation costs be abolished at least for employment and social security cases and be drastically reduced for the other cases. At the same time, the legal aid system, which is inadequate mainly due to the very strict conditions subject to which it is available, must be reorganised and extended⁵⁰. These recommendations are also in line with the recommendations of ILO bodies for the taking of support measures in favour of workers in the framework of the crisis, as these recommendations have been formulated following complaints of the Greek Confederation of Labour (GSEE)⁵¹.

Article 19

Racist Violence and hate speech - Antiracist Legal framework

On December 17, 2013 the GNCHR issued a Press Release concerning the *Memorandum of the Greek National Commission for Human Rights (GNCHR) on the Bill on Combating*

⁴⁹ Minutes of the Administrative Plenary of the Council of State No. 4/2010, specific opinion regarding the provision that became Article 12 of the Bill. This opinion invokes the decisions made by the ECtHR, *Radio France v. France* 23.9.2003, par. 26 (on the admissibility), *Monasteries v. Greece*, 9.12.1994, par. 49, and *Commercial, Industrial and Rural Chamber of Timisoara v. Romania*, 16.07.2009, par. 15. To these decisions we add those of the ECtHR *Section de Commune d'Antilly v. France*, 23.11.1999 (on the admissibility) and *Danderyds Kommun v. Sweden*, 7.06.2001 (on the admissibility).

⁵⁰ Law 3226/2004.

⁵¹ ILO, Committee on the Application of Standards, 2013 Report (102nd ILC), available at: http://www.ilo.org/ilc/ILCSessions/102/reports/committee-reports/WCMS_216456/lang-en/index.htm; Committee on Freedom of Association, 365th Report of the Committee on Freedom of Association (November 2012), case 2820, available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_193260.pdf; Committee on the Application of Standards 2011 Report (100th ILC), available at: http://www.ilo.org/global/standards/WCMS_165970/lang-en/index.htm. See also ILO, Committee of Experts on the Application of Conventions and Recommendations, 2013 Report, available at: http://www.ilo.org/ilc/ILCSessions/102/reports/reports-submitted/WCMS_205472/lang-en/index.htm; 2012 Report, available at: http://www.ilo.org/ilc/ILCSessions/101stSession/reports/reports-submitted/WCMS_174843/lang-en/index.htm; 2011 Report, available at: http://www.ilo.org/ilc/ILCSessions/%20100thSession/reports/reports-submitted/WCMS_151556/lang-en/index.htm and ILO's High Level Mission to Greece, Report (November 2011), available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/missionreport/wcms_170433.pdf.

Racism and Xenophobia, by which the GNCHR, closely monitoring the initiatives towards changing or reinforcing the current antiracist legislation, restated its positions on the issue.

More particularly, regarding the Bill of the Ministry of Justice, Transparency and Human Rights “Amendment of Law 927 /1979 (A 139) and adaptation to the Framework Decision 2008/913 /JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law”, which was brought before the Greek Parliament, the GNCHR highlighted the impact of its positions on the drafting of a new statute.

Despite the constant disruptions in the legislative procedure, the GNCHR has been consistently stressing the need to combat racist violence and has adopted the following texts:

- Press release - “GNCHR Memorandum on antiracist legislation” (16.9.2013)
- Observations on the Bill of the Ministry of Justice, Transparency and Human Rights on combating certain forms and expressions of racism and xenophobia by means of criminal law (17.3.2011) and
- Two special reports entitled “Police and Justice: combating racist violence” and “Extremist groups, public discourse and racism in sports”, which were published in the 2011 GNCHR annual report under a special heading on racist violence.

Given the crucial current social conjuncture during which the present bill is about to be examined, the GNCHR seizes the opportunity to formulate the strong belief that the message of the clear, explicit and without differentiation or reserve condemnation of racially motivated crimes, with determination and sincerity, both in theory and in practice, must be sent both inside and outside the country. Effectively combating expressions of racism and xenophobia and punishing bigotry and racist rhetoric is of primary importance to the Greek State, in particular as regards the preservation of democracy and the Rule of Law.

In view of the serious challenges our country is nowadays facing, it is imperative to align the current legislative framework for combating racial discrimination, the ineffective application of which has repeatedly been of concern to international bodies, with the provisions of the Council Framework Decision 2008/913 /JHA (28 November 2008). Therefore, the amendment of Law 927/1979 appears to *a priori* aim at “creating a modern and effective institutional framework for combating demonstrations of racism and xenophobia as well as crimes committed with such motives, while covering particular aspects of the issue by introducing legal means of protection and providing proportionate and effective sanctions.”

It is of primary importance, however, to highlight the danger of focusing public attention on the criminalization of racist speech as a counterweight to the absence of any sanctions

for acts of violence whatsoever. Combating racist speech is an important step which can prevent acts of racist violence. Nevertheless, under no circumstances does it fulfill the obligation to investigate and punish - and in essence actually disdain - acts of racist violence. For this reason, it is important to strongly emphasize the need to take parallel and effective educational initiatives at schools and bring into effect measures for sensitizing general population in order to avoid strengthening the impression that violence and racism are acceptable by the State and therefore by society as a whole.

Racist Violence Recording Network⁵²

2013 has been a crucial year for the development of racist phenomena in Greece. The last quarter of the year has been delimited by the murder of Pavlos Fyssas, the criminal investigations and the detention before trial of persons allegedly involved in the murder, as well as leading members of the Golden Dawn with many indictments, with main among them the formation of a criminal organization⁵³. During this quarter the incidents of racist violence were significantly reduced. This remark reinforces the belief that it took a long time for the Authorities to recognize the existence, the volume, the characteristics and the need to deal with the phenomenon of racist violence.

The research of past cases of racist violence and the criminal handling of the alleged criminal behaviour of members of the Golden Dawn are very positive steps. In no case, however, should we ignore the long-term institutional tolerance towards crimes with bias motivation. Moreover we shouldn't avoid emphasizing that anti-racist rhetoric must be constantly reflected in concrete and coherent measures. At this level, the institutional deficits remain. The failure to provide any guarantee for the filing of complaints by persons who were victims of racist violence but do not have legal documents may be considered one of them. Effective prevention and repression of hate crime implies that the victim would actually be able to lodge a complaint under safe conditions without fear of being penalized, which would prevent the victim from filing the complaint. The establishment of the Departments and Offices against Racist Violence by the Hellenic Police (ELAS), which has been positively accepted by the Network, is a necessary but insufficient condition for the effective combat against this phenomenon. In parallel many other prerequisites are necessary, which have not yet been fulfilled, such as transparent and objective procedure to select the officers, specialized training, ability of the victims of racist violence without legal documents to lodge a complaint, investigation and conviction of unlawful actions by police officers who are racially motivated.

⁵² Pursuant to an initiative of the GNCHR and the Office of the UNHCR in Greece and the participation of NGOs and other actors, the Racist Violence Recording Network was established. The Network, which is composed of actors who offer medical, social and legal services to victims of racist violence, aims at combating racist violence. Among these actors are, *inter alia*, *Medecins du Monde*, *Amnesty International*, *Hellenic League for Human Rights*, *Greek Helsinki Monitor*, *Greek Council for the Refugees*, whilst the *Greek Ombudsman* participates with an observant status.

⁵³ Racist Violence Recording Network, *Annual Report 2013*, available at: http://rvrn.org/wp-content/uploads/2014/04/Report2013_EN.pdf.

Moreover, the monitoring of the development of specific cases which have been recorded by the Racist Violence Recording Network demonstrates that the racist motivation is not thoroughly and carefully investigated by law enforcement authorities ever since the stage of preliminary investigation. Finally, particular concern is caused since the incidents where police violence is connected to racist violence, namely when the perpetrators are members of the security bodies, are significantly increased. The culture of impunity for such acts is reinforced by the lack of an effective independent mechanism to investigate complaints of police brutality and arbitrariness, in accordance with the recommendations of international bodies.

After two and a half years of operation and after having issued four reports and a number of recommendations to the State, the Network notes that most of the observations of its previous interventions are now commonplace, whereas the data it makes public constitute a benchmark for national and international institutions which protect human rights. However, it is primarily the responsibility of the authorities to systematically record racist crimes. A well-governed state should be seeking recognition, recording and prosecution of racist crimes. On the contrary, any negligence in recognizing and dealing with the phenomenon by the competent state authorities maintains and disseminates the belief that such criminal behaviour is tolerated, thus fuelling tensions which disrupt social cohesion and undermine the basic principles of the rule of law.

For the above reasons, under no circumstances should we get the impression that our country has adequately dealt with the problem of racist violence. The risk of resurgence is present – many recent data indicate that – while even the temporary reduction of serious racist crimes should not allow us to overlook everyday incidents of lower intensity which reveal the constant presence of diffuse racism within the society and its structural presence in the areas of public administration and the security bodies. We must also point out emphatically that in the future, when the trials of the members of the Golden Dawn shall be on-going, special care shall be required for the protection of the defenders of human rights and the witnesses of racist attacks, who may be targeted because of their actions.

Findings

During the period January – December 2013, the Racist Violence Recording Network documented, through interviews with victims, 166 incidents of racist violence with at least 320 victims: 143 incidents were committed against migrants or refugees, while the other 22 were committed against LGBT persons and 1 against a human rights defender (legal counsel of victims). The number of victims is significantly higher because of the recording of the incident of labour exploitation linked with racist motive in Nea Manolada, where 155 victims were shot and 35 of them hit by the supervisors of their employers.

Geographical and temporal dispersion: 103 incidents occurred in Athens, and particularly in areas of the city centre, such as Aghios Panteleimonas, Attica Square, America Square and other areas around Omonia, while 8 incidents were recorded in the broader area of the prefecture of Attica. Moreover, 15 incidents were recorded in Thessaloniki, 15 in Patras, 1 incident with 35 victims in Nea Manolada, Ilia, 5 in Piraeus, 5 in the Prefecture of Heraklion, Crete, 4 in Chania, 2 in Mytilene, while incidents were also recorded in: Rhodes, Lamia, Kos, Corfu, Kavala, Giannitsa and on a ship sailing in Greek territorial waters.

The majority of incidents occurred in public places, whereas the incidents which occurred in areas of detention were increased (23 incidents within police precincts or migrants' detention centers). This finding, together with the increase in racist incidents of police violence, is a cause for particular concern (see a specific reference in the unit "Involvement of police personnel and public servants in racist attacks").

It is worth noting that during the critical quarter after the murder of Pavlos Fyssas and the detention of leaders of the Golden Dawn with the indictment that they have established a criminal organization (October-December 2013), the Racist Violence Recording Network recorded 18 incidents of racist violence. The significant reduction in the incidences of racist attacks compared to the previous period of 2013, apart from the positive dimension it bears, supports the data of the Network regarding the existence of assault squads, against which the Greek State was unfortunately too slow to take action.

Characteristics of the attacks: The majority of incidents concern physical attacks against foreigners, while the types of crimes are mainly severe personal injuries (in 75 cases) and personal injuries (in 58 cases), mostly combined with threats, verbal abuse, property damage and theft. Most incidents occurred at night or in the early morning hours.

There were also 27 incidents of verbal violence (verbal abuse, threats), 1 of which was combined with insults to the victim's religion, 1 was combined with indecent exposure/insult to sexual dignity and 12 with arbitrary detention after the victim was arbitrarily brought before the authorities. Furthermore, there were 2 incidents of arson and 3 incidents of disturbance of the domestic peace, accompanied by threats and verbal abuse.

It must also be noted that the Racist Violence Recording Network recorded, after contact with the victim's family and representatives of the Pakistani community, the murderous attack against the 26-year old Sachzat Loukman by two persons on a motorcycle in Petralona in early 2013.

In at least 20 recorded incidents, the victims were targeted because of racial motive in conjunction with other incentives. These are the so-called "mixed motive" hate crimes, a phenomenon which has been identified and analyzed in detail in the relevant

international literature⁵⁴. The “mixed motive” incidents which were recorded by the Network are regarding either racist attacks emanating from and in conjunction with labour exploitation (the most emblematic case is in Nea Manolada) or exercise of racist violence followed by removal of assets (mobile phones, money and/or legal documents of residence). These incidents are typical racist crimes, since the victim is targeted and the criminal offense is made possible precisely because of the victim’s “diversity”. The victim’s “diversity” in these incidents is the determining element, rather than just a common one⁵⁵.

Victims: The victims, who approached the members of the Network and reported the incidents, consisted of 296 men, 11 women, 1 trans man and 12 trans women. The average age of victims is 29 years.

Within the group of **migrants and refugees**, the victims originated from Afghanistan (51) Pakistan (11), Algeria (4), Bangladesh (164), Egypt (4), Morocco (8), Somalia (3) Sudan (6), Guinea (6), Tunisia (1), Iran (6), Syria, (3), Eritrea (1), Congo (4), Nigeria (6), Senegal (1), Palestine (1), Ivory Coast (3), Albania (1), Burkina Faso (3), Ghana (1), Libya (1), Mali (2), Mauritania (1), New Guinea (1) and Cameroon (1). Furthermore, 2 victims were citizens of Bulgaria, while in one incident the origin was not declared.

As regards the legal status of the above victims (at the time they were recorded by the Network): 66 were asylum seekers, 4 were recognized refugees, 14 were holders of legal residence permits, while 213 held no legal documents or were under deportation order.

In the vast majority of cases, the victims consider that their characteristic as foreigners is the reason for the attack; they believe that they were targeted because of their skin colour, ethnic origin or religion and/or any other relevant characteristic revealing the fact they were not natives (the majority of foreign victims were Muslims).

Within the **group of LGBT persons**, the Racist Violence Recording Network documented in 2013 six (6) victims of attacks based on sexual orientation. These incidents are involving threats, verbal abuse and, in one case, personal injuries.

There were also 16 recorded victims of racist violence due to gender identity. Most of these are concerning arbitrary detentions of trans women in Thessaloniki, where many persons were multiply victimized, since they were brought before the police precincts in degrading conditions and detained for two or three days in a row (see a specific reference in the unit “Involvement of police personnel and public servants in racist attacks”). There were also 4 recorded incidents involving verbal abuse, threats and personal injuries.

⁵⁴ Although one definition of the “typical” hate crime is widespread, when the perpetrator’s motive is purely racist, many times the motivation behind a hate crime is quite complex. Research has shown that hate crimes often have multiple motives. See ODIHR-Hate crime laws, pp. 53-54.

⁵⁵ See also the Special Report of the Greek Ombudsman, “The phenomenon of racist violence in Greece and how it is combated”, p. 14, available in Greek language at: <http://www.synigoros.gr/resources/docs/eidikiekthesiratsistikivia.pdf>.

Finally, the Racist Violence Recording Network recorded an incident of unlawful detention of a lawyer of the victims during the above-mentioned incident when the victims were arbitrarily brought before the authorities.

Perpetrators: The perpetrators of the attacks recorded were almost always men, except for 14 cases of attacks by multiple-member groups where participation of women is also recorded. In two incidents women were recorded as perpetrators: one incident of verbal abuse and denial of medical treatment in a hospital pharmacy because of national origin, and one incident of verbal abuse and personal injury due to sexual orientation.

The average age of the perpetrators in the incidents where the victims were able to roughly calculate it, was approximately 27 years. The overwhelming majority of the perpetrators are Greek. There were also 3 recorded assaults by mixed ethnic groups, e.g. assault by a group involving Albanian perpetrators in the centre of Athens. In only 6 among 166 reported assaults there was one single perpetrator. Most assaults were committed by groups of 2-10 persons.

In two incidents there is recorded verbal assault (verbal abuse, threats, degrading behaviour), while in 2 incidents (with 39 recorded victims) the perpetrators were the employers of the victims. Finally there were 44 recorded incidents of violence by uniformed officers (see next chapter).

In 75 cases, the victims of the attacks believe that the perpetrators are linked to extremist groups, which also emerges from the qualitative data collected for the attacks, as well as the modus operandi recorded in the 2012 annual report and continues to be recorded in 2013: in these cases, the perpetrators are believed to act in organized groups, moving either by motorcycle or on foot, often being accompanied by large dogs. They are dressed in black and at times with military trousers, wearing helmets or having their faces covered. Most assaults occur after sunset or in the early morning hours. Motorcycle or foot “patrols” by persons dressed in black are the most common practice; they act as self-proclaimed vigilante groups who attack refugees and migrants in the streets, squares or public transportation stops.

It must be noted that in 15 cases, the victims or witnesses to the attacks reported that they recognized persons associated to Golden Dawn among the perpetrators, because either they wore the insignia of the organization, or they were seen participating in public events of the organization in the area, or they were known as members of the local branches of the party.

Intensity of attacks and weapons: Qualitative data on the nature of the attacks resulting from the recording of the incidents demonstrate the continuation of the modus operandi of racist violence organized groups in 2013: the victims report the use of weapons during the attacks, such as clubs, crowbars, folding batons, spray, chains, brass knuckles, knives and broken bottles, use of large dogs. The victims often suffer multiple injuries such as fractures, sprains, lesion injuries, abrasions, eyesight and hearing damages, symptoms of post-traumatic stress, etc.

Involvement of police personnel and public servants in racist attacks: The Racist Violence Recording Network notes with concern the increase in incidents where police violence is linked to racist violence.

Among 44 incidents of violence by uniformed officers recorded in 2013, 23 took place in detention facilities. In 31 incidents, the victims reported that they were targeted because of the fact they were not natives and/or their skin color, religion and ethnic origin. 10 of them took place in detention areas (police precincts, detention centers). In these incidents the uniformed officers, during the exercise of their duties and in routine operations, resort to unlawful acts and violent practices.

In 12 incidents recorded during June-July 2013, the victims were targeted because of gender identity: these involve repetitive arbitrary detention of trans women in Thessaloniki. These incidents were reported extensively in the press during that period and they were accompanied by threats, verbal abuse, derogatory characterizations regarding gender identity, denial of access to a legal counsel, even denial to provide medication in one case.

Finally, the Network is dealing with great concern the incident regarding the arbitrary detention of the victims' attorney.

Furthermore there were 2 recorded incidents where the perpetrators were public officers, namely:

- 1 incident during which a student, according to her testimony, fled to the teachers' room to be protected from the attack of her classmates because of gender identity. The guard locked her in the classroom, showing indifference for her security, and when the principal of the school arrived, he allegedly told her, "I will call the Golden Dawn just for you".

- 1 incident during which a hospital pharmacy supervisor verbally allegedly abused a foreign woman and refused to give her medical treatment, although she shown her the pink card.

The Racist Violence Recording Network expresses particular concern regarding recorded racist incidents by uniformed officers and civil servants, noting that they must be dealt with greater rigor as they bear a particular moral condemnation since they are being committed by representatives of the state.

Complaints and the authorities' response: Only 33 among 166 incidents were reported to the police, thus initializing criminal proceedings. The vast majority of victims do not want to take any further action, mainly because of fear associated with the lack of legal documents (see below, "Access of the victims to the justice system").

There were also reports concerning: unwillingness or discouragement, and in some cases, refusal of the police authorities to collaborate in practice for the lodging of a complaint. Furthermore, some victims did not wish to lodge a complaint because they have previously been victims of police violence or because they knew that the perpetrators had

relationships with the police and/or the Golden Dawn and they feared that they would be targeted. There were also reports on the lack of confidence of the victims in the justice system and consequently many of them feel that it would be hopeless to initiate a process.

These indicative reports demonstrate that, in general, an important part of the prosecuting authorities consider racist attacks as an everyday phenomenon integrated into a “normality” and, therefore, do not feel there is any special need to fight it. The victims’ testimonies frequently show that they avoid intervening during the incidents and, when they do so, they often treat the victims with depreciation and/or they are discouraging them from initiating any process.

The Racist Violence Recording Network once again assesses that the recorded findings are exceptionally alarming, while increasing concern rises from the fact that the incidents recorded by the Network’s members are only the tip of the iceberg. The geographically limited range of the participating organizations, the spreading fear amongst the victims which often prevents them from approaching even the organizations which support them so as to report the incidents, even anonymously, as well as the objective inability of organizations to provide effective protection to the victims, are strong indications that the number of racist violence attacks recorded by the Network is much smaller than the actual one. This conclusion is reinforced from the frequent media reports of incidents in areas different from the ones where the participating organizations are active, while it is validated by the relevant report of the Greek Ombudsman: “It is interesting but not inexplicable that the incidents which were initially collected from the Press are usually not found in the list of the network and vice versa. These are essentially two ways of recording which **complement one another** since most victims of attacks who have chosen to address the Network do not wish, mainly because of fear, frustration or lack of confidence in the state institutions, to make any award in respect of their case”⁵⁶.

Important developments against racist violence by the competent police and judicial authorities

Departments and Offices against racist violence within the Greek Police:

In its 2012 Annual Report, the Network had welcomed the legislative initiative of the Ministry of Public Order and Citizen Protection to establish Departments and Offices against racist violence within the Greek Police (Presidential Decree 132/2012). At the same time the necessary conditions for the effective operation of these parts were pointed out, including transparent and objective selection process of the officers, specialized training, as well as the urgent need to investigate and convict unlawful actions by racially motivated police officers.

⁵⁶ See also the Special Report of the Greek Ombudsman, “The phenomenon of racist violence in Greece and how it is combated”, *op.cit.*, p. 15.

According to data submitted to the Network by the Greek Police, in 2013, by Departments and Offices against racist violence:

1. The competent services of the Greek Police (Departments and Offices against Racist Violence) recorded nationwide one hundred and nine (109) cases with suspected racist motive, which have been investigated.
2. There were case files formed for ninety-three (93) cases which were submitted to the local competent Prosecuting Authorities. Among these, forty-three (43) were brought before the Courts under Law 927/1979.
3. There were thirty-seven (37) recorded incidents involving police officers. Thirteen (13) of them have been dealt with by the Internal Affairs Service.
4. The call centre 11414 received 450 calls, among which 28 are being investigated.

However, these figures relate to only a small sample of racist violence assaults which occurred in Greece in 2013, since as detailed below, they were regarding complaints by persons who had legal documents and therefore had the possibility to lodge a complaint before the police authorities (apart from the telephone complaints). It is indicative that, from the 166 recorded incidents, only 33 were actually reported to the police.

Moreover, the Racist Violence Recording Network notes that the two-day training received by persons serving in these Departments at the beginning of their operations is considered insufficient for the increased training needs on such a sensitive and complex issue. The Network therefore suggests a mandatory process of continuous training and feedback of the knowledge, for the police officers appointed in these Departments, as well as the entire personnel of ELAS in contact with vulnerable social groups. To that end, the Network has repeatedly proposed to the Greek authorities to formally request assistance from international and European organizations with expertise and experience in training security bodies and judicial officers. It is also proposed to draft Guidelines containing basic instructions and clarifications related to hate crime. The Racist Violence Recording Network could be actively involved.

Victims' access to the justice system:

There is, currently, no guarantee as regards the possibility to lodge a complaint by persons who do not have legal documents. Persons without legal documents, who constitute the majority of victims of racist attacks, even in cases where they wish to denounce the incidents, are automatically detained, upon their arrival at the police Precinct, waiting for an order of deportation to be issued, thus being prevented from filing any complaint regarding any racist violence incident against them. Moreover, during any legal proceedings against the perpetrator, the person without legal documents is again discouraged to participate in the process, since at this stage the victim is also threatened with arrest and detention for the purpose of deportation. It must be indicatively stated that out of 200 victims who were recorded by the Network in

2013, the vast majority do not wish to lodge a complaint due to fear mainly related to the lack of legal documents.

However, effective prevention and combat against racist crimes implies that the victim is actually able to file a complaint under safe conditions without any fear of being found in a very unfavourable position, able to prevent them for lodging the complaint. The State should encourage the victims –regardless of their residence status in the country– to report any threats or assaults against them. The Racist Violence Recording Network, in order to effectively deal with the above problem and to reduce the impunity which emerges therefrom, had proposed in its first recommendations towards the State in 2012 to explicitly provide for the suspension of deportation and detention of the victims or witnesses who lodge a complaint, in conjunction with the issuance of a residence permit for them on humanitarian grounds according to the model for provision of protection to victims of human trafficking. It is specifically proposed, where victims or witnesses without legal documents report incidents of racist violence, to suspend their detention and deportation under a specific prosecutor’s order which at a first stage shall consider that the complaint is probably founded and shall recognize the capacity of a victim or a witness of a racist violence crime, in order to grant then a special protection status (residence permit), for the time it shall be deemed necessary for the prosecution and conviction of the perpetrators and pending final judgment in the criminal proceedings against the offender.

The above proposal by the Network was reflected in the draft for the Ratification of the Code of Immigration and Social Integration, as was initially introduced, and the provisions on humanitarian status (Article 19) where in case (b) it was added that it would be possible to grant a residence permit for humanitarian or other reasons to “victims and essential witnesses of crimes which are provided for in Articles 187, 309 and 310 CC or which are punished as a felony and committed against their life, health, physical integrity, assets, property and personal and sexual freedom, provided that the prosecution procedure has been initiated or that preliminary examination was ordered pending a final court decision or until the procedure is closed. The fulfilment of these requirements shall be established by an act of the competent Public Prosecutor, both before and after the prosecution. The act of the Public Prosecutor shall be notified to the Directorate of Migration Policy of the Ministry of Interior”.

The above provision, which granted a residence permit on humanitarian grounds for all victims of felonies, was essentially aiming to fill the legal vacuum which existed on the residence permits of racist crimes victims, by expanding it to all victims of felonies irrespective of racial motive. The Racist Violence Recording Network welcomed this initiative insofar as it would contribute to the effective access of victims and witnesses to the Greek justice. The Network expresses its great concern for the non adoption of this specific provision, as the Code of Immigration and Social Integration was ratified without the provisions for humanitarian status (Article 19). In any case, the Network expresses its intense opposition to the recently promoted amendment which essentially

exempts public officials from any accountability and leads to the further intimidation of the victims. This unacceptable amendment reverses the burden of proof in the expense of the victims, threatening them with deportation and immediate court under the flagrant crime procedure and essentially criminalizing the recourse to legal protection⁵⁷.

The message of the State must be the absolute respect of the physical integrity and safety of any person living in the Greek territory. The ineffectiveness of the protection mechanism of the racist violence victims sends a message of impunity to organized groups of racist violence and exacerbates the lack of confidence in the rule of law.

Adequate investigation of racial motives:

The Racist Violence Recording Network recognizes that our country has made positive steps towards recording and prosecuting hate crimes. The recognition of the aggravating circumstance of racial motives in November 2013 for the first time, in a trial regarding arson in a store in Kypseli belonging to a national of Cameroon is an important step towards this direction. Another positive step is the significant increase in racially motivated cases which have found their way to the courts, the most significant being the pending trial for the murder of Sachzat Loukman in January 2013 in Petralona.

However, based on the monitoring of individual cases which have been recorded by the Racist Violence Recording Network, it appears that the racial motive is not thoroughly and carefully investigated by the law enforcement authorities at the stage of preliminary investigation. The Police Circular dated 24/5/2006, which states that in the framework of their enforcement action and particularly during preliminary investigation, the Police Authorities should investigate the possibility of a racial motive in the crimes committed, should collect information and record/report incidents through a specific form for all crimes with racist or multiple (mixed) motive, seems to have practically fallen into disuse.

In terms of court proceedings, the impunity of the perpetrators is a result of the fact that the relevant provision of Article 79(3) of the Criminal Code, which was added to the current legislation in 2008 and provides that the commission of the act due to ethnic, racial, or religious hatred of hatred due to different sexual orientation constitutes an aggravating circumstance, is not applied by either the police or the Prosecutor at the stage of the criminal prosecution, but only after the preparatory inquiries are essentially concluded, at the stage of the decision on the sentence, therefore, after the guilt of the offender has been established.

It is therefore necessary to take an immediate legislative initiative in order to ensure the investigation of racial motive at the stage of preliminary investigation, regardless of the aggravating circumstance at the stage of the decision on the sentence.

⁵⁷ See the relevant press release by the Racial Violence Reporting Network, available at: <http://rvrn.org/2014/03/%CE%BD%CE%B1-%CE%B1%CF%80%CE%BF%CF%83%CF%85%CF%81%CE%B8%CE%B5%CE%AF-%CE%B1%CE%BC%CE%AD%CF%83%CF%89%CF%82-%CE%B7-%CE%B1%CF%80%CE%B1%CF%81%CE%AC%CE%B4%CE%B5%CE%BA%CF%84%CE%B7-%CF%84%CF%81%CE%BF%CF%80>.

Along with the explicit commitment of the prosecuting authorities to record, from the moment a complaint has been filed, any events or suspicions of the victim that relate to racist motives, it is required to establish provisions which: a. provide that the crime committed with racist motive is a distinct offence; or b. provide, in relation to some specific types of crimes (including, indicatively, those against life, physical integrity, personal freedom and property), for a sentence increase in case the crime is committed due to racist motive; or c. provide for the racist motive to constitute a general aggravating circumstance, but within a specific framework regarding the sentencing of the crime. In that manner, the exercise and initiation of the prosecution will be enabled, based on a specific type of crime that will allow the investigation of the racist motive already from the beginning of the criminal proceedings, including the stages of interrogation and judicial process.

Nevertheless, we reiterate that notwithstanding any legislative amendment, the State should provide adequate training and guidance to the prosecuting and judicial authorities involved so that the racist motive is investigated at all stages of the criminal proceedings.

Adequate investigation and combat against racist violence by police officers:

The Racist Violence Recording Network notes with concern the increase in incidents where police violence is linked to racist violence. It is imperative to deal effectively with the references/testimonials/complaints about any kind of police arbitrariness, whether it is an offense by the police officers during the performance of their duties or perpetuation of stereotypical reactions against the victims, which are stemming from personal opinions or the absence of specific training so that racist behaviours which constitute violations of human rights may directly or indirectly evolve. Therefore, the practical and unconditional condemnation on behalf of the State of any act of police brutality and arbitrariness is imperative.

To this end, it is proposed to amend the current legislative framework with a view to establishing an effective mechanism for complaints regarding police violence and arbitrary incidents, for the independent investigation and monitoring in accordance with the recommendations of international organizations. The Network emphatically reiterates the recommendations of the Greek Ombudsman and the National Commission for Human Rights⁵⁸ in order to resolve the issue of the effective functioning as well as of the independence of the Offices against Incidents of Arbitrariness, which are provided for by Law 3938/2011, but are not operating. The same applies for the Commission which is foreseen in the same Law for the assessment of the complaints, the function of which is critical in order to review cases after the issuance of relevant decisions by the European Court of Human Rights.

⁵⁸ GNCHR, Comments on the bill by the Ministry of Citizen Protection "Bureau for Addressing Incidents of Arbitrariness and other provisions", *Annual Report 2010*, available at: http://www.nchr.gr/images/pdf/apofaseis/astunomia/Grafeio_Kataggelion_2010.pdf.

Adequate investigation of attacks on grounds of sexual orientation and gender identity:

The Racist Violence Recording Network has expressed its satisfaction for the explicit inclusion of gender identity in the last subparagraph of Article 79(3), namely in cases of crime victims where the motive of hatred constitutes an aggravating circumstance under Law 4139/2013. This is a positive step that brings our country closer to European laws and practices.

However, Presidential Decree 132/2012 by the Ministry of Public Order and Citizen Protection on the establishment of specific Departments and Offices against Racist Violence includes persons or groups of persons victimized solely because of “their racial or ethnic origin or their religion”. Therefore, both this Presidential Decree and any legislative initiative aiming to tackle hate crime should include the cases of persons being targeted because of a different sexual orientation and gender identity.