



Office for Democratic Institutions and Human Rights

**Information Submitted to the
Office of the United Nations High Commissioner for
Human Rights
as a Stakeholder in the
Universal Periodic Review of Greece**



WARSAW, 21 SEPTEMBER 2015

OSCE/ODIHR Submission of Information about an OSCE participating State or Partner for Co-operation under consideration in the Universal Periodic Review Process

Participating/Partner State: Greece

UPR Session and Date of Review: 25th Session, April-May 2016

Background

Greece is a participating State in the Organization for Security and Co-operation in Europe (OSCE) and has thus undertaken and has recently reaffirmed a wide range of political commitments in the “human dimension” of security as outlined in relevant OSCE documents.¹ The OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) has been mandated by OSCE participating States, including Greece, to assist them in implementing their human dimension commitments. OSCE/ODIHR assistance includes election observation and assessment activities as well as monitoring and providing assessments, advice and recommendations relating to implementation of commitments in the fields of human rights, democracy, tolerance and non-discrimination, and the situation of Roma and Sinti in the OSCE area. The present submission provides publicly available country-specific information that may assist participants in the Universal Periodic Review process in assessing the situation in Greece and its implementation of past recommendations, as well as to formulate new recommendations that may be relevant to enhancing the enjoyment of human rights and fundamental freedoms.

Election-related activities

Early Parliamentary Elections, 6 May 2012: In response to an invitation from the Permanent Mission of Greece to the OSCE, the OSCE/ODIHR deployed an Election Assessment Mission (EAM) to observe the 6 May 2012 early parliamentary elections. The EAM was headed by Ambassador Boris Frlec and consisted of six international experts. The EAM final report concluded that: “*Against an adverse economic background, these elections demonstrated a competitive, open and pluralistic process. The legal framework for elections provides a generally sound basis for the conduct of democratic elections. However, the lack of explicit legal provisions for domestic and international election observation, as well as certain limitations regarding the candidacy rights of civil servants and public office holders needs to be addressed.*”

The report also notes that “*campaigning took place in an open atmosphere, characterized by respect for fundamental freedoms of expression, movement and assembly. However, austerity measures had a visible impact on the election campaign as campaign activities were rather modest. In addition, it also generated complaints from smaller parties claiming that the*

¹ Compendium of OSCE Human Dimension Commitments, vol 1 and 2; Astana Commemorative Declaration, 2010.

*larger parties were receiving an unfair advantage regarding media access and public campaign financing.*²

Legislation reviewed by ODIHR

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Tolerance and non-discrimination issues, including incidents of and responses to hate crime

The authorities in Greece and other sources have provided information to ODIHR, most recently for its 2013 hate crime annual reporting cycle. Extracts from this information are included below.

OSCE participating States have made a number of commitments to promote tolerance and non-discrimination and specifically to combat hate crime, and the OSCE/ODIHR supports states in their implementation of those commitments. In this context, the OSCE/ODIHR produces an annual report on hate crime to highlight the prevalence of hate crimes and good practices that participating States and civil society have adopted to tackle them. It also helps participating States to design and draft legislation that effectively addresses hate crimes; provides training that builds the capacity of participating States' criminal justice agencies, prosecutors, judges and police; raises awareness of hate crimes among governmental officials, civil society and international organizations; and supports the efforts of civil society to monitor and report hate crimes. Information concerning Greece in the most recent (2014) edition of the annual hate crimes report³ referring to incidents occurred in 2013 includes the following:

Information from the Greek authorities: Greece regularly reports hate crime data (collected by the Ministry of Justice, Transparency and Human Rights, the Public prosecutor's office and the State Security headquarters of the Greek Police) to ODIHR. The country's Criminal Code contains a penalty-enhancement provision for hate crimes. A recent amendment added gender identity and disability to the list of protected grounds in aggravating circumstance provision. Furthermore, it forbids suspension of the sentence in cases where bias motivation was established as an aggravating circumstance. The Greek ministry of justice, transparency and human rights has requested ODIHR's assistance in developing the capacity of the criminal justice system and the Prosecutors and Hate Crimes Training programme (PAHCT), has been presented in Thessaloniki in 2014.

Data collected by Greek law enforcement agencies reported two homicides, 51 physical assaults, one incitement to violence, eight threats/threatening behaviors and 42 unspecified crimes. The authorities reported a total of 109 hate crimes, nine of which were prosecuted.

Starting with its 2012 reporting cycle, ODIHR introduced a system of key observations for all countries, based on OSCE Ministerial Commitments related to hate crime recording and

² See the full report and recommendations at: <http://www.osce.org/odihr/elections/92460>.

³ <http://hatecrime.osce.org/greece>

monitoring. For Greece, ODIHR observes that the law enforcement agencies have not recorded the bias motivation of reported hate crimes. The authorities should put in place a system which will enable them to record hate crimes by target group.

Information from civil society organizations and groups: In addition to information received from national authorities, ODIHR sent requests for information on hate crimes in Greece to non-governmental organizations and to international and local civil society organizations and groups. The Racist Violence Recording Network reported on racist and xenophobic incidents. These included one murder, 133 physical assaults, 75 of which resulted in serious injuries, and two arson attacks. One arson attack against the Turkish consulate was also reported by the Federation of Western Thrace Turks in Europe. Other incidents were reported by World Without Nazism, as three physical assaults, including one perpetrated by a group, and two incidents of damage to property.

The same organization also reported several arson attacks and two physical assaults against Roma and Sinti and a desecration of a cemetery with anti-Semitic bias.

Crimes with bias against Muslims were reported by the Federation of Western Thrace Turks in Europe, and included one physical assault resulting in serious injury, two incidents of damage to property and two of desecration of a place of worship, including one in which a pig's head was left outside a mosque.

A physical assault against Christians and members of other religions was reported by the European Association of Jehovah's Christian Witnesses/Jehovah's Witnesses – Greece. World Without Nazism also reported two incidents of desecration of a place of worship.

Transgender Europe reported on incidents targeting LGBT individuals. These include two serious physical assaults. In one of the attacks, a perpetrator attempted to pour gasoline over the victim. The Racist Violence Recording Network reported four physical assaults, one of which against a gay man and the other three against transgender women. Three incidents of threats were also reported. The Lesbian and Gay Community of Greece (OLKE) reported 87 physical assaults, the majority of which (53) resulted in serious injuries, 13 cases of damage to property and four cases of arson.

Information from OSCE and other international organizations: In addition to information received from civil society organizations and groups, the three Personal Representatives of the OSCE Chairperson-in-Office on tolerance and non-discrimination made a joint visit to Greece. Following the visit, the Representatives presented their recommendations for the country and suggested that the police should receive training on hate crimes.

Roma and Sinti issues

The OSCE/ODIHR has a specific mandate to assist participating States in implementing the OSCE Action Plan for Improving the Situation of Roma and Sinti within the OSCE Area.⁴ The most recent Status Report on the implementation of the Action Plan was issued by

⁴ <http://www.osce.org/odihr/17554>.

ODIHR in 2013.⁵ The report included the following information about the situation of Roma and Sinti in Greece.

In its response to the questionnaire related to the 2013 Status Report, Greece listed some specific achievements with regard to the improvement of the situation of Roma and Sinti, including the development of the National Roma Integration Strategy as a main achievement and progress in education.⁶ The latter, however, might be questioned as there was evidence of discrimination against Roma children as a result of segregation practices employed by Greek authorities that violate the right to education.⁷ Moreover, according to the Regional Roma Survey data conducted by the European Union Agency for Fundamental Rights (FRA), the proportion of Roma children not attending school in Greece is considerably high, more than 35 per cent, meaning that this proportion of children is either still in preschool, not yet in education, skipped the year, stopped school completely or is already working.⁸ With regards to completing any type of upper-secondary general or vocational education, the above-mentioned report concludes: *“In five out of 11 EU Member States, Portugal, Greece, Spain, France and Romania, fewer than one out of 10 Roma is reported to have completed upper-secondary education.”*⁹ At the same time, it is necessary to mention the use of positive practice of employment of Roma school mediators on project-based positions, i.e. run by civil society and supported by the state and/or donors.¹⁰

With regard to housing and living conditions, in the 2013 Status Report Greece identified the existence of so-called informal settlements lacking adequate infrastructure, and recognized that discrimination against Roma in the housing market exists, which is confirmed by the cases reported to national human rights institutions, including Ombuds offices.¹¹

When it comes to the health status of Roma in Greece, it continues to be dissatisfactory. According to recent reports, 15 per cent of Roma population in Greece suffers from some sort of disability or chronic disease.¹²

Country-specific ODIHR monitoring, assessment, co-operation and assistance activities (other than elections)

Greece was part of ODIHR's second assembly monitoring cycle in the course of which assemblies were monitored between 1 May 2013 and 5 July 2014. The following findings and recommendations stem from this exercise. The full thematic report is accessible at: <http://www.osce.org/odihr/132281?download=true>

⁵ <http://www.osce.org/odihr/107406>.

⁶ OSCE/ODIHR, *Implementation of the Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area, Status Report 2013* (Warsaw: OSCE/ODIHR, 2013), p. 19.

⁷ *Ibid.*, pp. 43, 44.

⁸ *Ibid.*, p. 45.

⁹ *Ibid.*, p. 45.

¹⁰ *Ibid.*, p. 47.

¹¹ *Ibid.*, pp. 27, 28.

¹² *Ibid.*, p. 34.

ODIHR monitored three un-notified assemblies on 1st May 2015: two protests against austerity measures in support of workers' rights and a demonstration on the occasion of Labour Day.

In the context of the monitoring exercise ODIHR made several observations regarding the Greek legal framework relevant to the exercise of freedom of peaceful assembly in the country as well as on policing practices.

- Greece's Constitution and Act 794/1971 provide only for "Greeks" to have the right to assemble peacefully.¹³ ODIHR recommends to ensure that the freedom of peaceful assembly of everyone under the jurisdiction of participating States, including non-citizens, is protected in law.
- In Greece, the Assembly Act does not protect "gatherings that take place randomly and without preparation". The provision also gives the police the discretion to prohibit or disperse such an assembly.¹⁴ The organizers may face three months' imprisonment and a fine if proper notification for an assembly is not provided. At the same time in Athens, interlocutors from the police noted that it is sufficient for an organizer to post information about the assembly online.¹⁵ The fact that the lack of compliance with formal legal requirements can constitute, as such, sufficient grounds for the dispersal of an assembly in Greece is not in line with international standards. It has to be ensured that peaceful assemblies are not dispersed merely because they do not comply with formal legal requirements for assemblies; such assemblies should be facilitated by police and other competent authorities;
- Assemblies in Greece must be no closer than 200 metres from government buildings¹⁶ and may not take place during "quiet hours" or extend beyond 23:00.¹⁷ ODIHR concluded that prohibiting assemblies at certain public locations or at certain times of the day constitute blanket prohibitions.¹⁸ Since blanket bans on assemblies are likely to be disproportionate in that they fail to take into account the individual circumstances of the assemblies involved, they should be avoided, and other, less intrusive restrictions should be used. Furthermore, according to the UN Special Rapporteur, restriction of access to a public place by not allowing assemblies to be held in the close vicinity of iconic buildings, such as presidential palaces, parliaments or memorials, should also meet the strict test of necessity and proportionality.¹⁹ In addition, the prohibition of assemblies planned for the so-called quiet hours is too vague and can result in an overly restrictive and arbitrary application of the law.

¹³ Article 11(1), Constitution of Greece.

¹⁴ Article 1(4), Act 794/1971 of Greece.

¹⁵ Interview with representatives of the Attica General Police Directorate, 30 April 2013.

¹⁶ Article 4, Act 794/1971 of Greece.

¹⁷ Article 4(3), Act 794/1971 of Greece.

¹⁸ "Draft Opinion on the Draft Law on Meetings, Rallies and Manifestations of Bulgaria", Venice Commission, 5 June 2009, paras. 23 and 42, <[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(2009\)087-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2009)087-e)>.

¹⁹ "Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai", United Nations Human Rights Council, A/HRC/23/39, 24 April 2013, para. 66.

- Greek legislation requires authorities to notify the organizers only eight hours before a planned assembly.²⁰ By informing organizers of a ban only shortly before the start of an assembly, organizers might be deprived of an opportunity to challenge any undue restrictions on assemblies in the form of bans.
- In Greece, the organizer (“chairman”) and his/her nominees (“steering committee”) are obliged to ensure the normal conduct of the assembly, for which purpose they should take “all the appropriate measures” including invoking the intervention of the police.²¹ Similarly, organizers in Greece may face three months’ imprisonment and a fine if proper notification for an assembly is not provided, if the nature of the assembly is materially different from what was in the notification, if the assembly is banned or if the assembly continues after a police order to disperse it.²² As highlighted by the UN Special Rapporteur, assembly organizers cannot be held responsible for ensuring the maintenance of public order and providing adequate safety and security. These issues must be primarily the responsibility of public authorities. The duty of the state to protect the safety and security of all groups and individuals in their exercise of freedom of peaceful assembly should be clearly defined in law and reinforced by the explicit commitment of the relevant institutions and authorities to fulfil this duty. Therefore, legislation placing the duty on the organizer to ensure peace and order at an assembly, creates an undue burden on organizers and may have unintended legal consequences by placing the responsibility for the wrongdoing of participants on organizers even if the latter have no control over such actions.²³ Moreover, legal provisions that directly establish administrative or criminal liability for the organizer for the conduct of others are in contravention of international standards.
- Organizers of assemblies may be held liable for their failure to act within the law. However, any sanctions or fines imposed after an assembly should strictly adhere to the principle of proportionality. The risk of a heavy and disproportionate fine or other penalty may, in itself, inhibit the enjoyment of freedom of peaceful assembly. In the absence of genuine criminal activity punishable by other laws, a violation of the notification requirement should be addressed by fines proportional to the offence committed.²⁴ Importantly, the amount of fines imposed on organizers of assemblies should also be in line with the proportionality principle. Possible punishment that includes imprisonment and a fine for organizers failing to provide sufficient notification for an assembly in Greece fall short of these standards.

Other assessments and recommendations contained in ODIHR reports on thematic human issues

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²⁰ Article 11, Public Assembly Act of Montenegro; Article 6(5), Act 794/1971 of Greece.

²¹ Article 4(5), Act 794/1971 of Greece.

²² Article 9, Act 794/1971 of Greece.

²³ See “Note on the Law on Demonstrations of the Republic of Albania”, OSCE/ODIHR, 29 March 2011, para. 43. *Unpublished document on file with ODIHR.*

²⁴ “Joint Opinion on the Public Assembly Act of the Republic of Serbia”, OSCE/ODIHR and Venice Commission, 18 October 2010, para. 42.