

HELLENIC REPUBLIC



NATIONAL COMMISSION
FOR HUMAN RIGHTS

ANNUAL REPORT

2012 - 2013

SUMMARY IN ENGLISH



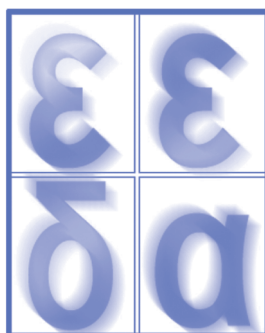
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FOREWORD BY THE GNCHR PRESIDENT
Mr. KOSTIS PAPAIOANNOU

FOREWORD

by the GNCHR President Mr. Kostis Papaioannou

The period of these recent years, a time of crisis, recession and violent fiscal adjustment, constitutes as such, a multiple challenge for the institutional framework of human rights protection. The inextricability of rights on the one hand, and the intensity and density of legislated measures on the other, render immediately incomplete any effort to name those individual rights that are being limited or violated. A simple review is enough to reveal the damage to crucial functions of the state of law, as well as the escalated impoverishment of the state of welfare. It is of emblematic importance to mention the downgrading or the circumvention of the smooth legislative process and parliamentary control on the one hand, and anything but the unimpeded access to justice, on the other, elements which intensify the disdain towards institutions and the citizens' sense of insecurity.

The serious impact of the austerity measures and the exercised fiscal policy on human rights, have been highlighted in previous reports and positions of the Commission. In this context, the Commission has systematically sought to demonstrate the impact of extreme austerity on human rights in all its public interventions, especially in its communications and positions before international monitoring bodies and counterpart human rights protection mechanisms on a European level. Moreover, it has not ceased to address recommendations towards the State and to also participate in international initiatives aiming at proving the extreme contradiction between the fiscal policy exercised in our country, under the supervision of EU institutions and with the well-known impact on the enjoyment of fundamental rights, and the European *acquis* in the field of these same rights.

The Commission issued decisions that concerned a wide scope of rights. We indicatively mention the observations and recommendations regarding the Ministry of Justice Bill "on fair trial

and its reasonable duration" as well as positions relating to the repeated, fruitless up until very recently, initiatives for the reinforcement of the antiracist legislation (Combating Certain Forms and Expressions of Racism and Xenophobia by means of Criminal Law). In this context, the GNCHR also issued a second report on the topic of racist violence entitled "Extremist groups, public discourse and racism in sports".

Furthermore, the GNCHR publicly stated its position on a series of issues, of particular importance, each time for a different reason, and taking into account the intertemporal importance thereof. Indicatively: Alien Detention Centres, cases of violent and humiliating treatment of detainees, suspension of the granting of citizenship process, working and living conditions of alien workers, legal establishment of same-sex partnership.

It is particularly worth mentioning that in the field of combating racist hate and subsequent violence with racist motives, the GNCHR had previously called upon the State the need to take measures. Besides, it maintained this line of action by establishing the Racist Violence Recording Network, in collaboration with the UN High Commissioner's Office in Greece and with the participation of more than 35 non-governmental organisations and other agencies, which provide legal, medical, social and other supporting services and which come in contact with victims of racist violence. The Network's establishment aims to cover the absence of an official and effective system for the recording of cases of racist violence and the need for an interconnection between agencies which usually record these cases on their own initiative. It is important to note that a large part of the racist crimes under judicial investigation concern cases recorded by the Recording Network, while the collaboration with the prosecuting and judicial authorities is constant.

The present GNCHR Annual Report presents an unprecedented particularity: it covers for the first time a period of two years, despite the Commission's customary and essential obligation to present its work on an annual basis. The reasons for this exceptional practice are directly related to the degree of support to the GNCHR's work by the State and, more generally, to the quality of the latter's collaboration with the GNCHR. Unfortunately, for the largest part of the two years in question, the collaboration with the General Secretariat of the Government, responsible for the Commission's operating and administrative support, was exceptionally problematic with direct, serious consequences on its daily operation. In fact, the then General Secretary explicitly stated before the Commission Board that vital problems of operation were not being resolved due to low prioritisation of human rights and to his conscious indifference to recommendations made by national and international institutions. The Commission was finally forced to publicly defend its institutional status by deploring such behaviour as contrary to the respect for basic principles of human rights and incompatible with the country's international obligations. Another cause for concern is the recent flagrant violation of the lawfully established procedure for the appointment of members to the Appeals' Authority by the competent Ministry, a process in which the GNCHR also participates based on an impartial process of acknowledging the international protection regime by securing the scientific excellence and operational independence of the Presidents and the Appeal's Committees members.

It is also reminded that the State is responsible for securing all the necessary conditions for the Commission's unimpeded and independent operation, as a national human rights protection mechanism. It is necessary to highlight that the degree of satisfaction of these preconditions, as well the quality of the institutional collaboration with the Authorities in particular, are crucial for the regular re-accreditation procedure of national human rights protection mechanisms, the re-

sult of which directly reflects on the country's international image.

Despite the aforementioned adversities, with the most severe being the long-term lack of sufficient scientific staff and with the most worrying being the unwillingness of institutional agencies to assist the Commission, I would like to emphasise that thanks to tireless efforts of the limited remaining personnel, the members and the Board, the Commission succeeded in continuing its work and finally restoring its operation to a regular basis. Dedication to the Commission's purposes and functions, the constant search for solutions to various problems, investment of time and mental energy and the ever so clear-headed approach to issues constituted resources much stronger than the difficulties themselves.

So let these lines offer me the chance to wholeheartedly thank all partners, for it is thanks to their contribution that the Commission is still standing and continues its work. Its clear-headed, informed, critical and unbiased opinion is now more useful than ever.

Kostis Papaioanou, President

September 2014

PART I.
LEGAL FRAMEWORK AND ORGANISATIONAL STRUCTURE
OF THE GNCHR

1. LAW No 2667/1998 ESTABLISHING THE GNCHR¹

The President of the Hellenic Republic

We hereby promulgate the following law, which has been voted by Parliament:

SECTION A

National Commission for Human Rights

Article 1

Constitution and mission

1. A National Commission for Human Rights, which shall be attached to the Prime Minister, is hereby constituted.

2. The Commission shall be supported as to its staffing and infrastructure by the General Secretariat of the Council of Ministers [currently the General Secretariat of the Government], and its budget shall be incorporated into the budget of this service unit.

3. The Commission shall have its own secretariat. The President of the Commission shall be in charge of the secretariat.

4. The Commission shall constitute an advisory body to the State on matters of the protection of human rights.

5. The Commission shall have as its mission:

(a) The constant monitoring of these issues, the informing of the public, and the advancement of research in this connection;

(b) The exchange of experiences at an international level with similar bodies of international organizations, such as the UN, the Council of Europe, the OECD, or of other states;

(c) The formulation of policy proposals on matters concerned with its object.

6. The Commission shall in particular:

(a) examine issues in connection with the protection of human rights put before it by the Government or the Conference of Presidents of Parliament or proposed to it by its members or non-governmental organizations;

(b) submit recommendations and propos-

als, carry out studies, submit reports and give an opinions on the taking of legislative, administrative and other measures which contribute to the improvement of the protection of human rights;

(c) develop initiatives on the sensitization of public opinion and the mass media on matters of respect for human rights;

(d) undertake initiatives for the cultivation of respect for human rights within the framework of the educational system;

(e) deliver an opinion on reports which the country is to submit to international organizations on related matters;

(f) maintain constant communication and work together with international organizations, similar organs of other countries, and national or international non-governmental organizations;

(g) make its positions known publicly by every appropriate means;

(h) draw up an annual report on the protection of human rights;

(i) organize a Documentation Centre on human rights;

(j) examine the adaptation of Greek legislation to the provisions of international law on the protection of human rights and deliver an opinion in this connection to the competent organs of the State.

Article 2

Composition of the Commission

1. The Commission shall be made up of the following members:

(a) The President of the Special Parliamentary Committee on Institutions and Transparency;

(b) One representative of the General Confederation of Labour of Greece and one representative of the Supreme Administration of Unions of Civil Servants;

(c) Four representatives of non-governmental organizations whose activities cover the field of human rights. The Commission may, without prejudice to Article 9, decide upon its expansion by the participation of two further representatives of other non-governmental organizations (on 06.02.2003 GNCHR included in its NGO membership the Greek League for Women's

1. As amended by Laws 2790/2000, 3051/2002 and 3156/2003.

Rights and the Panhellenic Federation of Greek Roma Associations);

(d) Representatives of the political parties recognized in accordance with the Regulations of Parliament. Each party shall appoint one representative;

(e) (deleted by Law 3156/2003);

(f) The Greek Ombudsman;

(g) One member of the Authority for the Protection of Personal Data, proposed by its President;

(h) One member of National Radio and Television Council, proposed by its President;

(i) One member of the National Bioethics Commission, drawn from the sciences of Biology, Genetics, or Medicine, proposed by its President;

(j) Two persons of recognized authority with special knowledge of matters of the protection of human rights, appointed by the Prime Minister;

(k) One representative of the Ministries of the Interior, Public Administration and Decentralization, of Foreign Affairs, of Justice, of Public Order, of Education and Religious Affairs, of Labour and Social Security, and for the Press and Mass Media, appointed by a decision of the competent minister;

(l) Three professors or associate professors of Public Law or Public International Law. At its first meeting after incorporation, the Commission shall draw lots in which the following departments of the country's university-level educational institutions shall take part: (a) the Department of Law of the University of Athens; (b) the Department of Law of the University of Thessaloniki; (c) the Department of Law of the University of Thrace; (d) the Department of Political Science and Public Administration of the University of Athens; (e) the General Department of Law of the Panteion University; (f) the Department of Political Science of the Panteion University. These departments shall propose one professor or associate professor of Public Law or Public International Law each. The departments of the university-level educational institutions shall be under an obligation to appoint their representative within two months from receipt of the Commission's invitation.

It shall be possible by a decision of the Com-

mission for other departments of the country's university-level educational institutions with a similar subject to be added for subsequent drawings of lots. Six (6) months before the expiry of its term of office, the Commission shall draw lots among the above departments for the next term of office;

(m) One member of the Athens Bar Association.

2. An equal number of alternates, appointed in the same way as its full members, shall be provided for the members of the Commission.

3. The members of the Commission and their alternates shall be appointed by a decision of the Prime Minister for a term of office of three (3) years. The term of the members of the Commission who take part in its first composition expires, irrespective of the date of their appointment, on 15 March 2003 (as amended by Law 3051/2002).

4. The Prime Minister shall convene in writing a session of the members of the Commission, with a view to the election of its President and the 1st and 2nd Vice-President. For the election of the Presidents and the Vice-Presidents, the absolute majority of the members of the Commission present who have a vote shall be required. Members drawn from the categories of sub-para (a), (b), (e), (j) and (l) of paragraph 1 of the present article may be elected as President and Vice-President (as amended by Law 2790/2000).

5. The representatives of the ministries shall take part in the taking of decisions without voting rights.

6. The Commission shall be deemed to have been lawfully incorporated if two of the members of sub-para. (c) and the members of sub-para (a), (e), (j) and (k) of paragraph 1 of the present article have been appointed (as amended by Law 2790/2000).

7. The members of the new composition of the Commission shall be appointed at the latest two (2) months before the expiry of the term of office of the previous composition.

8. The manner of incorporation of the Commission and any other relevant detail shall be regulated by a decision of the Prime Minister.

Article 3**Commissioning of specialist studies**

1. The General Secretariat for Research and Technology of the Ministry of Development may commission, on the proposal of the Commission, on a contract for services, the compilation of specialist studies for its purposes from academic working parties.

2. The working parties, on the conclusion of the relevant study, shall submit a report to the Commission, which may be made public by a decision on its part.

Article 4**Operation of the Commission**

1. The Commission shall meet regularly every two months and extra-ordinarily when summoned by the President or on the application of at least five (5) of its members. The members shall be summoned by the President by any appropriate means.

2. The Commission shall have a quorum if: (a) the absolute majority of its members is present, and (b) the President of the Commission or one Vice-President are among the members present.

3. The Vice-Presidents shall substitute for the President in the order of their rank when the latter is lacking, is impeded, or is absent.

4. The decisions of the Commission shall be taken by a majority of the members present. In the event of a tied vote, the President shall have the casting vote.

5. The Commission shall, at its discretion, invite persons to be heard before it who can assist its work by an account of personal experiences or the expression of views in connection with the protection of human rights.

6. The honoraria of the members of the Commission shall be set by a decision of the Ministers of the Interior, Public Administration and Decentralization, and of Finance, by way of deviation from the provisions in force concerning a fee or honoraria by reason of service on councils and commissions of the public sector.

7. The Internal Regulation of the Commission shall be drawn up by a decision of the Prime Minister. The operation of sub-commissions, the

distribution of competences among the sub-commissions and the members, the procedure for the invitation and audience of persons, and any other detail shall be regulated by this Regulation. The Regulation may be amended by a decision of the Prime Minister, following an opinion on the part of the Commission.

Article 5**Annual report**

The Commission shall by the end of January of each year submit its report to the Prime Minister, the President of Parliament, and the leaders of the political parties which are represented in the national and the European Parliament.

Article 6**Assistance of public services**

1. At the end of each year, the ministries which are represented on the Commission shall lodge a report with their observations on the protection of human rights in the field of their responsibility.

2. In order to fulfill its mission, the Commission may seek from public services and from individuals any information, document or any item relating to the protection of human rights. The President may take cognizance of documents and other items which are characterized as restricted. Public services must assist the work of the Commission.

Article 7**Research officers**

1. Three (3) posts for specialist academic staff, within the meaning of para. 2 of Article 25 of Law 1943/1991 (OJHR 50 A), on a private law employment contract of a term of three (3) years, are hereby constituted. This contract shall be renewable (as amended by Law 3156/2003).

These posts shall be filled following a public invitation by the Commission for applications. Selection from the candidates shall be in accordance with the provisions of paragraphs 2, 5 and 6 of Article 19 of Law 2190/1994 (OJHR 28 A), as replaced by Article 4 of Law 2527/1997 (OJHR 206 A), by five members of the Commission who have a vote, to be nominated by its President.

2. The legal research officers shall assist the Commission by preparing proposals on issues assigned to them and shall brief it on the work of international organizations which are active in the field of human rights. In addition, they shall keep a relevant file of texts and academic studies.

3. The remuneration of the legal research officers who are engaged in accordance with paragraph 1 of this article shall be determined by the decision of para. 6 of Article 4 of the present law, by way of deviation from the provisions in force concerning the remuneration of specialist academic personnel.

Article 8

Secretariat of the Commission

1. One (1) post of secretary and three (3) posts for secretarial and technical support of the Commission are hereby constituted.

2. The following shall be regulated by a Presidential Decree issued on the proposal of the Ministers of the Interior, Public Administration and Decentralization, of Foreign Affairs, of Finance, and of Justice:

(a) The distribution of the posts of para. 1 by category, branch and specialization, as well as issues concerning the organization of the secretarial and technical support of the Commission;

(b) The filling of the posts of para. 1, which may be by the making available or secondment of civil servants or employees of public law legal persons, or those employed on a contract of employment of a fixed or indefinite duration with the State, public law legal persons or private law legal persons of any form which are under the direct or indirect control of the State;

(c) any matter concerning the in-service status and the remuneration of this personnel.

3. It shall be permitted for an employee of a ministry or public law legal person of Grade A or B of category ΠΕ, proposed by the President of the Commission, to be seconded as secretary of the Commission, by a decision of the Minister of the Interior, Public Administration and Decentralization and of the minister jointly competent in the particular instance.

4. Until such time as the Presidential Decree of para. 1 is issued, it shall be permitted for the Commission to make use of employees and to use technical support provided by the Ministry of Foreign Affairs and of Justice in accordance with the decisions of the competent ministers.

Article 9

Transitional provisions

In the first composition of the Commission the following non-governmental organizations shall be represented: Amnesty International, the Hellenic League for Human Rights, the Marangopoulos Foundation for Human Rights, and the Greek Council for Refugees.

[Provisions on the Bioethics Commission follow.]

SECTION C

Final provision

Article 19

This law shall come into force as from its publication in the Official Journal of the Hellenic Republic.

We hereby mandate the publication of the present law in the Official Journal of the Hellenic Republic and its execution as a law of the State.

Athens, 17 December 1998

2. Current Members of the GNCHR

1. The President of the Special Parliamentary Commission for Institutions and Transparency, *Mr. A Tsouras* and since November 2012 *Mr A. Nerantzis*.

2. A representative of the General Confederation of Greek Workers, *Mr. I. Panagopoulos* and *Mrs. E. Varchalama* as his alternate.

3. A representative of the Supreme Administration of Civil Servants' Unions, *Mr. N. Hatzopoulos* and *Mr O. Mermelas* as his alternate.

4. Six representatives of Non-Governmental Organizations active in the field of human rights protection: for Amnesty International-Greek Section, *Mr. K. Papaioannou* and from June 2012 *Ms. K. Kalogera* (*Ms K. Kalogera* and *Mr A. Yolassis* as their alternates); for the Hellenic League for Human Rights, *Mr. V. Mallios* and from November 2012 *Mr K. Papaioannou* (*Ms E. Kalampakou* as their alternate); for the Marangopoulos Foundation for Human Rights, *Mr. D. Gourgourakis*, and *Ms. A. Yotopoulou-Marangopoulou* as his alternate; for the Greek Council for Refugees, *Ms. A. Chrysochoidou-Argyropoulou* and *Mr. I. Papageorgiou* as her alternate; for the Greek League for Women's Rights, *Ms. S. Koukoulou-Spiliotopoulou* and *Ms. P. Petroglou* as her alternate; and for the Panhellenic Federation of Greek Roma Associations, *Mr. Ch. Lamprou* and *Mr. K. Dimitriou* as his alternate.

5. Representatives of the political parties represented in the Greek Parliament: for New Democracy, *Mr. C. Naoumis* and *Mr. G. Nikas* as his alternate; for PASOK, *Ms. A. Papaioannou* and *Ms. M. Dimitrakopoulou-Siouana* as his alternate; for KKE *Mr. A. Antanassiotis*; for SYRIZA, *Mr. N. Theodoridis* and *Mr. S. Apergis* as his alternate; for DIMAR *Ms. M. Kouveli* and *Ms. M. Karaferi* as her alternate.

6. The Greek Ombudsman, *Ms. K. Spanou* and *Mr. V. Karydis* as her alternate;

7. One member of the Hellenic Data Protection Authority, *Mr. A. Roupakiotis* until 17.5.2012, *Mr. I. Metaxas* from November 2012 and *Mr. K. Christodoulou* as their alternate.

8. One member of the Greek National Council for Radio and Television, *Ms. O. Alexiou*, and *Mr. K. Apostolas* as her alternate.

9. One member of the National Commission for Bioethics from the field of Biology, Genetics or Medicine, *Mr. T. Patargias* and *Mr. K. Krimpas* as his alternate.

10. Two personalities widely recognized for their expertise in the field of human rights protection, designated by the Prime Minister: *Mr. A. Manitakis* until 4.7.2012 and *Mr. G. Sotirelis*. From November 2012 *Mr. N. Ouzounoglou* and *Mr. Sotirelis* (*the Metropolitan of Demetrias and Almyros His Eminence Ignatius* and *Mr I. Nanas* as their alternates)

11. One representative of the: Ministry of Interior, *Mr. V. Chronopoulos* and from November 2012 *Mr. A. Syrigos* (*Mr. K. Kintis* as their alternate and also *Ms. V. Giavi* from March 2013); Ministry of Foreign Affairs, *Ms. M. Telalian* and *Mr. E. Kastanas* as her alternate; Ministry of Justice, Transparency and Human Rights, *Ms. E. Flegga* and *Ms. A.-E. Lazarou* as her alternate; Ministry of Citizen Protection, *Ms. A. Tsoukala* and from November 2012 *Ms. T. Angelatou* (*Mr. E. Katriadakis* and from November 2012 *Mr. A. Soukoulis* as their alternates); Ministry of Education, Long-Term Learning and Religious Affairs, *Ms. A. Linou* (*Ms. E. Petraki* as her alternate and from April 2013 *Ms. S.-M. Karamalakou-Lappa*); Ministry of Labour and Social Security, *Ms. A. Stratinaki* and *Mr. A. Karydis* as her alternate; and Secretariat General of Communication and Information and Secreteriat General of Mass Media, *Mr. G. Petroulakis* and from November 2012 *Mr. I. Panagiotopoulos* (*Mr. P. Agrafiotis* and from November 2012 *Mr. K. Goulas* as their alternates).

12. From the Faculty of Political Studies and Public Administration, National Kapodistrian University of Athens, *Ms. P. Pantelidou-Malouta* and *Mr. G. Kouzelis* as her alternate; from the Faculty of Law, Demokriteion University of Thraki, *Mr. G.-E. Kalavros* and *Mr. A. Dervitsiotis*, as his alternate; from the Faculty of Political Science and History, Panteion University, *Mr. D. Christopoulos* and *Ms. A. Anagnostopoulou* as his alternate.

13. One member of the Athens Bar Association, *Mr. K. Kolokas* and *Mr. A. Tzoumanis* as his alternate.

It is worthy to note the originality of the law provisions concerning the GNCHR membership and the election of Members, of the President and the two Vice-Presidents. Each institution participating in the GNCHR designates its representatives. All representatives – except for those of seven Ministries who take part in the sessions of the Plenary and the Sub-Commissions without the right to vote – elect the President and the two Vice-Presidents of the GNCHR. This particular, liberal system ensures the GNCHR's independence and impartiality.

3. The organisational structure of the GNCHR

Since October 2006, *Mr. Kostis Papaioannou* is President of the GNCHR. *Ms. Angeliki Chrysohoidou-Argyropoulou* is 1st Vice-President and *Ms. Ellie Varchalama* is 2nd Vice-President, following the 2012 elections to the GNCHR Board.

- The GNCHR has established five Sub-Commissions:
 - The Sub-Commission for Civil and Political Rights
 - The Sub-Commission for Social, Economic and Cultural Rights
 - The Sub-Commission for the Application of Human Rights to Aliens
 - The Sub-Commission for the Promotion of Human Rights
 - The Sub-Commission for International Communication and Co-operation

According to the GNCHR Internal Regulation, the Plenary meets every two months. In practice the Plenary meets every month. The Sub-Commissions' work consists in the elaboration of reports on issues related to their specific field of action. All these reports are subsequently submitted to the GNCHR (Plenary) for discussion and decision.

The GNCHR employed in 2012-2013 the following Legal/Research Officers: *Ms. Christina Papadopoulou* until February 2013, *Ms. Lydia-Maria Bolani* until March 2012 and *Ms. Tina Stavrinaki* until September 2013). Since November 2013 the Commission employs two new Legal Officers, *Ms. Roxani Fragkou* and *Ms. Aikaterini Tsampi*. Its Secretariat has two staff-members, *Ms. Katerina Pantou*, Secretary and since July 2011 *Mr. Nikos Kyriazopoulos*, Secretarial Support Officer.

In 2003 the GNCHR acquired its own premises in Athens (6, Neofytou Vamva Str, GR 10674 Athens); it also maintains its own website (www.nchr.gr).

PART II.
RESOLUTIONS, DECISIONS, OPINIONS AND PRESS RELEASES
OF THE GNCHR

A. Resolutions, Decisions and Opinions of the GNCHR

1. Observations and Proposals concerning the bill on “the fair trial and its reasonable length” elaborated by the Ministry of Justice*

In the framework of its institutional role as an advisory body to the State on issues pertaining to the protection of Human Rights, the GNCHR submits the following observations and proposals concerning the Bill on “the fair trial and its reasonable length”:

Introductory Remarks

1. The GNCHR recognises the efforts of the State in addressing the constantly exacerbated problem of the excessive length of judicial procedures, which violates the fundamental right to effective judicial protection as guaranteed by the Greek Constitution and European and International Law. The Bill in question amends important procedural provisions, which govern procedures before all Greek courts and is added to a long series of recent legislative attempts to improve the situation.

2. The Explanatory Report to the Bill stresses the gravity of the current situation. However, it fails to refer to any specific assessment of the results of previous legislation identifying the reasons why the measures taken have not brought about the results aimed at and indicating the sectors that are in need of new measures, as well as the nature of the measures required. The Bill does contain some positive features, such as the extension of the pilot trial to the Court of Auditors or the referral of cases to a council, after a pilot trial before the Council of the State. However, the successive and unevaluated “deep” or “drastic” “incisions” – as they are usually termed – into procedural legislation applying to all branches of Justice does not satisfy the imperative of legal certainty.

* The present observations were unanimously approved by the GNCHR Plenary at its 26.1.2012 meeting. Rapporteur S. Koukoulis-Spilliotopoulos, Representative of the Hellenic League for Women’s Rights.

3. The GNCHR welcomes the references to the EU Charter of Fundamental Rights which entered into force by virtue of the Lisbon Treaty on December 1st, 2009 and constitutes *part* of primary EU law. The fundamental right to effective judicial protection enshrined in Article 47 of the EU Charter constituted already an integral part of EU law, pursuing to a general principle, which the ECJ formulated drawing inspiration from Articles 6 and 13 ECHR and the constitutional traditions of the Member States.¹

4. The GNCHR *has been* constantly stressing the imperative need to address the issue of the excessive length of proceedings, which *had led* to a series of ECtHR judgments against Greece. It has more recently repeated this in its observations on the Bill “Rationalisation of proceedings and acceleration of the administrative trial and other provisions”, which became Law 3900/2010². The judgments against Greece concern the *violation of Article 6 (1) ECHR* (right to a fair trial) and of Article 13 ECHR (right to an effective domestic remedy). In the aforementioned observations, the GNCHR repeated the imperative need to introduce a *specific legal remedy* that would satisfy the requirements of Article 13 ECHR.

5. The GNCHR *submits indicative* observations on specific matters that are related to fundamental rights guaranteed by supra-legislative norms. *The GNCHR* moreover recalls from outset *that the need* to ensure the acceleration of trials *cannot justify measures which restrict the right to access to a court or other guarantees of a fair trial or affect other fundamental civil or social rights or the quality of the judicial protection provided.*

I. Responsibility of the Administrative Authority and legal entities of public law for the length of proceedings

6. The GNCHR, in its previous observations concerning the Bill that became Law 3900/2010,

1. First relevant judgment: ECJ Case 222/84, Johnston [1986] ECR 1651.

2. Observations and Recommendations on the Bill of the Ministry of Justice “Acceleration of proceedings in administrative courts and other provisions”, 21.10.2010: www.nchr.gr. Law 3900/2010, OJ A 213/17.12.2010.

highlighted the findings referred to in the *Explanatory Report* to this Bill. In particular, according to this Report, the overwhelming volume of cases pending before administrative courts and the unreasonable length of proceedings are mainly due to “*maladministration*, in conjunction with the accumulation of *maizy legislation* and the *inconsiderate use of judicial remedies by the State and public entities*”.

7. The GNCHR stressed that “*any procedural reform will not succeed while the operation and the mentality of the Administration do not change. Under the current circumstances, a considerable drop in the courts’ backlog can only be achieved via the radical decrease of judicial remedies exercised by the State and public entities*”.

8. In this connection, the GNCHR invoked a specific opinion expressed in the Decision of the Administrative Plenary of the Council of the State No. 4/2010 which proposed provisions that were included in Law 3900/2010. According to this opinion, “the effective acceleration of proceedings before the Council of the State is virtually impossible, unless the number of cases brought before it drastically decreases. This decrease, however, cannot be achieved through legislative measures which would restrict or interfere with the fundamental right of citizens to seek the annulment of unlawful acts or omissions of the Administration as guaranteed by the Constitution and the ECHR. Therefore, the *only means* available to the legislator for achieving the drastic reduction of cases brought before the Council of the State *is the drastic reduction of judicial remedies exercised by the State and public legal entities*”³.

9. The above opinion recalls “the persistence with which the Administration exhausts all reme-

dies provided by law against judgments upholding remedies lodged by citizens”. “By seriously examining the consequences of this reckless use of remedies by the Administration and public entities (moreover, not merely in terms of excessive length of proceedings, but also in terms of waste of resources), one can see that these consequences are a lot more severe than those that would result from a limitation to the Administration’s entitlement to apply for review or appeal”.

10. The above observations apply to trials before any court, where one of the parties is the Administration or a public entity. Moreover, they are still crucial, as the everyday situation in courts shows. Therefore, the legislator should keep in mind these observations, as well as the proposals for specific measures also included in the above specific opinion.

II. The pilot ECtHR judgment *Athanasiou v. Greece*

11. In the meantime, the ECtHR delivered a “*pilot judgment*” against Greece (*V. Athanasiou and others v. Greece*)⁴. Pilot judgments concern States which are found in breach of the ECHR due to structural or systemic problems which require specific national measures. In such cases, the ECtHR does not merely find a violation; it also requires that the State take special measures for the most rapid and effective abolition of the malfunctions that affect the rights guaranteed by the ECHR.

12. The ECtHR found it necessary to deliver a pilot judgment against Greece, due to the serious and chronic character of the problems in question; namely, the excessive length of proceedings and the failure to introduce a specific remedy as required by the ECtHR since 2007. Moreover, the ECtHR recalled that the Council of Europe Committee of Ministers, in the framework of its competence to supervise execution of ECtHR judgments, had persistently required the adoption of a statute aimed at the acceleration of proceedings and the taking of further measures, such as the increase of the posts of judg-

3. *Records of the Administrative Plenary, Council of State Decision No. 4/2010, specific opinion on the provision that became Article 12 of the Bill. emphasis added. This opinion recalls the ECtHR findings in Radio France v. France, 23.09.2003, para. 26 (admissibility), Holy Monasteries v. Greece, 09.12.1994, para. 49, and Chamber of Commerce, Industry and Agriculture of Timșoara v. Roumania, 16.07.2009, para. 15. The following ECtHR judgments may be added: Section de Commune d’Antilly v. France, 23.11.1999 (admissibility), and Danderyds Kommun v. Sweden, 07.06.2001 (admissibility).*

4. *ECtHR, Athanasiou v. Greece, 21.12.2010, which became final on 21.03.2011.*

es and administrative staff in the courts and the improvement of the courts' infrastructure, along with the adoption of an effective compensatory remedy⁵.

13. In the *Athanasίου* judgment the ECtHR found Greece in breach of Articles 6(1) and 13 of the ECHR. Referring to its case law it recalled that the most effective measures for addressing this problem are preventive measures. Article 6(1) ECHR requires that the Contracting Parties organize their judicial system so as to enable their courts to fulfill all the requirements of this provision. Therefore, the most effective solution is the introduction of a remedy allowing for the expedition of proceedings, which can be combined with a compensatory remedy. However, a compensatory remedy may be sufficient, provided that it is effective.

14. The *Athanasίου* judgment also recalled the *criteria* governing compensation for excessive length of judicial proceedings:

- the action for compensation must be decided rapidly.
- the award must be paid promptly (within six months of the decision becoming final).
- the action for compensation must comply with the principles of a fair hearing.
- the rules concerning court costs must not impose an excessive burden on litigants.
- the amount of compensation must be consistent with the awards made by the Court in similar cases; it must include both pecuniary and non pecuniary damages caused by the delay; there is a strong but rebuttable presumption that excessively long proceedings will occasion moral damage. In cases where the domestic courts consider that there has been only minimal damage or none at all, their judgment by giving sufficient reasons.

According to well-established ECtHR case law, in order to find a delay which constitutes a violation of Article 6 (1) ECHR, and therefore award damages, the national courts must take into account the *overall duration of the trial, at all its stages* until an official copy of the final

judgment is available. When a necessary prerequisite for bringing a case to court is the prior lodging of an administrative remedy, the crucial time period starts from the moment that such a remedy has been lodged⁶.

15. The ECtHR concluded as follows: "while recognising certain recent developments in the Greek legal order [the introduction of Law 3659/2008], the Court considers that the national authorities must introduce, without delay, an *effective remedy* or a combination of effective remedies guaranteeing effective redress for the damage sustained as a result of the excessive length of proceedings. These remedies must comply with ECHR principles [...] and come into force within one year from the date on which this judgment becomes final".

Since the judgment became final on March 21, 2011, *the deadline for introducing the remedy required ends on March 21, 2012*.

16. The *Athanasίου* judgment concerns the excessive length of administrative court proceedings. However, even though most ECtHR judgments against Greece concern administrative court proceedings, the systemic problem appears with the same intensity in all branches of Justice. This is a well-known fact, which was confirmed by both this judgment and the Explanatory Report to the Bill.

17. One may thus wonder why this Bill introduces a remedy for the excessive length of administrative proceedings alone, even though it contains measures regarding all branches of Justice. This must be considered a *violation of the ECHR*.

18. The deadline set by the ECtHR in the *Athanasίου* judgment concerns the introduction of a specific domestic remedy. At the same time, the ECtHR recognised the recent legislative developments, followed by Law 3900/2010 on administrative proceedings, Law 3904/2010 on criminal proceedings⁷ and Law 3994/2011 on civil proceedings⁸ which also contains amend-

5. Interim Resolution CM/ResDH(2007)74 of 6 June 2007.

6. ECtHR *Korosidou v. Greece*, 10.02.2011, para. 29.

7. Law 3904/2010 "Acceleration of criminal proceedings and other provisions" (OJ A 218/23.12.2010).

8. Law 3994/2011 "Acceleration of civil proceedings and other provisions" (OJ A 165/25.7.2011).

ments to Law 3900/2010. Therefore, the establishment of an effective specific domestic remedy (for all branches of Justice) would have been sufficient for the time being. It should however be accompanied by a systematic impact assessment of the measures already taken, by the filling at least of the vacant posts of judges and the strengthening of staff and infrastructure of the courts.

III. Application for just satisfaction (Articles 53 – 58 of the Bill)

19. Articles 53-58 of the Bill introduce a remedy entitled “*application for just satisfaction*”, which addresses the unjustifiable delays in administrative proceedings. The GNCHR observes the following:

20. Firstly, while the other provisions of the Bill are amendments or additions to the procedural legislation, those of Articles 53-58 are not incorporated in either the Code of Administrative Procedure or Presidential Decree 18/1989 which governs the proceedings before the Council of the State. The imperative of legal certainty is thus not satisfied. Besides, it is doubtful whether this remedy satisfies the requirements of Article 13 ECHR. More particularly:

21. According to Article 55 of the Bill: “the application shall be lodged at each degree of jurisdiction” and the applicant “when lodging of an application for delay in proceedings before a higher court, cannot request just satisfaction for excessive length of proceedings that took place at a previous degree of jurisdiction,”. It is of course positive that the victim does not have to wait for a final decision in order to request just satisfaction. However, as long as it is not the whole duration of the trial that is taken into consideration, the requirements of Article 13 of the ECHR as interpreted by the ECtHR are not duly satisfied.

22. Indeed, while a single degree of jurisdiction may not present an excessive length of proceedings, the duration of the trial at this stage may contribute to the excessive length of the entire proceedings so as to amount to a violation of the ECHR. How is this violation to be remedied?

IV. The massive increase of court fees

23. The Bill introduces a massive increase of court fees as a means to decrease the lodging of remedies with all courts. When these fees are not paid, the remedy is dismissed by the court as inadmissible.

24. According to well established ECtHR case-law, Article 6 (1) ECHR guarantees a right of effective access to court. This right is not absolute; it is by its very nature subject to state regulation. However, the limitations applied must not restrict or reduce access in such a way and to such an extent that the essence of the right is impaired. Moreover, a restriction of the right to access to court is not compatible with Article 6 (1) ECHR, unless it pursues a legitimate aim and there is a reasonable relationship of proportionality between the means employed and the aim sought to be achieved⁹.

25. The examination by the ECtHR of the compatibility of limitations with Article 6 (1) “is based on the principle that the Convention is intended to protect rights that are not theoretical or illusory, but practical and effective. This particularly applies to the right of access to a court in view of the prominent place held in a democratic society by the right to a fair trial”¹⁰. These considerations apply to the conditions of admissibility of a legal remedy.

26. The ECtHR in principle allows limitations in the form of financial obligations that seek to ensure the good quality of Justice. However, such limitations have to be justified by the specific circumstances of the case or the financial situation of the person having recourse to the courts. The ECtHR thus found that the payment of a uniformly fixed duty, which was imposed by law to all persons, without exception, for the lodging of a remedy, was contrary to Article 6 (1) ECHR. The ECtHR pays particular attention to the stage at which the limitation is imposed. Therefore, in cases where the court fees were imposed at the initial stage of the proceedings, as a necessary

9. ECtHR, *Kreuz v. Poland*, 19.06.2001, paras. 52-55, *V. M. v. Bulgaria*, 08.09.2006, paras. 41-44.

10. ECtHR *Kreuz v. Poland*, para. 57, *Weissman v. Romania*, para. 37.

prerequisite for the admissibility of the remedy, the ECtHR found that the essence of the right of access to a court was affected. This is because a fair balance between the State's need to collect procedural expenses, on the one hand, and the need of the applicants to exercise their claims before a court, on the other, was not ensured.¹¹

27. It is, therefore, obvious that, when a large and ever growing segment of the Greek population is facing poverty and social exclusion¹²; when the 2011 national general collective agreement sets the minimum daily wage at 33,57 Euros and the minimum monthly wage at 751,39 Euros; when the 2nd Memorandum of Understanding (signed by the European Commission, acting on behalf of the Euro-area Member States, and the Hellenic Republic, as conditions for the disbursement of loan installments) requires a wage reduction by 22%, the introduction of new court fees and the increase of the existing ones by virtue of the Bill to amounts that reach 300-400 Euros constitutes a flagrant violation of the right to judicial protection of many people. This is the more so as the payment of these fees is a prerequisite for the admissibility of the remedy. This happens at a time of serious and growing turbulence in the labour and social security areas and of limitations or deprivation of fundamental social rights, when a growing number of persons are more than ever in need of judicial protection.

28. Moreover, the massive increase of court fees *limits access to Justice for individuals only*, since it is only individuals who pay them. This

is in clear violation of the ECHR. However, it is the State and public entities that are mainly responsible for the over-burdening of the courts (see Nos. 6-10 above). Therefore, the GNCHR has recommended that when a remedy lodged by the Administration or a public legal entity is dismissed, a *substantially higher court fee and a high fine* should be imposed on them, as a deterrent¹³. In this way, the burden of the courts may be alleviated, without the equality of the parties being affected, since the ECHR protects individuals against the State and not the State against individuals (see No. 8 above).

29. An explicit provision introducing the aforementioned measures is necessary. Especially when taking into consideration the fact that, even though Article 205 of the Code of Civil Procedure (penalty for chicanery) applies *mutatis mutandis* to administrative proceedings (by virtue of Article 40 of Presidential Decree 18/1989), it is rarely applied in practice by the courts.

30. The GNCHR recommends, as a means to support those suffering from the consequences of unemployment, labour insecurity and deregulation of collective agreements, the abolition of court fees, in compliance with the requirements of Articles 21, 22 (1) and (5) and 25 of the Constitution, at least for labour and social-security cases. In other cases, the fees should at least be substantially reduced. Moreover, legal aid must be reorganised and extended to administrative cases. The GNCHR recalls that access to court has already been obstructed through the imposition of a judicial stamp for declaratory actions, which were previously exempted therefrom. Therefore, it recommends the abolition of this stamp (Article 70 of Law 3994/2011) at least for such cases. Such measures will also be in line with recommendations addressed to Greece by ILO bodies following complaints by the Greek General Confederation of labour (GSEE)¹⁴.

11. ECtHR, *Weissman v. Romania*, 23.10.2006, paras. 35-43, *Apostol v. Georgia*, 28.02.2007, para. 65.

12. According to EUROSTAT, in 2010, 27,7% of our population (more than 3.000.000 people) were on the brink of poverty and exclusion or below the poverty threshold: http://epp.eurostat.ec.europa.eu/portal/page/portal/income_social_inclusion_living_conditions/data/database and http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/3-08022012-AP/EN/3-08022012-AP-EN.PDF. In the meantime this percentage has risen together with the rapidly growing rate of unemployment, the drastic cuts in salaries and pensions and the dismantling of the Social State. See also GNCHR Recommendation of 08.12.2011, "On the imperative need to reverse the sharp decline in civil liberties and social rights", as well as the relevant press release of 20.02.2012: www.nchr.gr.

13. See relevant GNCHR observations regarding the Bill that became Law N. 3900/2010, *op.cit.*

14. International Labour Conference, 100th Session, Geneva, June 2011, Report of the Committee on the Application of Standards, Part two: Observations and information concerning particular countries, 18 Part II/68-II/72, Con-

31. Recently the Council of the State (judgment 601/2012) examined the constitutionality of Article 45 (2) of Law 3900/2010, which raises court fees for the admissibility of a recourse lodged with an administrative court from 25 to 100 Euros. It found that the imposition of such a fee does not violate Article 20 (1) of the Constitution nor Article 6 (1) ECHR nor the principle of proportionality, as "according to common experience, this amount cannot be considered capable of limiting the right of access to the courts". We can deduce from this judgment, in view also of what was mentioned above (Nos. 27-29) that court fees which exceed 100 Euros (in particular fees of 300-400 Euros) limit the right to a court. However, the situation has since deteriorated and is constantly deteriorating,

V. The transfer of cases to single-member courts

32. The Bill provides for the transfer of a large number of cases to single-member courts and justices of peace, as well as for the establishment of new single-member courts and single-member criminal appeals courts. However, this may lead to great confusion and uncertainty in the judicial system and may create doubts as to the quality of the justice provided. It is generally acknowledged that the deliberation is a precious feature of the judicial function – an "irreplaceable school" as judges term it.

VI. Application for procedural review in cases a violation is found by the ECtHR

33. The GNCHR welcomes the extension of the application for procedural review before the Court of Auditors (Article 75 of the Bill) in cases a violation is found by the ECtHR. However, the GNCHR wonders why this remedy was not also provided for civil court cases, where it is absolutely necessary.

34. Besides, the GNCHR reiterates its proposal that this provision *be also extended, mutatis mutandis*, to cases where the judgment

conflicts with a *rule of EU law*, as found by the ECJ following a recourse of the European Commission against Greece. Such ECJ judgments, although they may have very serious consequences for the State concerned (a high fine) do not benefit the victims of the infringement (i.e. those who lost their case due to the application of a national provision which the ECJ found contrary to EU law)¹⁵.

VII. Quasi-judicial administrative recourses are a mere formality which lengthens administrative proceedings

35. In its observations on the Bill which became Law 3900/2010, the GNCHR pointed out that quasi-judicial administrative recourses (which are a necessary precondition for lodging a recourse with administrative courts aimed at alleviating the burden of these courts), do not serve their purpose. They have become a mere formality which does not lead to the examination of the substance of the cases and they should be put to better use. The GNCHR recommended, furthermore, that the members of bodies examining such recourses should be independent from the administrative authorities that issued the contested measure and should receive the necessary training for carrying out such tasks.

36 The initial version of the Bill contained provisions (Article 68) that attempted to reform and upgrade quasi-judicial administrative recourses; however, these provisions were subsequently removed.

VIII. Interim judicial protection in labour disputes

37. The right to interim judicial protection constitutes an integral part of the right to effective judicial protection guaranteed by Article 20 (1) of the Constitution¹⁶, the ECHR and EU Law¹⁷.

38. The right to interim judicial protection is guaranteed by Article 6 (1) of the ECHR; by

15. See GNCHR observations on the Bill that became Law 3900/2010, *op. cit.*

16. Council of the State, Chamber granting suspension of administrative acts, Decisions 718/1993 and 496/2001.

17. ECJ C-213/89 Factortame [1990], ECR 2433.

clusions.: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_157818.pdf.

their very nature, interim proceedings should not forego any delay. In order to examine the reasonable length of interim proceedings, what is at stake for the applicant should be taken into account¹⁸.

39. In dismissal cases, the availability and the rapidity of the interim proceedings are of particular importance for workers, in view also of the protection from dismissal required by the EU Charter of Fundamental Rights (Article 30) and various rules of secondary EU law.

40. Both the ECHR and EU law require that national courts satisfy the right to interim judicial protection, irrespective of whether the preconditions required by national law for providing such protection are fulfilled.

41. The Bill, in order to satisfy the imperative of legal certainty, should provide for the granting of an order imposing the interim employment of a dismissed worker in cases where the latter seeks a declaration of the invalidity of his/her dismissal. Moreover, such cases should be adjudicated on a priority basis. Such measures are especially needed in times of financial crisis. Such measures are particularly necessary in times of economic crisis, for the satisfaction of fundamental rights of the workers, as well as in the interest of the small and medium enterprises which are hardly hit by the crisis.

IX. An opportunity to abolish the preferential line of claims of social security organisations

42. The elaboration of the Bill offered an opportunity to abolish the preferential line of social security organisations in auctions, in the same line with worker claims, introduced by Article 41 of Law 3863/2010. This provision is contrary to ILO Conventions Nos. 95 and 173, which require that workers claims be placed in a higher position than that of social security organisations. GSEE has submitted a complaint to the competent ILO bodies regarding this matter.¹⁹

18. ECtHR *Boca v. Belgium*, 15.11.2002.

19. See Report III (1A). Report of the Committee of Experts on the Application of Conventions and Recommendations, 2011, p. 656.

X. Criminal Proceedings: Participation of the contested judge in the panel examining the application for his/her exemption

43. Article 26 of the Bill, in amending the provisions of Articles 16, 17 and 20 of the Code on Criminal Procedure, states that in cases where the exemption of a judge is requested – by application to the court or to a judicial council – the relevant decision shall be reached by the same panel of judges who are examining the initial case. The Explanatory Report clarifies, furthermore, that the court “does not have to refer the application for exemption to another court, where the contested judge does not participate”. However, the GNCHR recalls that the fundamental principle that “no-one should be a judge in his/her own case”²⁰ is an essential feature of the impartiality of a court. Therefore, the above provisions contravene Articles 6 ECHR and 20 (1) (right to judicial protection) of the Greek Constitution.

XI. Depriving judicial officers of their right to annual leave violates the Constitution and EU Law

44. According to para. 1 of Article 44 of Law 1756/1988 (Organisation of Courts): “Judges may be granted a leave, following an application by the latter and as long as service conditions allow it: a) up to one month, if he/she has served for at least one year, and b) up to fifteen days, if he/she has served for at least two months”. Besides, according to para. 11 of the same article: “The judge may not make use of court vacations or annual leave, if the head of the court considers that there is a serious danger that a judgment or order in an urgent case will be delayed, unless there are very serious health reasons”.

45. Article 7 of Directive 2003/88/EC “concerning certain aspects of the organisation of working time”, as interpreted by the ECJ, grants every worker the right to paid annual leave of at least four weeks, which may not be replaced by

20. ECtHR, *Kyprianou v. Cyprus*, 15.12.2005, para.127.

an allowance in lieu, except where the employment relationship is terminated. This article, as well as the entire Directive, apply to both the private and the public sector and are not subject to exceptions (Article 1 (3) of the Directive).

46. The aforementioned right to annual leave constitutes an expression of a fundamental principle of EU social law and is provided to every worker as a minimum requirement which is necessary for the protection of their health and safety. Member States may not limit or suspend this right or make its enjoyment dependent on any prerequisite, including a period of previous employment.²¹ The right to annual leave, in this sense, is also guaranteed by Article 31 (2) of the EU Charter of Fundamental Rights, which, according to Article 6 (1) EU Treaty, as amended by the Lisbon Treaty, entered into force on December 1st, 2009, and constitutes part of primary EU law.

47. Therefore, the aforementioned provision of para. 1 of Article 44 of Law 1756/1988, to the extent that it provides for the discretionary granting of the annual leave (as long as service conditions allow it) and makes its duration subject to a previous period of employment, is in breach of EU Law. However, the requirements of EU Law are satisfied when a genuine four-week annual leave is granted during court vacations.

48. The provision of para. 11 of the same article is also in breach of EU Law, and therefore invalid, since it deprives judges, under certain conditions, of their right to annual leave provided by EU Law.

49. Article 91 of the Bill, which replaces para. 11 of Article 44 of Law 1756/1988, removes the last phrase of this paragraph ("unless there are very serious health reasons") and adds grounds which limit or suspend court vacations. Therefore, this Bill provision, to the extent that it deprives judges of the minimum annual leave granted by EU law, is also contrary to EU Law and, if included in the new Law, it will be without any legal effect.

21. See especially the landmark ECJ judgment in *Case, C-173/99, BECTU* [2001] ECR I-4881.

50. The provisions of paras. 1 and 11 of Article 44 of Law 1756/1988 as well as the provision of Article 91 of the Bill are in breach of the provisions of 21 (3), and 25 (1), of the Constitution, interpreted in the light of EU Law.

XII. Limiting the judges' right to parental leave violates the Constitution and EU Law

51. Article 89 of the Bill limits the nine-month parental leave granted by Article 44 of Law 1756/1988 to five months for all judges. This leave constitutes an implementation of the provisions of Article 21 (1) and (5) of the Constitution which impose on the State the obligation to protect the family and childhood, and to address the ever-growing demographic problems. This leave thus serves multiple objectives of public interest of increasing importance at times of economic crisis, when establishing a family and maintaining an existing become more and more difficult. Therefore. The limitation of this leave is not allowed.

52. The general principle on the protection of family and family life, which is also part of EU Law, requires the harmonisation of professional and family life. This principle is expressed in Directive 96/34/EC, which requires the granting of parental leave to all workers in both the private and the public sector. This was also highlighted by the Council of the State, when it applied this principle in conjunction with the provisions of Article 21 (1) and (5) of the Constitution, in order to uphold the right to parental leave of all judges as provided by the Code of Civil Servants, prior to its being explicitly granted by Law 1756/1988 (see in particular Council of the State Plenary judgments Nos. 3216/2003, 1 and 2/2006).

53. Directive 96/34 introduced minimum standards of protection for workers with family responsibilities, without affecting the eventually more favourable to workers national provisions and does not allow the reduction of the existing level of protection afforded to workers by national legislation in this field. Therefore, the limitation of the right to parental leave is in breach of both the Constitution and EU Law.

2. Observations on the Draft Report of Greece about the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR)

I. Introduction

The Ministry of Foreign Affairs (D4 Human Rights Directorate) has forwarded to the GNCHR the Draft of the second Report of Greece concerning the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR) for comments, according to the provisions of Article 1(6e) of the GNCHR founding Law 2667/1998.

The GNCHR wishes to express its satisfaction about the fact that recently the Ministry of Foreign Affairs has been forwarding regularly the Draft Reports to be submitted to International Monitoring Bodies.

The GNCHR has addressed issues falling within the scope of the International Covenant on Economic, Social and Cultural Rights (hereinafter Covenant), expressing its views and making recommendations to the competent Ministries. Moreover, it had commented on the previous (first) Report of the Ministry of Foreign Affairs concerning the implementation of the Covenant in Greece.

The GNCHR after studying the draft of the Report (hereinafter Report), makes the following observations which may contribute to its enrichment, since they contribute to the need of forming an up to date and, as far as possible, comprehensive account of the milieu and the conditions under which the Covenant is implemented in Greece.

II. General Observations on the Draft Report

The submission of the Report concerning the implementation of the Covenant in Greece takes place in a period of a financial crisis plaguing the country and the successive austerity measures adopted since the beginning of 2010 have a direct impact on the enjoyment of the economical

and social rights, as these are described in the provisions of the Covenant. The GNCHR recalls that since June 2010 it had expressed an opinion about "the need for constant respect of the fundamental rights during the economy's and society's strategic exit from the external debt crisis", whereas last December it reissued a Recommendation on the "Imperative need to reverse the sharp decline in civil liberties and social rights".

The Report is extensive (91 pages) and attempts to depict the situation of the financial, social and cultural rights in Greece, going beyond the reference to the relevant legislative framework. Nevertheless, the required evaluation of the necessity, usefulness and effectiveness of the adopted measures or the reporting of the problems-obstacles which have emerged in practice are missing from some points (e.g. access of the Roma children to education). Additionally, while the Report correctly focuses on answers to the Concluding Observations of the Committee on Economic, Social and Cultural Rights (hereinafter Committee), some of the questions posed by the Committee's Guidelines on drafting the Report (e.g. concerning the periodic and effective judicial control of involuntary hospitalization) remain unaddressed. Reference to the relevant jurisprudence, if available, would be useful.

It should be noted, however, that although it seems that there is no Greek jurisprudence based on the Constitution, there is case-law that implements relevant provisions of the European Social Charter (ESC), according to which it is considered that the legal provisions which are not opposed to the Constitution, are opposed to the ESC (e.g. Council of State, dec. no 1571/2010: forced labour).

According to the Concluding Observations of the Committee, Greece should have submitted the Report under consideration by 30.6.2009. Greece has shown considerable delay in the case of the present Report as far as its submission to the Committee is concerned. Given the delay, the Report should include data covering the 2004 period (submission time of the previous

Report) until today, an attempt made to some extent in the Report.

Even though the Report refers to a period of time beyond June 2009, there are points in the Report, where the provision of statistics do not correspond to the issue under consideration regarding their quality, quantity and timing (e.g. p. 4 concerning the controls carried out by the Labour Inspectorate, p. 29 concerning the pay differential between men and women, p. 70 concerning the percentage of the population living below the poverty line). Consequently, the statistics should be updated by using the adequate and more recent data and where they are not available, this should be explicitly mentioned, as well as the reason for their inexistence (e.g. not collecting this kind of data in Greece).

As it has already been noted, the submission of the Report takes place at a time when Greece is in a deep economic and financial crisis and the State has adopted severe successive austerity measures in an attempt to exit this crisis. As a consequence, the Report should present in detail these measures, which – clearly – have an impact on the rights within the scope of the Covenant. Besides, there is no doubt that due to the widespread publicity which Greece's situation has attracted at an international level, during the presentation of the Report before the Committee, the Greek delegation will be required to answer relevant questions.

Furthermore, according to par. 5 of the Committee's Guidelines for drafting the Report, the national reports concerning the implementation of the International Labour Organization Conventions, which are mentioned in the Annex 2 of the Harmonized Guidelines for drafting national reports on International Human Rights Treaties, should be listed in Annex.

We recall again the importance of the Report drafted on 22.11.2011 by the High Level Mission of the International Labour Organization (ILO), which visited Greece in September 2011, in the control framework of the complaint presented by GSSE to the competent supervisory bodies of the ILO.

III. Specific Observations on the Draft Report

Article 2

a) Legislation against discrimination

Page 2: The GNCHR in "Observations on the Ministry of Foreign Affairs Report about the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination" noted, regarding the permitted divergence from the provisions of Law 3304/2005 due to nationality, that "the legitimacy of this treatment, which involves discriminations, may conceal and legalize discriminations based mostly on ethnic background in many cases. The fact that access to employment sectors, which are traditionally accessible to Greek citizens only, is frequently allowed to citizens of third countries who are of Greek origin (expatriates) and without real justification, may not confirm but reinforces the impression that it conceals discrimination".

Page 3: The Report generally refers to the fact that the GNCHR has highlighted the insufficiencies of Law 3304/2005. It would be, though, useful to mention the matters to which the relevant observations by the GNCHR refer. In addition, it would be useful to refer to the Reports of the Economic and Social Committee in relation to Law 3304/2005 as well as the most important problems which it has detected as far as its implementation and also the function of Bodies of Equal Treatment are concerned, especially the Equal Treatment Commission of the Ministry of Justice, which, in fact, remains inactive.

Page 4: The Report includes a table of figures regarding the function of the Labour Inspectorate (number of controls, number of imposed fines etc.). However, these figures concern the overall responsibility of the Labour Inspectorate – controlling the application of labour legislation – and its function as a body of equal treatment. Thus, these figures should be replaced by the ones which concern only the application of Law 3304/2005 on equal treatment and are included in the annual reports of the Labour Inspectorate. Furthermore, the figures and statistics which are included in the special reports of the

Ombudsman regarding the implementation of Law 3304/2005 should be added. In any case, the GNCHR has repeatedly pointed out that, according to Law 3304/2005, by virtue of which the Ombudsman is competent only for the public sector, whereas the Labour Inspectorate is competent only for the private sector, this is contrary to the EU Directives, since the Labour Inspectorate is not an independent authority, as required by the Directives.

Given that the Guidelines require detailed information on remedies and other measures, which the victims of breaches may take, it would be useful to refer to the relevant provisions of Law 3304/2005 (Article 13-Protection, Article 14-Burden of proof, etc.) and further analysis of the section which mentions "legal assistance and support actions for persons suffering from racism".

The GNCHR in its observations always attaches great importance to the effective adjustment of Greek legislation to the rules of the EU Directives, which provide for the shift of burden of proof and the legitimization of legal entities and associations as far as the exercise of the rights of the victims of breaches are concerned. The GNCHR reiterates that the compliance with the Directives at this point is still inadequate, concerning the proper formulation of the relevant rules and their integration of procedural rules; as a result, these rules are not implemented, even though they are of great importance for the effective protection against discrimination.

It would be also appropriate to refer to Law 3996/2011 "Reforming the Labour Inspectorate, regulations concerning Social Security and other provisions" (OGG A' 170) – aiming at, according to the explanatory memorandum, a greater effectiveness of the Labour Inspectorate – and more specifically at Article 2(1h), which expands the controlling role of the Labour Inspectorate in the field of discriminations, in order to cover cases of multiple discrimination and integrates explicitly disabled persons and seropositive for HIV.

Moreover, the GNCHR has already highlighted the growing discriminations, especially the multiple ones (due to gender, racial or ethnic background, age etc.) against women who work

in the framework of sub-contracting, which are intensified in cases of trade union action. It has also recommended the adoption of special provisions in order to cover the legal loopholes concerning the labour relations of this kind and to ensure the equal treatment of the employees.

Furthermore, the GNCHR notes that the legal measures which have been imposed since 2010 in the framework of structural interventions in the labour market, and especially those which severely restrict the regulatory content of the agreements, which set a minimum threshold of working conditions and terms (such as the National Collective Labour Agreement and the Sectoral Collective Agreements), considerably weaken the free collective bargaining and the power of this collective means, not only to regulate labour relations in terms of equality, but also to contribute positively to the extinction of dangerous stereotypes and inequalities in any workplace.

b) Immigrants rights

Page 6: It would be appropriate to mention that the number of Immigrants Integration Councils which have been established so far is 135.

The section regarding Law 3838/2010 shall be completed with a reference to Judgment No 350/2011 of the 4th Section of the Council of State, which has held the Law to be unconstitutional and refers to the fact that the case is pending before the Plenary of the Council of State.

Page 7: It would be also appropriate to mention the general framework and the main pillars of the National Strategic Plan for the **Integration of Third-country nationals**, as well as the actions of the Annual Program of 2010 of the European Integration Fund, since they are more recent.

c) Rights of persons belonging to minorities

Page 8: The GNCHR reiterates its opinion, which was expressed with regard to its observations on the Report of Greece to the Committee on the International Covenant on Civil and Political Rights, and according to which: "Nowadays,

the prevailing opinion is that the existence of minorities is an actual and not a legal fact, whereas according to the contemporary concept which governs the minorities rights, a so-called subjective approach is also accepted, which means that *inter alia* the expressed collective will of the minority to exist as such is a determining factor for considering a group as a minority”.

Article 3

a) Women's representation in decision-making centers

Page 9: It would be appropriate to include to the data listed here, the following: a) the number of women who are Members of the Parliament, b) the number of women who were elected as councilors of Municipalities or Administrative Regions, c) the fact that the vice president of the Council of State a few years ago was a woman and that now three vice presidents of the Council of State are women, and d) the appointment of a woman as President of the Supreme Court (Areios Pagos) for the first time.

The GNCHR would like to note, at this point, that Law 3852/2010 (Kallikratis) caused a demodernization as far as the quota in the regional elections are concerned. More specifically, according to Articles 18(3) and 120(3) of the new Law, the quota of at least the 1/3 of the candidates by sex, is not calculated on the number of candidates any more, as was determined by the Articles 75 of Law 2910/2001 and 34 of the Code of local authorities (Kodikas Dimon kai Koinotiton) (Law 3463/2006), but on the number of the members of the Municipal Council or the Council of the Municipal or Local Community. Therefore, as every group is allowed to have a number of candidates up to 50% larger than the number of the elected ones, the participation percentage of women is reduced.

In any case, it should be highlighted that the constantly growing job insecurity and financial insecurity, with regard to the insufficiency of supportive structures for families, are expected to lead to a substantial reduction in the participation percentages of women in representative political bodies, such as representative bodies of

workers' trade unions, or representative bodies of employers' organizations.

b) Gender equality in general

Page 10: According to the Committee's Guidelines (par. 13) at this point (not at the Report's section about combating women's unemployment) a detailed account of Law 3896/2010 "Implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation" should be given. Harmonization of the legislation in force with the Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 and other relevant provisions", of Law 3769/2009 on the principle of equal treatment between men and women in the access to and supply of goods and services, of their implementation framework (harmonization with Directive 2004/113/EC), but also of the bodies for equal treatment which are established by these laws. We reiterate that the GNCHR had submitted extensive observations on the draft of subsequent Law 3896/2010.

It should be noted that, thanks to the GNCHR's observations, the Bill of the subsequent Law 3896/2010 was greatly improved. Nevertheless, the following problems are still present, out of the ones which the GNCHR had noted: poor compliance with Directive 2006/54/EC concerning the formulation of civil procedural rules (burden of proof, legitimization of legal entities and associations as far as the exercise of the victims of discriminations are concerned) and the fact that these rules have not been incorporated into the rules of Civil Procedure – problems conducting to the lack of implementation of these rules, which are of great importance to the protection of rules against discriminations. Law 3769/2009 is also problematic.

The issue of poor compliance to the provisions of Directive 2006/54/EC concerning gender equality in occupational social security schemes was pointed out by the GNCHR. Indeed, the relevant provisions of Law 3896/2010 create confusion with respect to the previous insurance Laws 3863/2010 and 3865/2010, especially as far as

the relevant scope and the conditions of implementation of these three Laws and the transitional periods that are introduced by each one of them are concerned. Additionally, some permanent regulations of Law 3896/2010, such as the ones concerning the self-employed, cause certain problems.

Moreover, the Report should refer to the special Reports of the Ombudsman on the equal treatment of men and women in matters of occupation and labour relations, within the framework of an accurate account of the results of implementing the Law and the existing problems in that scope. Reference to the national jurisprudence would be appropriate (e.g. Administrative Court of Appeal, Athens 14/2011 concerning the adoption of different minimum height required for men and women, for the employment of professional troops, Council of State 3762/2010 concerning the maximum age for participating in the National School of Judges).

The successive interventions in the protective framework of labour legislation since 2010 are not mentioned in the Report; these interventions referring to the financial crisis, the wide range of the informal economy sector and the excessive flexibility and insecurity in the labour market, have direct repercussions on:

- the negotiating power of women employees (especially mothers and/or older women or/and foreigners) and employees with family responsibilities with regard to the occupation terms and the kind of employment contract,
- the over-representation of women and employees with family responsibilities in insecure, low paid jobs,
- maternity and generally having and raising children due to the financial insecurity that employees already experience,
- the proper raising of children of working parents especially during the first years of their lives, due to the ascertained insufficiency of public childcare facilities,
- the increase of the negative impact of family obligations on work and the reinforcement of stereotypes about women's role in the family and the workplace, resulting in the une-

qual responsibility sharing for childcare and care of the oldest members of the family and

- the exacerbation of sex discriminations along with other discriminations based on ethnic or racial background and/or age and/or family responsibilities and/or disabilities, resulting in an increased danger of social exclusion.

The GNCHR cannot refrain at this point from expressing its great concern for the recent abolishment of the Workers' Housing Organization, which provides important social services, such as running nursery centers. Another measure affecting children and parents is the reduction of judge's parental leave by half, which is provided for in the aforementioned Bill "on the fair trial and its reasonable duration". This is a rather negative precedent, in view of the insufficiency and the constant reduction in the number of public nursery centers. The GNCHR has noted that the repercussions of this Bill, which leads to the restriction of social rights, is unacceptable and contrary to the Constitution and the European law.

Finally, the GNCHR stresses that the Impact Assessment Reports, which are accompanied with Bills presented for approval to the Parliament, and especially the ones which contain working arrangements, do not refer – as they should – to the repercussions of the proposed measures on sex equality, even though there is constantly clear evidence that these measures lead to the widening of disparities and discriminations against women.

Article 6

a) Unemployment statistics

Page 11 et seq.: Given that the Committee in its Final Observations in 2004 strongly emphasized youth and women unemployment in rural areas, it would be appropriate to include statistics broken down by age and sex to the unemployment statistics for every region.

According to official figures, unemployment rate has doubled during 2009-2011, showing a 95% increase in the number of unemployed during March 2008-March 2011. The recorded unemployment rate in July 2011 was 17,6% and it

was predicted to rise to 18% by the end of 2011, whereas real unemployment rate was 22-23%. Nevertheless, the recorded rate reached 21% already in November 2011, with a total number of 1.0333.507 unemployed people, while the real rate is sharply increasing. The recorded youth unemployment reaches 50%, whilst the real figures are undoubtedly higher and many of the young employees are working under hard and insecure conditions. Among women, a historically high rate of 25.3% was recorded in 2011, compared with men's unemployment, a fact which clearly proves that austerity has widened the pay gap between sexes. Greece is facing an "employment crash": the number of the unemployed exceeds the number of the financially active ones, whereas the unemployment increase rate in 2011 was the highest in Europe (circa 41%).

b) Regional unemployment rates

Page 19: It would be useful to mention in the Report more detailed information on the unemployment's distribution and the employment reinforcement programs across all Greek regions, as well as other actions with the same goal.

c) Women's unemployment

Page 22: It would be appropriate to include in the Report a more detailed presentation of the measures adopted and the programs implemented throughout the period covered, as far as the reinforcement of women's employment and combating their unemployment is concerned.

At this point, the GNCHR would like to note that the deregulation of labour relations and the increasing financial crisis constantly deteriorate women's position in the labour market, making them even more vulnerable. The reversal of Collective Labour Agreement's hierarchy and the weakening of National Collective Labour Agreements and Sectoral Collective Agreements to the benefit of Operational Collective Labour Agreements, afflict mostly women. As the National Collective Labour Agreements determine the minimum working conditions for all public serv-

ants employed under private law (involved or not in syndicalism) all over the country, the employees (especially women involved in syndicalism to a lesser extent and have a restricted negotiating power on personal basis) are deprived of a significant security net. Women will accept more and more adverse working conditions, since unemployment rate, which is much higher for them than for men (see above [a]), threatens them unprecedentedly.

d) Policies and measures aiming at full employment

Page 25-27: The vocational programs carried out by the Manpower Employment Organization (OAED), as well as other technical and vocational training programs which have been carried out and their impact on finding a job, should be included in detail in the Report, according to the Guidelines (par. 18).

In addition, according to the Guidelines, information should be provided concerning work in the informal economy sector (par. 16); this kind of information is not included in the Report. The decision by the Minister of Health (14913/343/F10034/2011) should also be referred to: according to this decision, the insurance coupon is established as a new way of insurance for employers working at home and paid per hour or days of services, such as assisting at the household, minor repairs, babysitting, looking after elderly people etc. This measure aims at making social insurance possible even for the most informal and temporary jobs and at discouraging undeclared work.

According to par. 17 of the Guidelines, the legal framework protecting the employees from unfair dismissal should also be outlined. Given the changes which have taken place lately in labour law (e.g. facilitation of dismissals, increase in the limit of mass dismissals and reduction of redundancy payments, by reduction of warning period, extended period of monitoring employment without severance pay in case of dismissal), the previous legislative framework, as well as the legislation in force, should be presented.

Article 7*a) Minimum wage, average wage and family needs*

Page 27-28: The current form of the Report does not depict the actual situation of wage and the relative labour facts, as it has developed lately; moreover, it gives the wrong impression that the state safeguards and respects the National General Collective Labour Agreement as an institution of determining, after free collective bargaining, the minimum wages and labour conditions for all employees in the Greek territory.

Firstly, the Report should depict the extensive state interference with successive legal provisions since 2010 in the collective bargaining system and the collective labour agreements in force until now, as well as the recent regulations concerning the issue of minimum wage (L. 4046/2012). These regulations have led, on the one hand, to the significant weakening of the stable system – applied for decades – for implementing a minimum wage by the National General Collective Labour Agreement, which is contracted after free collective bargaining, and on the other to state intervention for the further immediate reduction of the minimum wage. As a result, large parts of the population live below the poverty line, especially after the employers excessive taxation burden (direct and indirect).

The successive austerity and taxation measures have caused the complete degradation of the standard of living of employees within the Greek territory. Within the 18 months of the implementation of the adjustment program to the terms of the international borrowing facility, a significantly qualitative and quantitative recession is recorded in the labour market, which restores the situation in force 20 years ago, a fact that reinforces fears that the situation is irreversible in the near future.

The doubling of unemployment rate during 2009-2011, together with civil servants' wage reduction, has led to 11.5% reduction of the real wages in the whole economy and 9.2% in the private sector during 2010-2011. Furthermore, the coexistence of wage reduction and unemployment increase has caused a large number of the households with loan commitments to bank-

ruptcy. Incapacity to repay their loans, if measures are not taken immediately, will lead many households to loss of their property rights.

These figures demonstrate that Greek employees have entered a long period of social and financial degradation, enfeeblement and dramatic deterioration of the living standards, which will affect mostly low and average income groups, while it will also lead to the marginalization of a large number of disadvantaged social groups, especially the long term unemployed and pensioners. The first figures, showing that poverty and inequality rates are increasing, are already available. In 2010, according to EUROSTAT, 27.7% of the population (more than 3.000.000) were endangered by poverty and social exclusion or were below the poverty line. Apparently, this figure has increased in the meanwhile, together with the rapid increase in unemployment rate, the constant plummet in wages and pensions and the dismantling of the social state.

It should also be noted that the Report should include information about the cost of living in Greece, as well as: a) according to Article 7 "the contracting states recognize the right of every person to enjoy fair and favorable conditions of work, which provide for, in particular: a) fee which provides to all employees as a minimum: [...] II) Decent living for them and their families, according to the provisions of the Covenant", b) the Guidelines ask for information concerning the existence of an indicator and periodical reevaluation system in order to ensure that the minimum wage is fixed at an adequate amount for safeguarding a decent standard of living for the employees and their families.

b) Equal pay for work of equal value

Page 28: Figures concerning pay gap between men and women (as in other points of the Report) need to be updated.

Page 29: According to par. 22 of the Guidelines, the Report should provide information concerning cases of sexual harassment. Consequently, the relevant legislative framework should be mentioned (L. 3896/2010), as well as the relevant legislation implementation mechanisms, relevant cases, imposed fines etc.

c) Measures to ensure security and health in the workplace

Page 30: It would be useful to include more information on the issue of arduous and unhealthy occupations (BAE), as well as the recent developments about the new list of these occupations. At this point, the GNCHR notes that it had submitted to the competent Ministries, in time, extensive "Recommendations on the review of the status of Arduous and Unhealthy Occupations and relevant Job Health and Security Matters", which were, unfortunately, not sufficiently taken into account.

Page 31: Given that the Report refers to the Presidential Decree 45/2008 "Measures of Health and Security of the Uniformed Services Personnel of the Greek Police", it would be useful to mention what are the detention conditions in Foreign Nationals Detention Centers and Police Stations, which affect the detainees' health above all, but also the people working in these places.

d) Working conditions for all employees, including overtime and paid or unpaid leaves

Page 33 et seq.: Given the significant changes in labour law which have taken place lately, the legal framework in force, as well as the previous legal framework, should be outlined (successive reductions in the minimum wage of the National General Collective Labour Agreement imposed by law, reduction in the overtime remuneration, further facilitation of managing the working time, exclusion of minor workers 15-18 years old from the crucial part of legislation concerning working conditions, abolishment of terms of Collective Labour Agreements regulating matters of working conditions/terms, when they expire etc).

Article 8

According to the Guidelines of the Committee, the Report should mention information on: a) the legislative framework regulating the foundation and function of trade union organizations, b) the mechanism of collective bargaining, and c) the legislative framework which regulates strikes. The aforementioned information is not mentioned in the draft Report.

More specifically, the GNCHR highlights that the current form of the Report does not depict the actual situation concerning the successive legal interventions in labour law and especially in collective labour law, which severely restrict free trade union action and the fundamental rights which relate to this freedom.

The GNCHR draws attention especially to the provisions of Law 4024/2011, which allow for a drastic interference in the structure and operation of trade union organizations, in breach of the employee's right to collective representation before their employers by persons freely and democratically elected. This legislation grants the right of bargaining and contracting operational Collective Labour Agreements to informal collective formations "persons associations" and downgrades significantly the principle of collective representation. Before these formations, the employer is released from any obligation he/she has towards the trade union organizations, whereas the representatives of the "persons associations" do not have a constant and full mandate to represent the employees before the employer for all collective labour issues; because of this, they do not enjoy full trade union rights and liberties, as lawful elected representatives of the employees in the administrative councils of trade union organizations. The ILO's high-level mission Report also concludes that "persons associations" do not constitute trade union organizations within the meaning of the International Labour Agreements.

The austerity and structural interventions measures which have been adopted, restrict or severely impede the trade union organization's free exercise of the right of collective bargaining and contracting a CLA, which determine the terms of payment and labour; additionally, they violate the obligation to respect the content and implementation of the CLA which bind the parties. These measures cause great concern, since they result in:

further weakening of the constitutional role and intervention of trade union organizations and reduction of their bargaining power for forming protective working terms common to all employees,

weakening of the structure and operation of trade union organizations in Greece and degradation of trade union representation of employees.

Article 9

Page 36 et seq.: The draft Report does not fully meet the objective of the Committee's Guidelines. Consequently, the section of the Report concerning the implementation of Article 9 of the Covenant should be enriched and precise references should be made not only to the recent extensive structural and functional interventions and any interventions concerning benefits in the social security system, but also to the constant reduction of social and security benefits and especially pensions (basic and supplementary).

The GNCHR highlights the figures indicating a sharp increase in unemployment, and also the wage reduction of the employees deprive the Social Security Funds of crucial resources, making their viability in the future insecure.

Article 10

a) Conciliating professional and personal life, including protection of motherhood

Page 42: The Report refers to mothers who work in the public or private sector and are entitled to maternity leave. Nevertheless, the existing legal framework does not protect all working mothers. As a consequence, the Report should examine all categories of working mothers, such as self-employed workers.

Furthermore, the special Report by the Ombudsman "Conditions and procedure of granting special protection of motherhood: implementation of Article 142 of Law 3655/2008" detects various problems as far as motherhood protection is concerned (maternity benefits) granted to mothers; these problems are, in short, the following: a) problems regarding the administrative procedure, i.e. the procedures of granting the said benefit by the Manpower Employment Organization (OAED), b) excluding many categories of working mothers from the benefit, based on the Administration's interpretation of the provision, c) problems linked to the existence of gaps

in the provision of Article 142 of Law 3655/2008 which require intervention by the legislature.

Page 43: As far as the protection from dismissal is concerned, it would be appropriate to refer to the investigation of complaints received by the Labour Inspectorate and the Ombudsman based on the Reports of both bodies.

Page 44: The Report refers to the granting of child-care leave to fathers. Mention should also be made to the relevant problems, as they have been outlined in the Conclusion of the Ombudsman "Problems during the process and concerning the conditions of granting a child-care leave to civil servants (Article 53, Law 3528/2007)", as well as to the Report by the Ombudsman on "Equal treatment of men and women in occupation and labour relations".

b) Legislation against discriminations in the access to goods and services

Page 46-47: The Report attempts to respond to the Concluding Observations (para. 15 and 36) of the Committee. Yet, referring only to Law 3304/2005 is not enough. Information should be provided on what is actually happening. Moreover, various projects and actions carried out by the Ministry of Labour are mentioned, which are aimed at vulnerable groups; the aforementioned projects concern mostly labour issues and not social services-benefits. Consequently, they should be transferred to the section of the Report analyzing either issues of combating discriminations or labour issues.

c) Measures for the protection and assistance of children in the field of occupation

Page 47-48: This section of the Report attempts to respond to the Concluding Observations (par. 17, 19, 38, 39 and 40) of the Committee, although in fact it responds – inadequately – only to the issues of street children, an issue that the Committee does not mention at all.

In addition, as far as child labour is concerned, the Report's content is not sufficient enough compared to the objective of the Guidelines (par. 37). The Ministry may also use some

of the data which were included in the Report by Greece concerning the implementation of the optional protocol to the Convention on the Rights of the Child, concerning children trafficking, prostitution and pornography, while it should definitely add the quotation, from the same Report: «However, it should be noted that the number of verified infringements is not directly related to the size of the problem, since the verification of illegal employment of children is a very hard task to document, in order for competent agencies to impose sanctions».

At this point, the GNCHR recalls in relation to child labour that some provisions of Law 1837/1989, implementing the Directive 94/33/EC on the protection of young people in labour, do not comply with the rules of this Directive. Thus, while the Directive requires a minimum rest period of 14 hours, for example, the Law provides only for 12 hours.

Moreover, reference should also be made to Law 3863/2010 "New Tax System and relevant provisions, regulations in labour relations" which amends the legal framework of child labour. In particular, according to Article 74(9) children aged 15-18 years who work, are excluded from the minimum protection level of the National Collective Labour Agreement regarding the minimum wage and working terms which were in force until now. According to this provision, employment of children aged 15-18 is possible by contracting traineeship contracts with 70% of the minimum wage or salary, with a minimum social security for the protection of their age and with full exclusion from the largest part of labour law which was in force until now for their protection. This provision is incompatible with the International Labour Convention (No. 138) on the minimum age for admission to employment.

d) Combating domestic violence and sexual abuse of minors

Page 49: The GNCHR commenting on the relevant Bill on domestic violence, had noted positive aspects, as well as the fact that the issue should be addressed in two ways: a) from a penal point of view, mostly by the establishment of aggravating circumstances for the relevant acts

of violence which are provided for in the Criminal Code and any others that shall be added under the new Law, the fact that they were committed domestically and b) as a social problem, whose solution will render the legal provisions effective, while they will remain ineffective, if the issue is not dealt with properly. The GNCHR had suggested some improvements and additions to the substantive and procedural provisions of the Bill and the integration of all the above in the relevant Codes, notifying that, should this not be effected, there would be a danger of creating confusion and legal uncertainty. Besides, it had expressed great doubts on the constitutionality and the effectiveness of the proposed institution of legal interference.

Page 51: The Report's content regarding sexual abuse of minors is not adequate. We note that the Ministry may use, after it has updated, the information which is included in the Report by Greece on the implementation of the optional protocol to the Convention on the Rights of the Child, concerning children trafficking, prostitution and pornography. The following should also be mentioned: the foundation and operation of the "Central Scientific Council for the prevention and confrontation of the victimization and the criminality of minors" (K.E.Σ.A.Θ.E.A.), the network "Orestis", the child helpline of the National Centre for Social Solidarity (E.K.K.A.), in the framework of the State's attempt to combat the phenomenon of physical and sexual violence against minors. Lastly, according to the Concluding Observations of the Committee (par. 38), the Report shall include statistical data on the number of victims, perpetrators, convictions and types of imposed penalties for the physical and sexual violence against minors.

Additionally, the Article 42 of Law 3907/2011 amending Article 44 of Law 3386/2005 should also be referred to: according to this article, a residence permit on humanitarian grounds may be granted to adults who are victims of domestic violence or minors who are proved to need protection and are hosted by institutions or other legal entities of public benefit, since their return to a safe environment is impossible.

e) Combating human trafficking

Page 53: It would be useful to give a more detailed account of the actions of the General Secretariat for Gender Equality concerning human trafficking. If these actions are referred to in other sections of the Report, a reference of the relevant pages should be included.

Regarding Article 10, there is no mention of references to legislation and mechanisms for ensuring economic, social and cultural rights for the elderly, as well as the asylum seekers and their families and family reunion of immigrants, as indicated by the Guidelines in par. 38-39. These fields should also be completed. It would be useful to refer to the European Court of Human Rights' judgements *Saidoun* and *Fawsie* concerning the refusal to grant the allowance for large families to immigrants and the modifications of the relevant legislation in accordance to these judgements.

Article 11*a) Housing situation in Greece*

Page 54: It would be appropriate to make use of the data collected from the recent census in 2011 and not the one in 2001.

Given that according to the General Comment of the Committee on the right to housing "all right-holders to adequate housing shall have permanent and steady access to [...] safe drinkable water, electricity for cooking, heating and lighting [...]", the Special Fee for Electricity Supply of Developed Surfaces (Public Power Corporation fee) of Law 4021/2011 should be referred to; not paying the aforementioned fee entails the electricity supply to be discontinued. Moreover, the relevant judgement by the Council of State should be mentioned.

Page 55: The Report should mention that according to the latest commitments of Greece due to the new Memorandum, the Worker's Housing Organization was abolished. This constitutes a heavily negative fact, at a time when the number of homeless people is dramatically rising.

b) Dealing with the homeless

Page 57: The Report mentions that the Ministry of Health and Social Solidarity has adopted some measures and actions. It is not clear whether these measures are the ones described on page 58 or others. In addition, the recent legal amendment of the Ministry of Health according to which the term "homeless" is defined and the homeless are considered as a vulnerable group should be referred to.

Page 59: As far as the issue of housing of the asylum seekers (and in the light of the European Court of Human Rights decision at the *M.S.S.* case and the decision by the Court of Justice of the European Union on 21.12.2011 at the cases C-411/10 and C-493/10, *N.S. v. United Kingdom*) and unaccompanied minors is concerned, it should be noted that the available guesthouses are lagging behind the actual needs which have to be met. The phenomenon of asylum seekers or irregular immigrants using abandoned building for housing should also be mentioned: they are crowded in these buildings which do not fulfill the necessary sanitary conditions. Additionally, the phenomenon of these same categories of people renting houses, apartments and rooms under the same living conditions should also be mentioned.

c) The Greek Roma and their right to adequate housing

Page 61: The term "Roma" is preferred to the terms "Gypsies".

Page 62: Furthermore, it would be useful to mention the problems detected not only by the GNCHR but also by the Ombudsman concerning the implementation of the Action Plan in the field of housing.

In addition, the Report should clarify if the forms of the Action Plan can be applied to non-Greek Roma and to which of them, according to par. 44 of the Concluding Observations of the Committee.

Page 67-68: It should be noted that the Report does not take a stand on the issue of forced evictions of the Roma. Under the light of a) the views of the Human Rights Committee in

the case *A. Georgopoulos v. Greece* (Communication no 1799/2008, 14.09.2010), b) the decision of the European Committee of Social Rights in the case *Interights v. Greece* (Complaint no 49/2008, 11.12.2009), c) the decision by the Chief Public Prosecutor on the criminal proceeding for breach of duty (64/2011 and 71/2011) against the former mayor and deputy mayor, due to the illegal demolition of a Roma camp in August and September 2006 (following the decision of the Human Rights Committee), and d) the interventions of the Ombudsman in this issue, the Report should address the issue more seriously.

It should be mentioned that in 2010 the Ombudsman had to intervene in order to deter the eviction and demolition of the shelters in which the Roma were living in three cases, being successful so far. "The issue of demolishing illegal shelters of Roma is extremely complicated, since strictly abiding by the legal requirements on demolishing illegal shelters does not take into account the particularities concerning the way of living of the aforementioned group of people and also it is not adequately combined with the special actions and programs designed and implemented for their settlement".

As far as the cases of police officers maltreating Roma is concerned, the GNCHR recalls the ECtHR judgements *Petropoulou-Tsakiris, Mpekos and Koutropoulos, and Stefanou*.

Moreover, concerning Law 3938/2011 "Establishing an Office for Combating Cases of Arbitrary Actions in the Ministry of Citizen Protection and other provisions", the GNCHR recalls that when asked to submit comments on the Bill, it had expressed serious objections as to its content, maintaining that the objective is not thereby met: in fact, it is not the case of establishing an effective and independent body for the investigation of complaints. The European Committee for the Prevention of Torture (CPT) seems to share this view regarding the above-mentioned objections.

d) Measures for combating poverty

Page 70: Statistics referring to the number of Greek citizens living below the poverty thresh-

old should be updated following the last report by Eurostat, according to which 27.7% of Greek people were facing poverty and social exclusion in 2010. Undoubtedly, this percentage has increased significantly in the meantime.

Page 72: According to the Guidelines of the Committee concerning Article 11, information on the right to sufficient food and the right to water should also be included. These references are absent from the Draft Report. It would be appropriate to refer to a) the increase in soup kitchens provided by Municipalities and the Church in the framework of attempting to assist the people who are most affected by the financial crisis, b) the initiative of the Ministry of Education to distribute vouchers for food to schools where cases of malnutrition were detected.

Additionally, given the pending case before the European Committee of Social Rights against Greece concerning Asopos, it is appropriate to refer to it.

Article 12

a) Public Health

Page 72: It would be useful to refer briefly to the contents of Law 3370/2005, as well as to the National Action Plan for Public Health, in order to inform the reader more effectively.

b) Smoking ban

Page 73: The anti-smoking laws (Law 3730/2008 and 3868/2010) should also be referred to, as well as their implementation problems.

c) National Food Policy

Page 73: The programs on Health Education by the Ministry of Education dealing with nutrition, alcohol and smoking issues should also be mentioned.

d) Mental Health

Page 74: According to the Concluding Observations of the Committee, information should be provided on the exact number of people who are served by the Mobile Units of Mental Health-care.

The sharp decline in the funding of the Units of Mental Healthcare from the Ministry for Health and Social Solidarity threatening some of them with closure should also be mentioned.

Furthermore, according to par. 57 (z) of the Guidelines, the Report should include information, which is absent in this case, relevant to health issues and more specifically the treatment of mentally ill in institutions, the periodic and effective judicial inspection of involuntary hospitalizations. In the light of the ECtHR judgment in the cases *Venios v. Greece* and *Karamanov v. Greece*, providing the relevant information, this is deemed imperative. The GNCHR, as well as the Ombudsman, has addressed the issue of involuntary hospitalizations submitting specific proposals in its Report "Rights of people with psychiatric background: Protection issues within the framework of psychiatric reform in Greece".

e) *Mobile Units*

Page 76: The Report refers to the National Action Plan on Combating HIV/AIDS 2008-2012,. We shall, nevertheless, highlight — as we have already done in our relevant Report — that this Action Plan is not actually implemented. According to the guidelines, the Report should refer to the issues of antiretroviral treatment and the attempts to combat discrimination against HIV positive people. The GNCHR cannot but mention the disappointing decision by the Supreme Court (Areios Pagos) regarding the dismissal of an HIV positive employee, which prompted us to deal with the matter. We should, though, mention the positive breakthrough of the blatant subordination of the HIV positive people to the protection framework of Law 3304/2005 through Article 2 of Law 3996/2011 on the reformation of the Labour Inspectorate.

f) *Actions by OKANA*

Page 77: Regarding OKANA, the transfer of its units in hospitals over the country should be mentioned. It would be also useful to refer to the Bill by the Ministry of Justice on the Code on Drugs which emphasizes the therapeutical and not the legal treatment of the drug user. The

GNCHR cannot but mention at this point, the dramatic decrease in funding the bodies against drugs (e.g. KETHEA i.e. Therapy Center for Dependent Individuals) which jeopardises the rehabilitation actions and programs.

Articles 13 and 14

Page 81: It is appropriate to make an extensive reference to the issue of school drop-out rates, which is not restricted only to vulnerable groups according to relevant studies. According to the Minister of Education Ms Christophilopoulou, "the data of the last completed research on school drop-out rate at secondary education conducted by the Transition Observatory, shows that school drop-out rate amounts to 12.81% for secondary education in Greece. School drop-out rate at primary education is unimportant (it amounts to 0.8-1%) and concerns special social groups (Roma children etc.)".

Furthermore, it would be useful to refer to Law 3699/2008 "Special Education and Persons with Disabilities or Special Educational Needs" on the implementation of which the GNCHR had submitted extensive suggestions.

a) *Education of Roma children*

Page 82-83: The Report refers to the measures adopted by the Greek State in order to strengthen the education of Roma children. In the light of the GNCHR's decision on the case *Sampanis and others*, reference should be made to how certain measures have been implemented in practice, problems have emerged in practice, and due to the reactions of principals or parents in school associations, in some cases Roma children have been deprived of access to education. It should be mentioned that on 22.2.2011, the deputy Prosecutor of the Supreme Court (Areios Pagos), Ph. Makris asked the Prosecutors at the Athens District Court "to deal with the fight against the phenomenon of Roma children'exclusion from public education so as to eradicate the fearful conception about the Roma children and to ensure an unimpeded and without exclusion or discrimination equitable integration of these children in all structures of the State".

b) Deterring and combating children's corporal punishment

Page 84: The reference made in the Report as far as school violence is concerned, is clearly disproportionate to the huge proportions of this phenomenon in the last years. The GNCHR, in the framework of which the Special Investigatory Committee for Group Violence in Schools, maintains that: a) the Report should make more extensive reference to this significant issue, and b) this reference should be made in the framework of Article 10 where issues of corporal and sexual violence against minors are analyzed.

It would also be appropriate to mention the suggestions of the Network against School Violence which is coordinated by the Association for the Psychosocial Health of Children and Adolescents with the participation of the Ministry of Education, the General Secretariat for Youth, the Pedagogical Institute, the Child Health Institute, the Children's Ombudsman, the Marangopoulos Foundation for Human Rights, the Hellenic Society of Child and Adolescent Psychiatry, the Paediatric Psychiatry Clinic of the University of Athens of Children's Hospital "Agia Sofia" and other bodies.

Finally, the GNCHR on the occasion of its observations on the draft report, suggests that the State should ratify the Optional Protocol to the Covenant on Economic, Social and Cultural Rights.

Athens, 9 March 2012

3. The GNCHR Recommendation and decisions of international bodies on the conformity of austerity measures to international human rights standards¹

I. The NCHR Recommendation

1. The NCHR, in its institutional capacity as an advisory body to the Greek State for the protection of Human Rights, adopted, in December 2011, by unanimous decision of its Plenary, a Recommendation *"On the imperative need to reverse the sharp decline in civil liberties and social rights"*.

2. The Recommendation deplores *"the rapid deterioration of living standards"* in Greece, *"coupled with the dismantling of the Welfare State"*, which *"are rendering a significant part of the population destitute, widening the social divide, disrupting the social fabric, strengthening extremist and intolerant elements and undermining democratic institutions"*.

3. At the same time, the Recommendation recalls that, according to its Court of Justice, the European Union (EU) *"is not merely an economic union, but is at the same time intended, by common action, to ensure social progress and seek constant improvement of the living and working conditions of the peoples of Europe, as is emphasized in the Preamble to the Treaty"*². The Recommendation also recalls that, according to the EU Treaty, *civil liberties and social rights are fundamental values* of the EU; their promotion is the first aim of the EU; the EU social objectives (including *social inclusion, social justice and protection and social progress*) are inextricably linked to its economic objectives and are a condition for the effectiveness of the latter. Moreover, the Recommendation recalls that the Charter of Fundamental Rights, which is binding upon the EU and its Member-States, guarantees

indivisible civil liberties and social rights and proclaims that the EU *"places the individual at the heart of its activities"*.

4. The Recommendation underlines that the ILO Committee on the Application of Conventions and Recommendations (CEACR) requested that the Greek Government intensify its efforts and proceed to a thorough and frank dialogue with the social partners, in order to review the austerity measures taken or planned, while re-considering their impact on the workers and ensuring the living standards of the latter.³

5. Finally, the Recommendation stresses that *"it is obvious that there is no way out of the socio-economic and political crisis which plagues Europe as a whole, nor any future for the Union, if fundamental civil liberties and social rights are not guaranteed, and that immediate joint mobilization of all European forces is required if it is to save the values on which the European civilization is founded"*, *"sounds the alarm and calls upon the Greek Government and the Greek Parliament:*

- to take into consideration the fiscal measures' impact on social protection and security, which they are bound to safeguard, and

- to undertake common action with the governments and parliaments of other Member States and with the European Parliament, so that every measure of "economic governance" as well as the planned amendments to the EU Treaty be adopted and implemented with due respect for and in a manner that safeguards fundamental civil liberties and social rights."

II. The NCHR Recommendation is quoted by European and international monitoring bodies⁴

6. The NCHR Recommendation has had a significant effect. The European Committee of

1. Adopted unanimously by the Plenary of the GNCHR during its session on the 27.06.2013. Rapporteurs Ms. Sofia Koukoulis-Spiliotopoulou, Representative of the Greek League for Women's Rights, Ms. Elli Varchalama, Representative of General Confederation of Greek Workers, 2nd GNCHR Vice President.

2. CJEU Cases C-50/96 Schröder [2000] ECR I-774 and C-270/97 Sievers [2000] ECR I-933.

3. CEACR, Report to ILC, 102nd (2013) Session, C.102 (minimum standards), p. 764-6.

4. On the issues dealt with in this report see more particularly: S. Koukoulis-Spiliotopoulos, 'Austerity measures: decisions of international and European bodies, EU law and Greek case law' (in Greek), Social Security Law Review (EDKA) 2013, p. 505 et s.

Social Rights (ECSR) and the ILO Committee of Experts on the Application of Conventions and Recommendations (ILO Committee of Experts) quote this Recommendation in their decisions and reports regarding Greece.

a) The European Committee of Social Rights

7. The ECSR – a *quasi* judicial body of the Council of Europe (CoE) – quotes the NCHR Recommendation in seven decisions on collective complaints by Greek trade unions against Greece, by which it finds that austerity measures are violating labour and social security rights guaranteed by the 1961 European Social Charter (ESC) ratified by Greece.⁵

8. In all these decisions, the ECSR recalls basic principles: *“The increasing level of unemployment is presenting a challenge to social security and social assistance systems as the number of beneficiaries increase while tax and social security contribution revenues decline. However, by acceding to the 1961 Charter, the Parties have accepted to pursue by all appropriate means the attainment of conditions in which certain rights may be effectively realised.”* *“The economic crisis should not have as a consequence the reduction of the protection of the rights recognised by the Charter. Hence, governments are bound to take all necessary steps to ensure that the rights of the Charter are effectively guaranteed at a period of time when beneficiaries most need the protection.”*

9. *“Doing away with such guarantees would not only force employees to shoulder an excessively large share of the consequences of the crisis but also accept pro-cyclical effects liable to make the crisis worse and to increase the burden on welfare systems, particularly social assistance, unless it was decided at the same time to stop fulfilling the obligations of the Charter in the area of social protection.”*

5. The 1961 ESC was sanctioned by Act 1426/1984. The 1995 Additional Protocol, which expands the protection of social rights, and the 1988 Additional Protocol, which establishes the “mechanism of collective complaints” to the ECSR, were sanctioned by Act 2595/1998.

i) The first ECSR Decision

10. The first ECSR decision⁶ concerns a probation period in an open-ended contract and the special enterprise collective agreements. Regarding the first issue, the Greek legislation stipulates that: *“The first twelve months of employment on a permanent contract from the date it becomes operative shall be deemed to be a trial period and the employment may be terminated without notice and with no severance pay unless both parties agree otherwise”*⁷. The ECSR unanimously finds that this provision violates Art. 4 (4) of the 1961 Charter (*“right of all workers to a reasonable period of notice for termination of employment”*).

11. Regarding the abolition of the principle of the favourability of collective agreement clauses and the possibility for enterprise collective agreements to contain terms less favourable than those laid down in the relevant sectoral collective agreements, the ECSR found by 14 votes to 1 that it cannot examine the issue, as the right to collective bargaining falls within the scope of Arts. 5 and 6 of the 1961 ESC, which Greece has not accepted.

12. In his dissenting opinion, Professor Petros Stangos, maintains that the collective bargaining comes within the scope of Art. 3 (1) (a) of the 1988 Protocol. He especially highlights that the essential requirement for this provision to be upheld is that a collective agreement should in all circumstances allow the participation and contribution of the workers, or of their representatives, in determining and cumulatively improving the working conditions, organisation and environment. Therefore, their participation in the worsening of working conditions conflicts with Art. 3 (1) (a) of the Additional Protocol. This is confirmed by the Appendix and the Explanatory Report to the Additional Protocol, as well as by the purpose of Art. 3 (1) (a). Consequently, the legislative intervention (Art. 13 Act 3899/2010)

6. ECSR 23.05.2012, Complaint 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.*

7. Art. 74 (2) section A, Act 3863/2010, as amended by Art. 17(5a) Act 3899/2010.

in the system of collective labour agreements until then in effect (Act 1876/1990), which “*granted trade unions in an undertaking the power to make the working conditions less favourable for the employees of the undertaking than those laid down in the sectoral agreements, outlaws participation and contribution by workers’ representatives where motivated by a contradictory aim [...] which is peremptorily stipulated by the operative part of Art. 3 (1) (a) of the Protocol.*” “*The infringement of this provision thus committed by Greece is corroborated by the fact that the practice of concluding collective agreements at enterprise level, as sanctioned by the Act of 2010, is assigned the purpose of serving first and foremost to reduce the proportion made up by the cost of labour in the production cost of firms, with the ultimate aim of increasing their competitiveness.*”

ii) *The second ECSR decision*

13. The second ECSR decision⁸ concerns the “special apprenticeship contracts” between employers and workers aged 15 to 18 years. These workers are not covered by Labour Law, with the exception of the provisions on the health and safety of workers. Therefore, they are not granted paid annual holiday, whilst their wage is reduced by 32% of the minimum wage provided by the national general collective agreement (NGCA) of 15.7.2010 and they have reduced social-security coverage.⁹ The ECSR unanimously found violations of a number of articles of the 1961 Charter.

14. More particularly, the deprivation of annual holiday violates Art. 7 (2) of the 1961 Charter, which requires a holiday of no less than three weeks. The inadequate character of the “apprenticeship”, as well as the wage reduction, violate Art. 10 § 2 of the 1961 Charter (“*right of young people to vocational training*”).

15. The social security coverage of apprentices is limited. According to the ECSR, this “ap-

pears to establish a distinct category of workers with qualified entitlement to social security”. The ECSR asked the Government for “*the reasons given for the special conditions of social security applied to apprenticeship contracts, the necessity of these conditions as well as the results obtained by their implementation; the existence of measures of social assistance for those who find themselves in a situation of need as a result of the implementation of the above-mentioned conditions*”. The Government gave no reply.

16. According to the ECSR, “*any changes to a social security system must maintain in place a sufficiently extensive system of compulsory social security and refrain from excluding entire categories of worker from the social protection offered by this system. Financial consolidation measures which fail to respect these limits constitute retrogressive steps which cannot be deemed to be in conformity with Article 12§3.*” The ECSR ruled that the aforementioned provisions violate Art. 12 (3) of the 1961 Charter (“*right to social security*”) which requires that the social security system be raised progressively to a higher level.

17. The second ECSR decision also concerns the general reduction of the minimum wages of all workers by 22%, and by 32% for workers under 25 years of age and apprentices, in relation to the minimum wages fixed by the NGCA of 15.7.2010.¹⁰ According to the ECSR, in order for the reduction to be considered “*fair*” within the meaning of Art. 4 (1) of the 1961 Charter (“*right to fair remuneration*”), the remuneration has to be “*above the poverty line in a given country*”. Younger persons may be paid a lower minimum wage in certain circumstances (e.g. when they are engaged in (genuine) vocational training). Such a reduction may promote their access to the labour market, but the minimum wage should not fall below the poverty level of the country concerned. After explaining how the poverty level is defined, the ECSR mentions that, according to EUROSTAT data, this level is €580 per month in Greece and notes that the mini-

8. ECSR 23.05.2012, *Complaint 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.*

9. Art. 74 (9) Act 3863/2010, Art. 1 (1) Ministerial Council Act 6/2012.

10. Article 74 (8) of Act 3863/2010, and subsequently Government Act 6/2012.

imum wages of workers under the age of 25 are below this limit. Consequently, it finds a violation of Art. 4 (1) of the 1961 Charter.

18. The ECSR also finds that *"the extent of the reduction in the minimum wage, and the manner in which it is applied to all workers under the age of 25, is disproportionate even when taking into account the particular economic circumstances in question."* Therefore, the relevant provisions also violate Art. 4 (1) of the 1961 Charter, in light of the non-discrimination clause of its Preamble.

19. It should be noted that the source of the wage reductions provided by Ministerial Council Act 6/2012 (see No. 17 above) is the Second Memorandum of Understanding, which is annexed to Act 4046/2012 and which contains three more specific Memoranda. According to Art. 1 (6) of Act 4046/2012, certain clauses of the first of these specific Memoranda (the Memorandum on Economic and Financial Policy) *"constitute rules of direct application"*. Among these rules is para. 29 of this Memorandum, which provides for the above reductions. Therefore, the ECSR found in essence that the Memorandum clause conflicts with the 1961 Charter. General minimum wages have subsequently been removed from the ambit of the NGCA. They are now fixed by statute at the aforementioned reduced levels: for those above 25 years of age, the monthly wage is €586,08 and the daily wage is €26,18; for those below 25 years of age, the monthly wage is €510,95 and the daily wage €22,83.

iii) *The next five ECSR decisions and their references to international and Greek bodies*

20. The next five ECSR decisions¹¹ concern successive amendments to social security

11. 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*.

schemes,¹² in particular the reduction of pensions and Christmas, Easter and holiday bonuse. In each decision the ECSR makes reference, firstly, to decisions of other national and international bodies. More particularly:

21. The ECSR refers to the CoE Committee of Ministers, which, when assessing the application of the European Code of Social Security by Greece, observes that *"the principles of social solidarity and justice become particularly important when times are bad"*. *"The social security system would not fulfil its role if the benefits it provided were so low as to push the workers below the poverty line"*. The Committee of Ministers urges the Government to consult with the relevant stakeholders, *"to assess, together with all the parties to the financial support mechanism, the spreading of poverty in Greece"* and to coordinate its social security policies with those concerning taxation, wages and employment.

22. The ECSR quotes the 2011 ILO Committee of Experts' Report (see below), which also invokes the Report of the ILO High-Level Mission which visited Greece in September 2011. The Government indicated that approximately 20% of the population was (then) facing the risk of poverty, but that *"it did not have an opportunity, in meetings with the Troika, to discuss the impact of the social security reforms on the spread of poverty"*, nor *"the opportunity to discuss the impact that policies in the areas of taxation, wages and employment would have on the sustainability of the social security system"*. The Government stated that it was encouraged by the fact that these issues were on the agenda of an international organisation and hoped that the ILO would be in a position to convey these issues to the Troika.

23. All these ECSR decisions contain a paragraph entitled *"The Greek National Commission for Human Rights"* referring to the NCHR Recommendation which *"expressed great concern in relation to the ongoing drastic reductions in even the lower salaries and pensions"*.

12. Namely by Acts 3845/2010, 3847/2010, 3863/2010, 3865/2010, 3896/2010, 4024/2011.

24. The ECSR deduces from the European Court of Human Rights (ECtHR) case law that social security benefits constitute property, in the sense of Art. 1 of Protocol No.1 (P1).¹³ However, this rule does not create a right to acquire property nor does it restrict the Contracting States' freedom to decide whether or not to have any form of social security system in place, or to choose the type or amount of benefits to provide under any such scheme. Nonetheless, where a Contracting State has in force legislation providing for the payment as of right of a welfare benefit, that legislation must be regarded as generating a proprietary interest for persons satisfying its requirements. Art. 1 of P1 cannot be interpreted as entitling a person to a pension of a particular amount. Legislative interventions must be justified by compelling reasons relating to the general interest, but should not be permitted to impose an excessive and disproportionate burden on people which affects the essence or core of the social security right.

25. The ECSR further refers to the CoE Parliamentary Assembly Resolution "Austerity measures – a danger for democracy and social rights", which calls on CoE Member States to closely assess current austerity programmes from the view-point of their short- and long-term impact on democratic decision-making processes and social rights standards, social security systems and social services. The Parliamentary Assembly "is concerned that the restrictive approaches currently pursued, predominantly based on budgetary cuts in social expenditure, may not

reach their objective of consolidating public budgets, but risk further deepening the crisis." Furthermore, "the implementation of austerity measures is often linked to bodies whose character raises questions of democratic control and legitimisation, such as the so-called 'troika'". The Resolution also refers to the Explanatory Memorandum of the Resolution, which invokes reports of international organisations and bodies, such as the UN Conference on Trade and Development (UNCTAD), the Organisation for Economic Cooperation and Development (OECD) and the UN Independent Expert on the foreign debt and human rights, on the negative social effects of austerity measures, their disproportionate effect on women and their ineffectiveness, with particular references to Greece.¹⁴

26. The Greek Government argued that the rights were restricted in compliance with obligations imposed through agreements made with the EU and IMF bodies. The ECSR replies that such obligations do not absolve of obligations emanating from the 1961 Charter.

27. According to the ECSR, the compatibility of the restrictions with the 1961 Charter is examined on the basis of the nature of the reforms, their justification, the socio-economic framework, their extent, necessity and appropriateness, the existence of social assistance for those who find themselves in a situation of need as a result of the changes made, and the results obtained. Art. 4 (1) (a) of the 1988 Additional Protocol, in particular, establishes the right of elderly persons to adequate resources enabling them to lead a decent life.

28. The ECSR also recalls that Art. 31 of the 1961 Charter requires that the State demonstrate that the restrictions are necessary in a democratic society for the protection of the rights and liberties of others, public interest, national security, public health or morals.

29. The ECSR notes that the contested restrictions do not constitute, on their own, violations to the 1961 Charter. Their "cumulative

13. ECtHR cases cited: *Stec and Others v the United Kingdom*, [GC], (dec.) no. 65731/01 and 65900/01, ECHR 2006-; *Rasmussen v. Poland*, no. 38886/05, judgment of 28 April 2009; *Kjartan Asmundsson v. Iceland*, application no. 60669/00, judgment of 12 October 2004; *Gaygusuz v. Austria*, judgment of 16 September 1996, Reports of Judgments and Decisions 1996-IV, p. 1142; *Styk v. Poland* (dec.), no. 28356/95, 16 April 1998; *Szumilas v. Poland* (dec.), no. 35187/97, 1 July 1998; *Bieńkowski v. Poland* (dec.), no. 33889/97, 9 September 1998; *Domalewski v. Poland* (dec.), no. 34610/97, ECHR 1999 V; *Ichtigiaroglou v. Greece*, application no.12045/06, judgment of 19 June 2008; *Tsoukalas v. Greece*, application no. 12286/08, judgment of 22 July 2010; *Kokkinis v. Greece*, application no. 45769/06, judgment of 6 November 2008; *Reveliotis v. Greece*, application no. 48775/06, judgment of 4 December 2008.

14. Resolution 1884 (2012), 26 June 2012, "Austerity measures – a danger for democracy and social rights": <http://www.assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=18916&Language=EN>.

effect”, however, “is bound to bring about a significant degradation of the standard of living and the living conditions of many of the pensioners concerned”. As the Government neglected to conduct research and analysis into the effects of such far-reaching measures and to discuss with the organisations concerned, “it has not been discovered whether other measures could have been put in place which may have limited [these cumulative effects]”.

30. Any decisions made in respect of pension entitlements *“must respect the need to reconcile the general interest with individual rights, including any legitimate expectations that individuals may have in respect of the stability of the rules applicable to social security benefits”.* This did not happen with the measures at stake. The ECSR recalls also the possibility to address individual complaints to other mechanisms and the significant role of domestic courts.

31. In all these cases, the ECSR finds that *“due to the cumulative effect of the restrictive measures and the procedures adopted to put them into place, these measures constitute a violation of Article 12 (3) of the 1961 Charter”.*

b) International Labour Organisation Bodies

32. Since 2011, ILO bodies have made a significant contribution to the evaluation of the compliance of Greece with fundamental social rights through the monitoring of the implementation of ratified ILO Conventions¹⁵.

33. From March 2011 until today, the ILO monitoring bodies¹⁶ have found constant, mul-

tipl and serious violations of core ILO Conventions, as it is shown in particular in the following documents:

i) Three Reports (2011, 2012, 2013) by the Committee of Experts on the Application of Conventions and Recommendations (CEACR);¹⁷

ii) Report (365th/2012) of the Committee on Freedom of Association (CFA) case 2820);¹⁸

iii) Reports (2011, 2013) of the Committee on the Application of Standards;¹⁹

Also very important for the application of ILO Conventions, is the information provided in the Report of an ILO High-Level Mission²⁰, which following a decision of the International Labour Conference (ILC) (June 2011), visited Greece in September 2011 (see No. 22 above).

34. The ILO Conventions which were violated according to the ILO monitoring bodies are the following:

- C. 98 (1949) right to organise and collective bargaining [CFA (2012), Committee on the Application of Standards of the ILC (2011), CEACR (2011, 2012, 2013)];

- C. 87 (1948), freedom of association and protection of the right to organize [CEACR (2011, 2012, 2013)];

- C. 154 (1981), collective bargaining [CEACR (2011, 2012, 2013)];

- C. 81 (1947), Labour Inspection [CEACR 2011, 2012, 2013)];

- C. 95 (1949), protection of wages [CEACR (2011, 2012, 2013)];

- C. 100 (1951), equal remuneration [CEACR (2011, 2012, 2013)];

- C. 111 (1958), discrimination in employ-

15. The ILO monitoring mechanism was first activated through complaints lodged in July 2010 by the Greek General Confederation of Labour (GSEE) with the Committee on Freedom of Association (CFA) and the Committee on the Application of Standards and the relevant Reports regarding deficient application of the core ILO Conventions. As the reports of ILO bodies show, the texts of the initial Complaint and the Reports were constantly updated until the beginning of 2013. Specific measures of a permanent character adversely affecting the enjoyment of social rights (labour and social security) in Greece, as a result of the international loan mechanism and the accompanying Memorandum commitments, were the cutting edge of these complaints.

16. Committee on Freedom of Association (CFA), Committee on the Application of Standards, Committee of Experts

on the Application of Conventions and Recommendations (CEACR).

17. Report 2013: http://www.ilo.org/ilc/ILCSessions/102/reports/reports-submitted/WCMS_205472/lang-en/index.htm. Report 2012: http://www.ilo.org/ilc/ILCSessions/101stSession/reports/reports-submitted/WCMS_174843/lang-en/index.htm. Report 2011: http://www.ilo.org/ilc/ILCSessions/100thSession/reports/reports-submitted/WCMS_151556/lang-en/index.htm.

18. http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_193260.pdf

19. http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_165970.pdf

20. http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/missionreport/wcms_170433.pdf

ment and occupation [CEACR (2011, 2012, 2013)];

- C. 122 (1964), employment policy [CEACR (2011,2012,2013)];

- C. 138 (1973), minimum age (admission to employment) [CEACR (2011,2012,2013)];

- C. 150 (1978), labour administration [CEACR (2011, 2012, 2013)];

- C. 156 (1981), workers with family responsibilities [CEACR (2011, 2012, 2013)],

- C. 102 (1952), minimum standards of social security [CEACR (2011, 2012, 2013)].

35. The ILO monitoring bodies make detailed references to the constant and extended state interference with fundamental rights and freedoms, including the freedom of association (freedom of association, freedom of collective bargaining and respect of its results and of the binding power of collective agreements, political motivation for breaking strikes). Extensive reference is also made to the consecutive austerity measures that have been imposed as loan conditionalities in the framework of the international loan mechanism, with heavy consequences for the enjoyment of other internationally guaranteed fundamental rights, such as the right to social security and the right to work in equal conditions. In order to solve such problems, the Committee demands the cooperation of the Greek Government with social partners and the Greek Ombudsman and highlights the responsibility of all the parties to the “*support mechanism*”.

36. The Conclusions of the Committee on the Application of Standards at its 102nd Session (June 2013)²¹, issued after the hearing of Greece, in the framework of the monitoring process regarding the application of ILO Convention No. 98²², mention that “*the outstanding issues in this case concerned numerous interventions in collective agreements and allegations*” by which “*collective bargaining was seriously weakened and the autonomy of the bargaining partners violated*”. The Committee

requests the Government “*to review the impact of austerity measures and the measures to be taken in times of crisis*” and “*to intensify its efforts, with ILO technical assistance, to establish a functioning model of social dialogue on all issues of concern with a view to promoting collective bargaining, social cohesion and social peace in full conformity with the Convention.*”

37. The Committee on the Application of Standards “*urged*” the Government “*to take steps to create a space for the social partners that would enable them to be fully involved in the determination of any further alterations that touched upon aspects going to the heart of labour relations and social dialogue*” and invited it “*to provide additional detailed information to the [CEACR] on the matters raised and on the impact of the abovementioned measures on the application of the Convention*”.

38. Furthermore, after examining the complaints against Greece and in accordance with ILO Conventions, the ILO Constitution and their own well-established jurisprudence, the ILO monitoring bodies concluded as follows²³:

39. These bodies recall the well-established jurisprudence of the ILO monitoring bodies regarding countries devastated by the financial crisis: when applying their policies, the Governments must respect the fundamental principle that restrictions to the enjoyment of social rights may only be imposed, within the framework of a stabilization policy, as an exceptional measure, for a limited period of time, and they must be accompanied by adequate guarantees for the protection of living standards.²⁴

21. http://www.ilo.org/wcmsp5/groups/public/--ed_norm/--relconf/documents/meetingdocument/wcms_216456.pdf

22. ILO C. 98 (Right to organise and collective bargaining), sanctioned by Act 4205/1961, OJ A 174)

23. CFA 365th Report (November 2012), Case 2820, Conclusions paras. 950-1003; CEACR Reports Part II – Observations and Information Concerning Particular Countries, 100th (2011), 101st (2012) and 102nd (2013) ILC Sessions, Greece; Committee on the Application of Standards, Report Part II – Observations and Information Concerning Particular Countries, 100th ILC Session (June 2011), 102nd Session (June 2013), Greece; ILO High Level Mission to Greece (Athens, 19-23 September 2011) Report, Conclusions paras. 297-356; ILO Governing Body, Digest of decisions and principles on the Freedom of Association, 5th (revised) ed. 2006.

24. CEACR, Report to ILC, 101st (2012) Session, C102 (mini-

40. They find that the handling of the crisis raises “concerns for social solidarity, justice and equity” and has created a “widespread feeling of social injustice”.²⁵ They, moreover, stress that “the Greek State has shifted the balance between its social responsibility towards its people and the fiscal responsibility towards its creditors in favour of the latter”²⁶. In fact there is grave concern for the effectiveness of the enacted measures and it is stressed that “while there is a feeling of social injustice” the sacrifices that the workers will have to undergo will be “unfair and unequal” “and will not lead to an exit from the crisis, but instead to a vicious circle and deeper into recession”.²⁷

41. Reference is also made to the imposition of labour and social-security measures of “programmed impoverishment” of the beneficiaries, without any visible prospect for economic recovery. It is, furthermore, underlined that “there is no concept of a subsistence wage in Greece, and that the minimum pension is set well below the poverty threshold.” “In a country where large segments of the population live below the poverty threshold, wages and benefits should be linked to indicators of the physical subsistence of the population determined in terms of the basic needs and the minimum consumer basket”.²⁸

42. The CEACR “notes with **regret** that the evolution of the situation in Greece confirms its previous conclusion that applying exclusively financial solutions to the economic and social crisis could eventually lead to the collapse of the internal demand and the social functioning of the State, condemning the country to years of economic recession and social unrest”. The CEACR refers to data which show the loss of income, unemployment,

inequality and poverty in Greece. In particular, it notes that “in 2010, 27.7% of Greek citizens or more than 3 million persons were at risk of poverty or social exclusion”.²⁹ It also finds that the current minimum wage, also due to tax retentions, leads many workers below the poverty threshold, while growing and extensive delays in wage payments, in conjunction with the increasingly drastic pay cuts, have severe repercussions on the workers’ standard of living.³⁰

43. The Government is requested to create “the most rapid scenarios of undoing certain austerity measures and returning disproportionately cut benefits to the socially acceptable level”, and “to indicate what measures were taken to increase contribution to the country’s efforts by the most fortunate contributors – individuals, banks, companies, industries, civil and religious organizations, and other bodies able to contribute to the social welfare system through taxes or earmarked contributions”.³¹

44. It is pointed out that repeated and extensive State interventions, through permanent measures, in the system of collective bargaining established by Act 1876/1990, only proves harmful and destabilizes labour relations, as it deprives workers of a fundamental right and means of furthering and defending their economic and social interests. Such an unlawful intervention was made in the institution, procedure and content of the national general collective agreement (which establishes minimum standards of wage protection and working conditions for all workers throughout the country) and, in general, in the collective autonomy of employers and workers to establish, without state interference and after free collective bargaining, agreed standards of terms and conditions of work. Thus, through the detailed mention of the imposed measures, the stifling framework, within which collective labour rights are trapped, is outlined.³²

num standards), p. 766 and Report III (Part 1B), para. 220. See also CFA, 365th Report (November 2012), para. 990.

25. CEACR, Reports to ILC 101st (2012) and 102nd (2013) Sessions, C. 102 (social security minimum standards).

26. CEACR, Report to ILC 102nd (2013) Sessions, C. 102.

27. CEACR, Report to ILC 102nd (2013), Session, C. 102; CFA 365th Report (November 2012), Case 2820, Conclusions paras. 963.

28. CEACR, Report to ILC 102nd (2013) Session, C. 102.

29. CEACR, Report to ILC 102nd (2012) Session, C. 102.

30. CEACR, Reports to ILC 101st (2012) and 102nd (2013) Sessions, C. 95 (protection of wages).

31. CEACR, Report to ILC 102nd (2013) Session, C. 102.

32. CEACR, Report to ILC 102nd (2013) Session, C. 98 (organise and collective bargaining).

Moreover, the CEACR notes that the favourability principle was abolished and that 'associations of persons', which do not enjoy the guarantees of democratic vote and independence ensured to trade unions, were given the possibility to conclude collective agreements in small enterprises, which may prevail over sectoral collective agreements. It consequently deplores that "given the prevalence of small enterprises in the Greek labour market (approximately 90% of the workforce), the facilitation of association of persons combined with the abolition of the favourability principle will have a severely detrimental impact upon the entire foundation of collective bargaining in the country". The CEACR "urges the Government to review with [the social partners] all the above measures with a view to limiting their impact and their duration and ensuring adequate safeguards to protect workers' living standards". Furthermore, the Greek State is requested to refrain, not only from interventions and obstruction of the procedure for the independent arbitral settlement of collective disputes (such as the prohibition to solve remuneration matters), but also to restore the orderly function of the Organisation for Mediation and Arbitration (OMED).³³

45. The CFA and the CEACR note "with concern" the closure of the Workers' Housing Organization (OEK) and the Workers' Social Fund (OEE) which "were crucial to trade union social work and funding workers' housing and provided an indispensable social function" (e.g. nurseries, summer camps for children, social tourism for low-income workers, cultural activities) which "did not burden the state budget, being financed exclusively from employers' and workers' contributions". Moreover, the OEE "secured minimum financing for trade unions' operating needs and was the main source of OMED financing, enabling it to preserve its autonomy vis-à-vis the State". The CFA and the CEACR requested the Government "to provide detailed observations on this matter, including indications of measures

taken to ensure that the closing of the OEE in particular has not led to a grave interference in the functioning of the GSEE or of OMED" and to indicate "any measure taken or envisaged to ensure the continuation of OEK and OEE projects".³⁴

46. The CEACR underlines the harmful consequences of the measures for gender equality at various levels, to the detriment of women.³⁵ The CEACR particularly stresses "the disproportionate impact of the legislative measures regarding flexible forms of employment on women's levels of pay", and the overall "disproportionate impact of the crisis on women", which "is exacerbated by the stance of the SEPE [Labour Inspectorate] which seems reluctant or unable to play a role in gender discrimination cases, e.g. by imposing fines",³⁶ and it indicates factors which lead to indirect discrimination in wages and widen the gender pay gap. It mentions information from the Greek Ombudsman on the dramatic increase in dismissals due to pregnancy, maternity leave and sexual harassment, along with soaring unemployment, especially of women and young people; moreover, "a large number of women have joined the ranks of the discouraged workers who are not accounted for in the statistics", while "SMEs (Small and Medium Enterprises) which constitute an important source of female and youth employment have been closing down on a massive scale". It is furthermore underlined that in the public sector, the employment-restrictive measures, the dismissal of thousands of workers, the new grading system and the single pay-scale, that substantially cut wages, will severely affect women who constitute in that area the vast majority, and will severely increase their already very high unemployment rate.³⁷

33. CEACR Reports to ILC 101st (2012) and 102nd (2013) Sessions, C. 98 (right to organise and collective bargaining).

34. CFA 365th Report (November 2012), Case 2820, Conclusions; CEACR Report to ILC 102nd (2013) Session, C. 87 (freedom of association and protection of the right to organize), C. 150 (labour administration).

35. CEACR Report to ILC 102nd (2013) Session, C. 111 (discrimination).

36. CEACR Reports 101st (2012) and 102nd (2013) ILO Sessions C.100, C. 111, C. 81 (Labour Inspection).

37. CEACR Reports to ILC 101st (2012) and 102nd (2013) Ses-

47. The CEACR deplores the rapid increase of flexible forms of employment in the private sector and the replacement of contracts of indefinite duration by fixed-term contracts, which are causing a substantial reduction of wages. Overwhelming evidence is drawn from Labour Inspectorate data: for example, in 2011 part-time employment increased by 73.25%, agreed rotation work by 193% and imposed rotation work by 631,89% as compared to 2010 figures. Nevertheless, *“flexibility was introduced without sufficient safeguards for the most vulnerable, or safeguards which had been introduced by law were not effectively enforced”*. According to the Ombudsman, women, especially pregnant women and mothers, were strongly affected by the flexibilisation of labour relations, which lead in particular to the reduction of their wages.³⁸

48. The CEACR *“urges the Government to fully consult the representative organizations of employers and workers before the adoption of any new austerity measures and to make every possible effort to avoid any new curtailment of workers’ rights in respect of wage protection in either the public or the private sector and to seek to restore the purchasing power of the wages that has been drastically diminished”*³⁹. It also asks the Government to *“review the measures and policies adopted according to the results achieved in pursuit of the objectives of full, productive and freely chosen employment”*, since *“an active employment policy should be pursued as a major goal”*, and to provide *“information on the results of the measures adopted in order to overcome the impact of the debt crisis on the labour market, and information on the number of programme beneficiaries obtaining lasting employment”*.⁴⁰

sions, C. 100 (equal remuneration) and C. 111 (discrimination).

38. CEACR Reports to ILC 101st (2012) and 102nd (2013) Sessions, C. 100 and C. 111.

39. CEACR Report to ILC 102nd Session (2013), C. 95 (protection of wages).

40. CEACR Report to ILC 102nd Session (2013), C. 122 (employment policy).

49. The aforementioned Reports of the ILO monitoring bodies refer to the fact that Greece has not responded to its obligation to provide information requested for more than two years regarding the consequences of austerity measures on the quality of working and living conditions and the income of workers throughout the country, while at the same time, the State has been repeatedly and in vain requested to review the measures imposed, in order to protect the enjoyment of fundamental labour rights. On the other hand, the official position of the Greek Government is that *“the weakening of the quality of labour rights”* was done *“in order to strengthen the competitiveness”*, within the framework of implementing the terms of the country’s international loan mechanism.⁴¹

50. Finally, in 2013,⁴² the CEACR *“notes with regret”*⁴³ *that the evolution of the situation in Greece confirms its previous conclusion that applying exclusively financial solutions to the economic and social crisis could eventually lead to the collapse of the internal demand and the social functioning of the State, condemning the country to years of economic recession and social unrest.”* *“The Committee reminds all the constituent powers of the State of their collective obligation to ensure that the policy of fiscal and financial consolidation does not undermine the fulfilment of the social and human objectives of Convention 102 at least at the level permitting to maintain the protected population in health and decency”*. And *“requests the Government to explore and provide information on the most rapid scenarios of undoing certain austerity measures and returning disproportionately cut benefits to the socially acceptable level, which*

41. CEACR, Report to ILC 102nd (2013) Session, C. 098 (right to organise and collective bargaining), p. 107 and C.102 (minimum standards), p.764; CFA, 365th Report (November 2012), Case 2820, para. 948. See also ILO, Report on the High Level Mission to Greece (2011), paras. 12-13 and CEACR, Report to ILC 101st (2012) Session, C.098 (organise and collective bargaining) and C.154 (collective bargaining), p. 160.

42. CEACR Report to ILC 102nd Session (2013), C. 102 (social security, minimum standards).

43. Emphasis in the CEACR text.

at least prevents the "programmed" impoverishment of the beneficiaries".

III. The European Court of Human Rights: I. *Koufakis and ADEDY v. Greece*

51. On 13 May 2013, the ECtHR gave its judgment in the cases *I. Koufakis and ADEDY v. Greece*.⁴⁴ Based on its well-established case law, to which the ECSR had also referred (see No. 24 above), the ECtHR declared the complaints inadmissible, because manifestly ill-founded. The complaints were brought before the Court, after having being lodged with the Greek Council of the State (the Supreme Administrative Court (CS)) (judgment No. 668/2012), which had dismissed petitions for the annulment of administrative acts by which, pursuant to Acts 3833/2010, 3845/2010 and 3847/2010, the remuneration of the first applicant and the remuneration and pensions of the members of the second had been reduced. The applicants invoked violations of Article 1 of the First Protocol to the ECHR (P1). The second applicant also invoked violations of Articles 6 (1), 8, 13, 14 and 17 of the ECHR.

52. Regarding Art. 1, P1, the ECtHR, recalled that, according to its well-established case law, Member-States enjoy a broad margin of appreciation in shaping their social policy. National authorities, as a rule, are in a better position than an international court to determine the most appropriate measures for achieving a balance between the expenditures and revenues of the State. This margin is even broader when the disputed measures are related to the determination of priorities for the distribution of the State's limited revenues. Article 1, P1, requires mainly that state interference in the enjoyment of the right to the respect of property should be provided by law and should pursue a legitimate aim of general interest, while being proportionate to this legitimate aim; in other words, a fair balance between the demands of the general interest and the requirement to protect individual fundamental rights should be ensured. This bal-

ance is not achieved when an excessive burden is placed on the individual. Besides, Article 1, P1, does not confer a right to a salary or a pension of a certain amount.

53. The ECtHR found that the measures introduced by the disputed legal instruments did not constitute a "deprivation of property", as alleged by the applicants, but an "interference with the peaceful enjoyment of their possessions", under the first sentence of paragraph 1, Article 1, P1. It noted that the interference was prescribed by law. The disputed measures were justified by the exceptional and unprecedented crisis in Greece. The reductions in wages and social-security benefits were part of a broader programme for the fiscal adjustment and structural reform of the Greek economy, which was aimed at meeting urgent needs. These aims were of general interest and coincided with those sought by the Euro-area Member-States, in view of their obligation to observe budgetary discipline and preserve the stability of the area, with a view to the immediate reduction of public expenses.

54. The ECtHR, recalled that the national legislature enjoys a broad margin of appreciation in implementing economic and social policies, unless its judgment is manifestly proved to lack reasonable basis. Therefore, the disputed reductions served the general interest.

55. The ECtHR also examined whether the proportionality principle was observed, that is to say, whether a fair balance had been achieved between the demands of the general interest and the obligation to protect fundamental rights. It noted that the measures introduced by Act 3845/2010 were considered necessary, because those previously adopted under Act 3833/2010 had proved insufficient to resolve the country's dire economic predicament. It also referred to the reasoning on the basis of which the CS rejected the arguments regarding the violation of the proportionality principle by the disputed measures, as well as to the observation of the CS that the claimants (applicants in the instant case) did not invoke specifically before the CS that the impugned measures had deteriorated their situation to such an extent that their very subsistence was in jeopardy. Furthermore, the

44. ECtHR Case No. 57665/12 and 57657/12. The judgment is published in French, with a summary in English: <http://hudoc.echr.coe.int>.

ECtHR noted that the reduction of the first applicant's salary was not such that it risked exposing her to subsistence difficulties. It also noted that, as regards the second applicant, measures to off-set the removal of the 13th and 14th months' pension and of the 13th and 14th monthly salaries were taken. Since the national legislature did not overstep the limits of its margin of appreciation, it was not for the ECtHR to say whether the legislature had chosen the best means of addressing the problems or whether it could have used its power differently.

56. After rejecting the allegations of breach of Article 1 P1, the ECtHR moved on to reject further allegations of violation of other articles of the ECHR.

57. From the aforementioned judgment one can deduce that the implementation of national economic and social policies belongs to the State, subject, however, to a review of their conformity with fundamental rights. The cases brought before the ECtHR were not such that they could allow the ECtHR to find that the State had overstepped the limits of its power. However, the reasoning of the decision clearly shows these limits.

Some conclusions and recommendations

58. The NCHR, within the framework of its institutional capacity as an advisory body to the Greek State for the protection of Human Rights, observes with great concern the impact of the austerity measures on fundamental Human Rights, and more particularly social rights, irrespective of whether they are linked to financial benefits provided by the State. The NCHR draws attention to the findings of international monitoring bodies, regarding breaches of international human rights protection standards, as well as to the international concerns reflected in the decisions and recommendations of such bodies. These findings correspond to the findings and concerns regarding the legal and factual situation in Greece formulated by the NCHR Recommendation of December 2011, which international bodies frequently quote.

59. The NCHR recalls the observation made by the CEACR that "*the NCHR Recommendation*

has not been followed by the Government"; nor has the opinion issued, one year later, by the Greek Court of Auditors (which reviews bills before they are submitted to Parliament) been followed. The latter considered that "*recurrent cuts in pensions were contrary to Articles 2, 4, 22 and 25 of the Constitution as they conflicted with the constitutional obligation to respect and protect human dignity, the principles of equality, proportionality and work protection*".⁴⁵

60. It results from the texts of the international bodies that international human rights law sets limits to national economic and social policy. Austerity measures that lead to the degradation of living standards of a big part of the population, leading many under the poverty threshold and causing a general feeling of insecurity, constitute breaches of international human rights standards and make the measures ineffective (see in particular Nos. 9, 25, 40 above).

61. The NCHR recalls that the ILO Committee of Experts (CEACR) "*notes with regret*⁴⁶ *that the evolution of the situation in Greece confirms its previous conclusion that applying exclusively financial solutions to the economic and social crisis could eventually lead to the collapse of the internal demand and the social functioning of the State, condemning the country to years of economic recession and social unrest.*" The CEACR "*requests the Government to explore and provide information on the most rapid scenarios of undoing certain austerity measures and returning disproportionately cut benefits to the socially acceptable level, which at least prevents the 'programmed' impoverishment of the beneficiaries*".⁴⁷ The CEACR findings converge with those of the European Committee of Social Rights (ECSR) which deplores that "*the adopted measures risk bringing about a large scale pauperisation of a significant segment of the population*".⁴⁸

45. CEACR Report to 102nd ILC Session (2013), C. 102 (social security, minimum standards): http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100.COM.MENT_ID:3088061:NO

46 Emphasis in the CEACR text.

47 CEACR Report to 102nd ILC Session (2013), C. 102 (minimum standards).

48 ECSR 07.12.2012, Complaints Nos. 76-80/2012.

62. The NCHR highlights the findings of international bodies regarding the disproportionate impact of the crisis and austerity measures on women (see Nos. 25, 46-47 above) and the systematic discrimination against young people in the area of employment (see Nos. 13-19 above).

63. The NCHR also recalls the findings of international monitoring bodies that since the adoption of the austerity measures, within the framework of the “*financial support mechanism*”, and until this very day, no assessment of their social impact has been carried out, in consultation with interested organizations, nor have there been sufficient protection measures for those affected by these measures, as required by international law, whereas some Memoranda clauses directly breach international norms (see Nos. 19, 22, 25, 27, 29, 36, 37 above).

64. The NCHR, in its Recommendation, and the international monitoring bodies underline that both the Government and all the other parties involved in the “*financial support mechanism*” are accountable for this situation and that immediate corrective measures are required, for the unhindered enjoyment of fundamental rights, in particular labour and social security rights (see Nos. 21, 26, 35 above).

65. Evaluating the exacerbation of labour inequality and the extensive breaches of fundamental international labour law standards, in conjunction with breaches of national labour law, which lead to the overexpansion of the informal sector of the economy and the emergence of situations of lawlessness and violence, the NCHR stresses the need for immediate restoration of the system of collective bargaining and collective agreements introduced by Act 1876/1990. Within this framework, the re-establishment of the procedure for concluding national general collective agreements (NGCAs) and of their content and scope should be an immediate priority, with a view to maintaining the NGCA status as an institutional instrument serving the general interest and the interest of workers in particular, through the establishment of general minimum standards of wages and working conditions for

all workers throughout Greece. Besides, in the post-junta era, the content of the NGCAs was not merely financial.⁴⁹ In order to effectively reverse the heavy consequences affecting a large part of society, this re-establishment should be combined with the repeal of the legislative suspension of the application of crucial principles that govern the minimum standards of collective labour protection; including the principle of favourability and the extension of the scope of collective agreements (art. 37 §§ 5-6 of Act 4024/2011).

66. Besides, the NCHR reiterates its statements that any labour protection policy will be ineffective, unless the Labour Inspectorate is adequately staffed and appropriately strengthened.

67. The NCHR calls upon the State to implement, without delay the decisions and recommendations of the international monitoring bodies, by repealing the provisions which violate human rights and effectively controlling the respect of human rights in practice. In particular, in cooperation with all competent authorities (including the Court of Auditors, the National Actuarial Authority, the General Accounting Office) urgent and effective measures must be taken for achieving the guarantee of social security by the State and the constant assessment of the adverse consequences of the multiple austerity measures on the employment and social security rights of large segments of the population. Effective plans must be elaborated for the achievement of the full enjoyment of these rights, e.g. through restoring healthcare and welfare, unemployment and disability benefits and services, on the basis

^{49.} *The NGCA was, through its normative content and in terms of equality, a fundamental instrument for the promotion of fundamental rights, often before the State had guaranteed them, and for the improvement of already existing rules (regarding e.g. equal pay for men and women, reconciliation of professional and family life, respect for national, religious and cultural particularities of employees by their employers, protection of employees with disabilities and adaptation of their working conditions, measures for employees affected by HIV-AIDS, protection of employees participating in rehabilitation programs, promotion of employment along with environmental protection etc).*

of social justice and social solidarity; by stopping the flexibilisation of employment relationships in the private and the public sectors.

68. The NCHR recalls the universality, indivisibility and interdependence of human rights, which is reaffirmed in the EU Charter of Fundamental Rights and recalled in the NCHR Recommendation. Social rights are also a prerequisite for the substantive and effective exercise of civil and political rights. This is why their decline affects all human rights and democratic institutions.

69. Finally, in light of the findings of international bodies (Nos. 62-63 above), the NCHR stresses that the commitments of Greece, and other States facing a debt crisis, towards their international creditors, cannot serve as an argument for restricting human rights guaranteed by ratified International Treaties, which set minimum universal standards of protection. Memoranda concluded within the framework of international loan mechanisms cannot override international human rights standards, especially when these standards also bind State-Parties to these mechanisms, such as EU Member-States.

70. The NCHR recalls the concerns expressed in its Recommendation, that *"the rapid deterioration of living standards coupled with the dismantling of the Welfare State and the adoption of measures incompatible with social justice"* *"are rendering a significant part of the population destitute, widening the social divide, disrupting the social fabric, strengthening extremist and intolerant elements and undermining democratic institutions."* These concerns are shared by international human rights organisations and bodies, in particular by the Council of Europe Commissioner for Human Rights.⁵⁰

71. The NCHR also reiterates that *"immediate joint mobilization of all European forces is required if it is to save the values on which the European civilization is founded"*. Consequently, it calls again on the Greek Government and the Greek Parliament:

- *"to take into consideration the impact of fiscal measures on social protection and security, which they are bound to safeguard";*
- *"to undertake common action with the governments and parliaments of other Member States and with the European Parliament, so that every measure of 'economic governance' as well as the planned amendments to the EU Treaty be adopted and implemented with due respect for and in a manner that safeguards fundamental civil liberties and social rights".*

^{50.} See Nils Muižnieks, Council of Europe Commissioner for Human Rights, Report following his visit to Greece, from 28 January to 1 February 2013. Strasbourg, 16 April 2013, CommDH(2013)6.

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

I. Introduction

The Ministry of Foreign Affairs has forwarded a Draft of the Second Periodic Report of the Hellenic Republic to the National Commission for Human Rights regarding the application of the International Covenant on Civil and Political Rights. Under its founding law (2667/1997), the Greek National Commission for Human Rights (hereinafter GNCHR) delivers an opinion on this issue. After examining the content of the Draft Report (hereinafter Report), the GNCHR submits the following observations which may contribute to its enrichment, since they correspond to the need to formulate a timely and complete image of the environment and the conditions under which the Covenant is applied in Greece.

II. General Observations on the draft Report

The Report contains an extensive -43 pages- presentation and evaluation of the application of civil and political rights in Greece, without limiting itself to a simple indication of the legislation and the relevant structures established for the protection of every right. The GNCHR considers that it should, at this point, recall the need to clearly describe the issues that arise during the application of any legislation in practice as closely as possible to reality and to find solutions to the shortcomings either of the protection framework or of the stakeholders and structures created.

Greece should have submitted its Final Report to the Human Rights Council (hereinafter HRC) before April 1st, 2009, a delay which was also documented in its previous submission. Due to this delay, the Report should contain information from 2004 (last submission to the HRC) onwards, something that is to a certain degree achieved here.

The draft Report is quite extensive and a certain amount of effort was put into drafting it

in accordance to the HRC Guidelines. It also addresses all the issues pointed out by the HRC in its Concluding Observations. In some parts however, there is either too much redundant information, or in some parts no information at all. A description of the process under which the Report was put together is a positive element which displays the contribution of 31 various bodies during its drafting.

The submission of the Report on the application of the Covenant comes at a time when Greece is plagued by financial crisis. The GNCHR applauds the general reference in the Report's Introduction to the impact of the financial crisis on the enjoyment of the rights protected under the Covenant and the analysis of various situations for specific rights.

The GNCHR recalls that already since 2010 it conveyed to the State 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", which was adopted by the Plenary on 27.6.2013.

In this regard, the GNCHR cannot but note the need to refer to the impacts of the deep financial crisis and the financial austerity measures, which clearly have affected the rights covered by the application of the Covenant.

III. Specific Observations on the draft Report

Articles 2 and 26

Protection of Roma rights (par. 18 of the HRC Concluding Observations)

Before moving on to specific observations for the relevant part of the Report, the GNCHR would like to first express its concern for the widespread prejudice that dominates Greek public opinion and the Greek Media proven by recent events. The Report, having made reference to the role of national institutions for human rights,

should also include special reference to the GNCHR which since 2003 includes a representative member from the Panhellenic Foundation of Greek Roma Associations, as well as to the Ombudsman which has been particularly active in this field.

The GNCHR specifically on the situation of Roma in Greece has highlighted that the issues surrounding this particular group are not restricted to minority rights issues but in fact include individual rights and observes the following:

The Integrated Action Plan for the Social Inclusion of the Greek Roma

The Report makes extensive reference to the Integrated Action Plan (IAP) for the Social Inclusion of the Greek Roma. However, the GNCHR from the outset highlighted that it lacked the solid legal guarantees that are able to neutralize the factors that undermine it. As reported by the Ombudsman, *there is no institutionally and regulatory integrated framework in place able to ensure the effective participation/integration of Roma in Greek social life.*

Concerning issues of housing, even though the loan programme was characterized as a good practice by the Committee of Experts on Roma and Travellers, the ECRI found that the plan on housing loans did not always benefit the targeted groups. In fact, relevant decisions condemning Greece for the housing conditions of Roma, as well as relevant observations by the European Committee for Social Rights, prove that Greece still has a lot to accomplish, especially now that the IAP is over.

At this point it is necessary to highlight that the practice of social-medical centres has proved positive for the Roma communities and therefore, the GNCHR recommends that more of them be established and their activities be extended.

The issue of pending population registering

The issue of the pending population registration of a large number of Greek Roma is clearly dominant when it comes to the case of housing

reinstatement. The large number of Roma children that are not registered upon birth raise yet another issue of concern.

In this regard, there is a strong resistance of the local authorities themselves, when it comes to registering the Roma who stay or travel through their territory and frequently invoke that registration based on "racial" criteria is prohibited.

The rights of Roma women

The GNCHR shares the concern of CEDAW when it comes to lack of data concerning the employment of Roma women, their social exclusion, as well as the difficulties they face in the enjoyment of basic commodities such as access to healthcare facilities, social benefits, education and political and public participation.

The rights of Roma children

The GNCHR, under the present circumstances, calls for the confrontation of alarming cases that irrefutably violate the rights of Roma children. Agreeing with the findings of the Ombudsman, the GNCHR highlights the need to ensure for Roma children the equal enjoyment of their rights to health, education, housing, labour and social participation.

Especially on the integration of Roma children into the educational procedure, the GNCHR considers necessary the registration and documentation of the specific school population of every region and the collection of all relevant data on Roma communities. The necessary funds should be allocated for the functioning of permanent learning mentors, whilst the training of Roma mediators that will function as a link between Roma communities and schools is also necessary.

Furthermore, the GNCHR considers the segregation of Roma children unacceptable, as well as their dispersion in schools located in areas remote from their residence.

The behaviour of State organs

As constantly observed by the GNCHR, the rights of both minor and adult Roma are violated by certain state organs. Especially in relation to

Roma minors, the Committee on the Rights of the Child has expressed its concern for the arbitrary and discriminatory manner with which police authorities stop and cross-check Roma minors, as well as the violation of their right to a fair trial. Data collected by the EU Fundamental Rights Agency demonstrate the alarming dimensions of discriminatory practices in Greece based on the ethnic profiling of Roma by the police.

The GNCHR highlights the inadequate manner in which the State deals with instances of police violence against Roma and proposes the adoption of measures that address cases of Roma maltreatment, such as the effective punishment thereof and allowing more Roma to serve in the police force.

Within this framework, the GNCHR stresses the need to set into motion the initiative to establish a working group that will examine the issue of human rights training among members of the police forces.

Other observations

Since the HRC requests the collection of more data on Greek Roma, the GNCHR highlights the latest research published by the FRA. In light of the aforementioned, the results of the application of the multilevel action plan on Roma for 2012-2020 are expected within a framework of a broader plan for the social inclusion of Roma that adopts a holistic approach similar to the spirit and recommendations of the GNCHR. Considering the findings of both the Ombudsman and the ECRI, there is still a need for the development of more systematic and long-term monitoring mechanisms.

Discrimination on grounds of sexual orientation (par. 19 of the HRC Concluding Observations)

The GNCHR emphasizes the need to adopt measures to address discrimination on grounds of sexual orientation. Namely:

Civil Marriage

The GNCHR expresses its regret that the State failed to take into consideration its continuous recommendations concerning the exclusion

of same-sex couples from the regulatory framework of the law on civil marriage. Especially in light of the most recent ECtHR decision condemning Greece for this issue.

Instances of Racist Violence

The GNCHR notes the important positive steps taken for addressing cases of discrimination on grounds of sexual orientation through the establishment and functioning of the Racist Violence Recording Network in 2011, on the initiative of the GNCHR and the UN High Commissioner for Refugees Office in Greece, with the participation of non-governmental organisations and bodies. Apart from the Network, which in 2012 received only one complaint concerning discrimination on grounds of sexual orientation, the Office of the Ombudsman also receives on a regular basis, a limited number of such complaints, despite efforts to approach the LGBT community.

The GNCHR regretfully notes that recent anti-racist initiatives and legislation fail to include discrimination on grounds of sexual orientation or gender identity. Therefore, it stresses the need to include in any state initiative aiming to fight hate crime the protection of those that are targeted due to their different sexual orientation and/or their gender identity.

Legislation on Equality and non-discrimination

The GNCHR applauds the indication of the weaknesses in the present legislative framework, as well as the specific proposals concerning the amendment of Law 3304/2005 transposing Directives 2000/43 and 2000/78. However, the following should also be taken into account:

1. The Greek Ombudsman should become the central body responsible for the promotion and monitoring of the application of the principle of equal treatment by private and public actors in all relevant fields, except for access to goods and services. The latter should fall under the competence of the Consumer Ombudsman. At the same time, the relevant duties of other bodies established through Law 3304/2005 should be adjusted to the Ombudsman's new mission.

2. The prohibition of discrimination on multiple grounds should be added to Law 3304/2005.

3. The amendment of a number of articles of Law 3304/2005 so that discrimination prohibited by this Law cannot be disguised as discrimination against third-country nationals, who are protected by other secondary EU law instruments.

4. The amendment of a number of articles of Law 3304/2005 regarding the scope of application of the equal treatment principle, positive action, professional requirements and different treatment on grounds of age, so that they are made consistent with the wording of Directives 2000/43 and 2000/78.

5. The improvement of the wording of the provisions of Law 3304/2005 which transpose procedural provisions of the Directives (standing of NGOs, burden of proof) and their incorporation into the relevant procedural codes.

6. The amendment of a number of articles of Law 3304/2005 with a view to facilitating the legal standing of NGOs before judicial authorities, the recognition of favourable – not unfavourable – *res judicata* and the legal standing of NGOs to engage in administrative proceedings.

7. The amendment of Law 3226/2004 regarding legal assistance to low income citizens, with a view to facilitating legal aid for lodging recourses to the courts for violations of Law 927/1979 (punishment of race discrimination) and Law 3304/2005.

Finally, in light of recent events concerning the affront to the dignity of a large number of female patients and victims of sexual exploitation, it is important to highlight the legal *vacuum* concerning the protection of the rights of people with HIV and to recall the GNCHR's previous recommendations on including HIV as a ground of discrimination in Law 3304/2005.

Education and non-discrimination

The GNCHR believes that the Report should also refer to the education of people with disabilities or special educational needs. In the past, the GNCHR made specific proposals regarding the application of Law 3699/2008 on "Special Education and Education of persons with dis-

abilities or special educational needs". However, these proposals were ignored and, moreover, major setbacks have since occurred, as existing infrastructure were abolished.

In light of recent findings of the UN Committee on the Rights of the Child, the GNCHR recalls its above proposals, highlighting the need for the education of all children in general schools based on a system that will take into account the capacities and needs of each individual child without creating special groups vulnerable to exclusion:

Regarding infrastructure: a) the GNCHR highlights the need to create Centres of Early (or Timely) Intervention and daily Educational Centres, whilst for the School Units for Special Education, it considers necessary to stress the need to build school buildings that satisfy all the necessary accessibility and functionality criteria. Also, the educational programme of these centres has to be defined in order for specialised teachers to cover the special needs of all students; the Personalized Educational Programmes needs to be monitored so that the unhindered continuation of education of all students can be ensured. Furthermore, the prompt issuance of the Presidential Decrees and Ministerial Decisions which are necessary for the implementation Law 3699/2008 is required regarding (a) the selection procedure for the appointment of Counsellors for the Special Educational Staff and their duties and obligations; (b) the formal qualifications of the specialised educational staff to be hired and c) the operation of Special Educational Classes and Inclusion Sections, as well as the integration of persons possessing new skills among the teaching staff are also crucial. Finally, the GNCHR refers to individual measures that need to be taken within the framework of the Differential Diagnosis and Support Centres.

Regarding special educational needs, problems of students with language disorders, neurological or mental illness, hearing or vision impairment, or autism should be addressed. The GNCHR considers that a) the National Accreditation of Sufficient Knowledge of Greek Sign Language and Braille can draw a lot from the

experience of the Hellenic Federation of the Deaf and the Centre for Education and Rehabilitation for the Blind, and b) that books and materials should be adjusted and distributed to children with hearing or vision impairments.

Foreign citizens

In 2010, the GNCHR applauded the legislative initiative for the “**Political participation of expatriate and foreign third country nationals residing legally and on a long-term basis in Greece**”, which constituted an important step towards the substantive integration of immigrants lawfully living and working in Greece. What is more, this initiative attempted to ensure the full enjoyment of rights for the members of the aforementioned group, whilst clarifying the Greek State’s position on illegal immigration.

However, by virtue of judgment No. 460/2013 of the Plenary of the Council of the State, a series of articles of the Code of Greek Citizenship and Law 3838/2010 (“**Contemporary provisions regarding Greek Citizenship and political participation of expatriates and legally residing immigrants and other provisions**”) were found unconstitutional and Ministerial Decisions granting Greek citizenship to aliens who were born in Greece to foreign parent(s) who resided at least five years and attended a Greek school, as well as Ministerial Decisions allowing their participation in municipal elections were annulled.

The issue of participation in municipal elections should be addressed through a constitutional amendment, whilst the Bill on the “Ratification of the Code on immigration and social inclusion” regulates the situation of second generation immigrants, providing for the granting of five-year residence permits to adult third-country nationals that were born in Greece or have successfully completed six grades of Greek school in Greece, prior to adulthood and reside legally in the country. The GNCHR applauds the granting of long-term residence to **second generation immigrants**, noting of course that their full and substantial integration can only be ensured through the awarding of Greek citizenship.

National Institutions for Human Rights (NHRIs)

The GNCHR also deems it advisable that specific reference be made to its work as a **national mechanism for the protection of human rights and an independent** advisory body to the State.

The founding law of the GNCHR has been based on the Paris Principles adopted by the United Nations Organization (General Assembly A/RES/48/134, 20.12.1993) and by the Council of Europe. Both of these international organizations promote over the years the establishment of National Institutions for Human Rights. The degree of conformity with the Paris Principles constitutes the basis of evaluation – and, at regular intervals, re-evaluation – of the National Institutions by the International Coordinating Committee of NHRIs (ICC). According to this evaluation, the NHRIs are granted A status (in compliance with the Paris Principles), B status (not fully in compliance with the Paris Principles) or C status (non-compliance with the Paris Principles), which determines their ability to participate in a series of mechanisms of the UN (co-operation with Treaty Bodies, Special Procedures, Universal Periodic Review etc.), of the Council of Europe (Human Rights Commissioner, CPT etc.) and of the European Union (Fundamental Rights Agency etc.). **The GNCHR**, since 2001, has been awarded **Status A (in full compliance with the UN Paris Principles)** by the International Coordinating Committee of NHRIs.

Furthermore, specific reference should be made to the contribution of the GNCHR to the functioning of institutions such as the Appeals Committees and the Asylum Service, the Immigration Committees and the Naturalisation Committees.

Education on Human Rights

As for the education on human rights **at school**, the GNCHR applauds the recent announcement made by the Ministry of Education promising to promote **actions for the correct and democratic political education** of younger generations, as well as **for shielding them from Nazi and racist practices**.

Nonetheless, the GNCHR is still disturbed by the **absence of a holistic approach** to human rights education which is obvious in the curricula of primary as well as secondary education.

Articles 3 and 23

Domestic violence against women (par. 7 of the HRC Concluding Observations)

The GNCHR focuses on domestic violence against women by requesting specifically the following:

(a) Regarding the **legal framework**, the GNCHR applauds the adoption of Law 3500/2006 which *inter alia* criminalises marital rape. The GNCHR had repeatedly expressed its concern for the absence of such a provision.

However, notwithstanding the observations made by the GNCHR, the law did not fully regulate the issue of domestic violence, since it does not deal with its essence nor does it address its causes. The GNCHR recalls the recent findings of the UN Committee on the Elimination of Discrimination against Women and the Committee against Torture, which confirm the persisting phenomenon of domestic violence against women.

In fact, even though there are a large number of cases of domestic abuse against women, **very few perpetrators are prosecuted and punished**. The UN Committee against Torture specifically calls on the Greek State to amend Article 137A of the Criminal Code, so that rape and other forms of sexual violence against women are punished as a **form of torture** and not merely as a "serious affront to sexual dignity".

Finally, the GNCHR deplores that the Council of Europe Convention on preventing and combating violence against women and domestic violence was merely signed by Greece on May 15, 2001, but has not yet been ratified.

(b) Raising awareness to the phenomenon of domestic violence is still an open challenge for Greece. This is mainly due to the perpetuation of **patriarchal attitudes and deeply rooted stereotypes** regarding the role and responsibilities of women and men, as well as practices that create discrimination. The Committee on the

Elimination of Discrimination against Women, in particular, has expressed its concern over the lack of state measures aiming to eliminate stereotypes and negative traditional principles and practices.

The lack of **studies** on the dimension of violence phenomena and the root causes thereof, as well as **statistical data** on violence against women and domestic violence based on sex, age, minority/ethnic origin and the relationship between the perpetrator and the victim, is just as problematic.

(c) The GNCHR applauds the protection measures for the victims of domestic violence included in the "National Plan for the Prevention and Combating of Violence against Women 2009-2013"; however it highlights that **effective access to justice** is not always guaranteed for female victims. While expressing its satisfaction with the adoption of Law 4055/2012 which abolishes the obligation to pay a court fee when denouncing domestic violence, the GNCHR stresses that the high cost of judicial proceedings and the fact that women are not aware of their rights and of the means to exercise them, still hinder their protection.

Application of Sharia law in Family and Inheritance law for members of the Thrace Muslim Minority (par. 8 of the HRC Concluding Observations)

The GNCHR expresses its concern about the non application of general Greek law to women of the Thrace Muslim Minority regarding **family** and **inheritance** issues. It insists that more effort should be put in informing these women of their rights and possibilities for judicial recourse, so that they can benefit from Greek civil law. The Report does not seem to adequately address these issues.

Having repeatedly expressed its position on the matter and taking into consideration the recent findings of the UN Committee on the Elimination of Discrimination against Women, the GNCHR continues to observe that the Greek civil law does not apply to the Thrace Muslim minority regarding marriage and inheritance. Furthermore, the application of local Sharia law

and general Greek Law is not in harmony with the provisions of the Covenant on **non-discrimination**.

Further disturbing is the recent No. 1862/2013 **judgment delivered by the Supreme Civil Court**, which, in an inheritance case regarding members of the Thrace Muslim community, refused to apply the provisions of the Civil Code, holding that the law applying in inheritance cases is the Sacred Muslim Law which constitutes domestic law and is specifically applied to Greek citizens of Muslim belief.

As for marital issues, as the GNCHR has already pointed out, marriage **by proxy** is contrary to Greek public order and to specific provisions of international treaties ratified by Greece. Therefore, Muslim marriage by proxy is non-existent regarding the representative and the future spouse and null regarding the person represented.

On gender equality in general

The GNCHR has repeatedly expressed its position on gender equality in Greece, especially during the period covered by the Report. Let us note the following:

Law 3896/2010

The GNCHR welcomed in principle the adoption of Law 3896/2010 "Application of the equal opportunity and equal treatment principle for both men and women on issues of work and occupation" and the endorsement of several of its observations during the drafting process.

The aforementioned statute is not, however, without imperfections. Firstly, the definition of vocational training is not clear and consistent with EU law. This does not create legal certainty. Moreover, Article 19 on "Positive Measures" does not comply with the requirements of Article 116(2) of the Greek Constitution, which introduces an obligation for all state authorities. This constitutional provision "*obliges the legislator and the Administration, as well as other organs of the State*" to adopt in all fields the positive measures in favour of women that are "*appropriate and necessary*" for "*achieving the best*

possible result" in order to minimize inequalities and with the ultimate goal of achieving real gender equality. Furthermore, Article 116(2) of the Greek Constitution stipulates that positive measures should aim to eradicate "inequalities" (this notion is wider than the notion of "discrimination" used in Article 19 of Law 3896/2010).

Moreover, there is no **autonomous individual right to paid parental leave** for all male and female workers. Article 3(4) regarding the protection of maternity is not in compliance with ECJ case law and the provisions of Article 21(1) and (5) of the Greek Constitution, which guarantee the effective protection of maternity. Especially in the private sector, women undergo unfavourable treatment with respect to access to employment and conditions of work, not only when they are pregnant or have recently given birth, but also when they have young children or are married and at child-bearing age.

Finally, the GNCHR considered the statute inadequate for ensuring effective judicial protection of female victims of discrimination, as *inter alia* legal entities and organisations are not granted legal standing to engage in judicial or administrative proceedings in their own name for the protection of victims of discrimination.

Work and gender equality

Despite the adoption of Law 3896/2010 and the measures mentioned in the Report, the deregulation of employment relationships due to the severe financial crisis and the successive austerity measures continue to exacerbate 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 Women, the GNCHR expresses its concern for the marginalization of women in the labour market as reflected in the **high female unemployment rates** (31% v. 24% male unemployment) and their over-representation in precarious forms of employment. The GNCHR also expressed its concern for the **adverse effects of a series of labour and social security law provisions on women**.

Furthermore, the **reversal of the Collective Agreement hierarchy, and the weakening of the National General Collective Labour Agreements and of the Sectoral Collective Agreements** affect women in particular, mainly regarding equal pay for work of equal value. These agreements used to be the best means of promoting and protecting uniform pay and employment conditions for all workers in Greece, without any discrimination.

Another source of concern is the continuous reduction of the (already inadequate) **care** structures for children and dependent persons and other social structures, which limit women's capacity to take up employment or trap them in jobs with limited rights. This perpetuates gender stereotypes, as men are not encouraged to participate in such care themselves. Harmonising family and working life should be a matter of both men and women. There is also a disturbing rise in discriminatory practices, especially on multiple grounds, at the expense of women that are employed within the **framework of contractor awards**, who are especially targeted when they are engaged in trade union activity.

Especially in the public sector, the GNCHR, keeping in mind the **Report of the ILO High Level Mission to Greece in September 2011**, highlights that the 30.000 public servant dismissals as well as pension cuts for those under 55 years of age, affect women in particular who were entitled in the past to an earlier pension if they had minor children.

Besides, women still continue to claim equal opportunities and equal professional promotion in public sector areas such as in the armed forces and the security forces where stereotypes still prevail.

Furthermore, in the above GNCHR observations the need to strengthen the Labour Inspectorate, as well as the Ombudsman is also highlighted, especially regarding the role of the latter in extrajudicial mediation. This is the more so at a time when both bodies have suffered budget cuts and an increasing number of workers are unable to have recourse to the courts for lack of financial means.

All in all, the GNCHR shares the Ombudsman's concern that **any progress made thus far will**

be lost especially in matters of employment and gender equality. This will, furthermore, lead to the loss of valuable human resources and will affect the rule of law and democracy. The lack of policies for combating female unemployment, for encouraging men to participate in family care, the gender pay gap and the "glass ceiling" that hinders female professional evolution are inextricably linked to, *inter alia*, issues pertaining to citizenship, fundamental rights and democracy.

Participation of women in political and public life

The GNCHR expresses its concern for the negative climate surrounding the political system, which reflects a strong resistance to accepting the equal political presence of women in all structures of political power. Political party strategies by which party members are promoted and female members are placed in traditional posts, as well as the overall **sexism that dominates public life** prevent women from exercising their political role, maintaining the belief that politics are predominantly "male".

Family Law issues

As for gender equality in **family law**, the GNCHR highlights its observations concerning:

a) *The surname of spouses*: Article 1388 of the Civil Code, which provided that women retained their maiden name after marriage, was amended so as to allow the adding of a spouse's surname to the other, following an agreement between the couple (Article 28 of Law 3719/2008). This provision disrupts the continuum in the wife's identity, by allowing consecutive changes in surnames; it is therefore incompatible with the principle of gender equality.

b) *Parental Responsibility for children born out of wedlock*: Even though the GNCHR proposed not to amend of Article 1515 of the Civil Code on the parental responsibility for children born out of wedlock, Law 3719/2008 removed the precondition of the mother's consent in order for the father to be judicially awarded full or partial parental responsibility for child he has recognized.

c) *Validity of marriage*: The GNCHR has proposed the amendment of Article 1350(2) of the Civil Code that allows, pursuant to a court order, marriage at a younger age on serious grounds and the fixing of the minimum age in such cases at 16 years.

Gender Mainstreaming

In general, the GNCHR calls for the abolishment of sexist attitudes and **stereotypes** regarding the roles and responsibilities of women and men in the family and society, as well as for the **effective implementation of gender equality in all areas (gender mainstreaming)**.

To this effect, the GNCHR also highlights the need to adjust the provisions on family taxation to the gender equality principle. Noting the relevant observations made by the Ombudsman, the GNCHR underlines the need to adopt legislation that will allow spouses to submit separate tax returns. Even when spouses submit joint tax returns, the GNCHR proposes the introduction of an individual tax obligation for each spouse and the separate tax clearance through the abolition of Article 61(2) of the Code of Income Tax.

Finally, the GNCHR notes the establishment of a law commission for the drafting of a bill on the promotion of substantive equality and welcomes the adoption of the National Action Plan for Substantive Gender Equality 2010-2013 drafted by the General Secretariat for Gender Equality. However, considering the final observations of the UN Committee on the Elimination of Discrimination against Women, the GNCHR expresses its concern for the budget cuts regarding the aforementioned Secretariat which jeopardize its autonomy. The Commission also notes that the National Commission for Equality between Men and Women remains dormant since 2008.

Article 7

Responsibility of Police Officers (par. 9 of the HRC Concluding Observations)

The GNCHR expresses its concern for the frequency, the volume and the character of **cases of police arbitrariness**, also recorded in reports and decisions of international bodies. This arbitrariness is *inter alia* manifested through

the **use of excessive violence** during the policing of demonstrations or crowd control missions, but also in case of arrest and detention of suspects; a fact that proves the consolidation of a police violence model. Another important common thread that connects police action to arbitrariness is **racist crime**. This connection is unfortunately expressed at *multiple levels*. The inability, inactiveness or strong unwillingness to examine racist attacks or the involvement of police officers themselves in racist violence acts, as well as arbitrary arrests carried out solely on racist grounds, cause great concern. However, it is the close relations of police forces with obviously racist groups or even the revealed participation of police officers in groups that carry out racist crimes which constitute phenomena that **urgently call for the adoption of measures by which responsibility will be attributed to and sanctions will be inflicted on members of the police force involved**.

The GNCHR welcomes the recent inquiry carried out by the Ministry of Public Order and Citizen Protection into the alleged participation of members of the security forces in groups involved in racist crimes and highlights the following:

Mechanism for the investigation of complaints of police maltreatment

Following ECtHR judgments finding violations of Articles 2 and 3 ECHR⁵¹, reports of the CPT⁵², the Greek Ombudsman, the UN Committee

51. *Greece has been condemned four times for violation of Article 2 of the ECHR (see ECtHR, Makaratzis v. Greece, 20.12.2004, ECtHR, Karagiannopoulos v. Greece, 21.6.2007, ECtHR, Celiknku v. Greece, 05.07.2007, ECtHR, Leonidis v. Greece, 8.1.2009). Greece has also been condemned four times for violation of Article 3 of the ECHR (see ECtHR, Bekos and Koutropoulos v. Greece, 13.12.2005, ECtHR, Zelilof v. Greece, 24.5.2007, ECtHR, Galotskin v. Greece, 14.1.2010, ECtHR, Stephanou v. Greece, 22.4.2010).*

52. *CPT, Report to the Government of Greece on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 23 September to 5 October 2001, CPT/Inf (2002) 31 (20.11.2002), par. 11-22, Report to the Government of Greece on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 August to 9 September 2005,*

against Torture⁵³ and the ECRI⁵⁴, which have repeatedly pointed out the inadequate or ineffective inquiries into maltreatment in the framework of disciplinary or even judicial proceedings, Law 3938/2011 provided for the establishment of an independent and effective **mechanism for the investigation of complaints of police maltreatment**, an initiative welcomed at first by both the GNCHR and the CPT⁵⁵.

Nevertheless, apart from the fact that the Office for Combating Cases of Arbitrariness is inactive, the GNCHR notes that its institutional operation is regulated by provisions that do not serve the needs it has to cover nor the purpose it has to fulfil. As the Committee against Torture observed, its role is limited to the examination of the admissibility of complaints/reports that are in turn referred to the competent disciplinary body of the security forces for further inquiry⁵⁶. Therefore, the GNCHR calls for the reformation of the above Committee, in accordance with the recommendations of international monitoring bodies, such as those included in the Opinion of the Council of Europe Commissioner for Human Rights regarding the standards to be complied with by an independent and effective mecha-

nism of investigation of complaints against the police⁵⁷. This Opinion relies on ECtHR case law.

Human rights education for police officers

The GNCHR, would also like to highlight that, notwithstanding the measures taken for the suppression of arbitrary cases involving the security forces, the effective response to this phenomenon includes the correct - initial and periodic - education and training of security forces mainly on human rights, but also on inquiry methods, especially for the Police. The GNCHR has proposed to the Ministry of Internal Affairs, on its own initiative, to carry out and establish a **programme for the education of police officers** on human rights. At first this proposal was accepted and a working group convened a couple of times in 2009, mostly to discuss initial steps and then the development of the said programme. However, the implementation of the programme itself failed. Furthermore, following the change in Government, the Ministry of Citizen Protection disregarded the GNCHR proposal and dismantled the previous working group. What is more, a new working group was put together consisting only of department officials. The GNCHR made several attempts to communicate with the Ministry and highlighted the importance of its participation in the programme. Nevertheless, these efforts proved fruitless and the Ministry failed to brief the Commission on the continuation or non continuation of the programme. Therefore, **the GNCHR has reasonable doubts concerning the will to make substantive changes to the training of police officers regarding education on human rights**. The GNCHR is willing to assist and cooperate with the Ministry in order to facilitate any educational initiative in this regard.

Article 8

Combating human trafficking (par. 10 of the HRC Concluding Observations)

With regard to human trafficking, the GNCHR has expressed its concern for the lack, on the

CPT/Inf (2006) 41 (20.12.2006), par. 12-21, Report to the Government of Greece on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 20 to 27 February 2007, CPT/Inf (2008) 3 (8.2.2008), par. 11-20, Report to the Government of Greece on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 23 to 29 September 2008, CPT/Inf (2009) 20 (30.6. 2009), par. 10-18. Report to the Government of Greece on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 17 to 29 September 2009, CPT/Inf (2010)33 (17.11.2010), par. 16.

53. *Committee against Torture, Conclusions and Recommendations: Greece, CAT/C/GRC/CO/5-6 (27.6.2012), par. 13.*

54. *ECRI, ECRI Report on Greece, CRI(2009)31 (15.9.2009), par. 175-179.*

55. *CPT, Report to the Government of Greece on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 19 to 27 January 2011, CPT/Inf (2012) 1 (10.1.2012), par. 88-90.*

56. *Committee against Torture, Conclusions and Recommendations: Greece, op. cit., par. 13.*

57. *Commissioner for Human Rights, Opinion concerning Independent and Effective Determination of Complaints against the Police, CommDH(2009)4 (12.3.2009).*

one hand, of an **effective protection framework for trafficking victims** - mostly women and children - and of **protection mechanisms for witnesses**, on the other.

The GNCHR welcomes the ratification of the **UN Convention against Transnational Organized Crime and the Protocols thereto**, after their sanctioning by Law 3875/2010, which improved witness protection, an issue previously highlighted by the GNCHR.

Moreover, Greece has already signed since 2005 the Council of Europe Convention on Action against Trafficking in Human Beings and recently issued a law sanctioning in view of its ratification.

Of course, any improvement to the legal framework is not in itself sufficient to effectively combat human trafficking. There is further need for the **effective implementation** of the legal provisions. Furthermore, **data should be recorded** which will demonstrate the effective prevention of trafficking and the protection of its victims, the prosecution of perpetrators and the assistance to victims.

The GNCHR welcomes the protection measures mentioned in the Report concerning trafficking victims. However, it highlights the need for a multilingual helpline that will support victims and for a protection scheme that will promote social integration.

The GNCHR has also noted the lack of special measures for the combating of trafficking of Roma adults and children which presents particularities and should be handled on a specific basis. In fact, the GNCHR, sharing the concern of CPT, stresses the need to investigate the disappearance case of 502 Roma children from an Aghia Varvara establishment.

Finally, keeping in mind the spirit of the concluding observations made by the UN Committee on the Elimination of Discrimination against Women, the GNCHR highlights the need to record and continuously update any data relevant to the effective implementation of the National Action Plan against human trafficking for 2010-2012.

Article 9 and 10

As far as the right to liberty and personal security is concerned and, more specifically the implementation of temporary detention (Article 9 ICCPR), the GNCHR has already proposed that temporary detention be reserved to exceptional cases and that it should be combined with the reduced imposition of penalties involving deprivation of liberty. Existing legislation on alternative measures and penalties aims to achieve a rationalization of criminal justice administration and a decongestion of detention centres as long as there are no procedural obstacles. The ECtHR in a recent judgment found Greece in violation of Article 5(4) of ECHR, for failing to meet the speediness requirement when deciding on the applicant's request to replace the measure of temporary detention (the period of three (3) months and eight (8) days does not fulfil the requirement of the "reasonable time", as mentioned in Article 5(4) ECHR)⁵⁸. The above shows the ineffectiveness of a person's right to liberty.

Detention conditions for irregular immigrants (par. 11 of the HRC Concluding Observations)

From the moment the GNCHR was established, it has dealt many times with detention conditions of illegal immigrants in Greece (Article 10 ICCPR, Draft Report, p. 24). The GNCHR acknowledges the strong migration pressure on the country. However, it repeats its proposal that the Greek government should take into account and comply not only with the continuous recommendations of the CPT and the other international organs, but also with the GNCHR observations. For this reason, GNCHR recalls its observations issued after an inspection of alien detention centres made together with the Greek Ombudsman in the Department of Evros and Rodopi from 18 to 20 March 2011. This inspection showed that in recent years the situation in Evros amounts to a humanitarian crisis. The GNCHR acknowledges that there has been a rapid reduction in the migration flow through the land borders be-

⁵⁸. ECtHR, *Shyti v. Greece*, 17.10.2013, par. 36-42.

tween Greece and Turkey since 2012. However, it emphasizes that the pressure has been shifted towards the east sea borders between Greece and Turkey, where there has been a rise in the number of arrests (1,139.24 %) made by the Hellenic Coast Guard in the last nine (9) months of 2013 (in comparison with the respective period in 2012).

More specifically, the main problems found during the inspection in the detention centres or derived from information provided by the competent bodies can be summarised in the following:

- Administrative deportation and detention of illegal immigrants still appears to be applied.
- Overpopulation in detention centres often leads to the detention of criminal detainees in the same centres as illegal immigrants. The GNCHR would like to express its satisfaction regarding the operation of the five (5) pre-removal detention centres and hopes that until the end of 2014 four (4) more new centres will be established.
- The GNCHR emphasizes that the issue of asylum seekers' detention merits special attention. The GNCHR stresses that illegal entry and stay cannot be considered *per se* a ground for detention. Detention of an immigrant is an extraordinary measure which should be applied in exceptional cases and only as an *ultimum refugium* after all possible alternative measures have been examined. Anyone deprived of liberty due to detention must be duly informed about the duration of his detention, which cannot exceed the reasonable time that is necessary in order to achieve the aim pursued.
- Although the GNCHR acknowledges that the Greek Authorities are making serious efforts to tackle illegal immigration, it must note that there is a great number of judgments and decisions delivered by international bodies finding Greece in violation of the right to human dignity of detainees as guaranteed by Articles 10 ICCPR and 3 ECHR⁵⁹. Furthermore, the GNCHR

notes that there is no effective remedy in the Greek legal order for challenging detention conditions. In the same vein⁶⁰, a Greek court acquitted migrants who had escaped a detention centre, holding that their escape was justified by the serious and otherwise unavoidable danger to their health⁶¹.

Inadequate infrastructure, overpopulation and prolonged detention lead to serious repercussions on the health and the quality of the detainees' life. At this point, the GNCHR would like to highlight that according to International Human Rights Law, the right to health belongs to every person, without discrimination, and is not a privilege of the nationals of a country. It is a fundamental and universal right. It consists of the right to quality of medical care, food, physical exercise and social activities. Therefore, the GNCHR would like to repeat its recommendations, which are included in its last two reports.

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 developments.

More specifically, the GNCHR is very satisfied with the operation of the new autonomous Asylum Service (1st instance) and the Appeals Authority (2nd instance). The GNCHR itself contributed to the staffing of the Appeals Committees.

As for the granting of asylum, the GNCHR emphasizes that according to a recent report of the German NGO "Pro Asyl", which interviewed ninety (90) refugees from Syria, Afghanistan, Somalia and Eritrea, the Greek asylum system is still problematic. This report highlights that the asylum system is deeply affected by the closing of the land borders in Evros and the relocation of

59. See *inter alia* ECtHR, *Horshill v. Greece*, 1.8.2013, *Chkhar-*

ishvili v. Greece, 22.5.2013, *Ahmade v. Greece*, 25.9.2012, *Mahmundi v. Greece*, 31.7.2012, *M.S.S v. Belgium and Greece*, 21.6.2011, *A.A. v. Greece*, 22.7.2010, *S.D. v. Greece*, 11.6.2009, *Dougoz v. Greece*, 6.3.2001.

60. See *inter alia* ECtHR, *Ahmade v. Greece*, 25.9.2012, *S.D. v. Greece*, 11.6.2009, *Rahimi v. Greece*, 5.4.2011, *A.A. v. Greece*, 22.7.2010.

61. *Single-member Court of First Instance of Igoumenitsa No 682/2012*, 2.10.2012.

immigration channels to the Aegean Sea that has caused the death of many people. From August 2012 to November 2013, one hundred forty-nine (149) people died, most of them refugees from Syria and Afghanistan. The new EU Regulation 604/2013 of 26 June 2013 (Dublin III) fails to improve this situation. In spite of the appeals of UN Special Rapporteur on Human Rights of Migrants Mr. François Crépeau for a fair sharing of responsibility in the EU, Greece continues to be "the custodian of an external EU border", as the UN Rapporteur stressed. Member-States maintain under Dublin III their margin of appreciation in determining the applicable criteria for granting international protection.

Operation "Xenios Zeus"

The GNCHR questions the methods employed by the police in order to verify whether immigrants are legal or not. Police officers state that the operation has been successful, since during the prosecution of 85,000 immigrants only 4,811 of them - 6% - were found to be illegal. However, the Human Rights Watch Report "Unwelcome Guest: Greek Police Abuses of Migrants in Athens", questions whether this is a result of indiscriminate identity check rather than effective policing for monitoring unlawful conduct.

The GNCHR retains its doubts in relation to the extent and intensity of police "clean up" operations which display an element of racist bias.

Accommodation centres

The GNCHR has its reservations concerning the effectiveness of this new measure ("accommodation centres") as a response to the problems of detention centres; a year and a half after their operation, they do not seem to fulfil their mission, which is the treatment of illegal immigrants in full respect of human dignity, inherent to every human being. It is also uncertain whether special treatment is provided for vulnerable groups (victims of human trafficking, minors, pregnant women, single parent families), pursuant to Articles 17 of PD 220/2007 and 11 of Law 3907/2011.

The GNCHR is willing to assist the Ministry of Public Order and Citizen Protection for taking

measures, which are compatible with the international obligations of the State. Also, it stresses that Open Detention Centres should replace Closed Detention Centres since the latter fail to ensure appropriate living conditions.

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

The GNCHR expresses its deep concern regarding the rise of the number of detainees and overcrowded Greek prisons. As a matter of fact, according to the most recent Annual Report of the Council of Europe, Greece is the second country (after Serbia) with the largest population in its detention centres, with 100 places corresponding to 151.7 detainees. According to the general statistic report of the Ministry of Justice, Transparency and Human Rights, the number of detainees in Greece is 12.479 for 8.224 placements, 4,254 people in custody included. The GNCHR emphasizes that the legislation is inefficient and that the crime rise has led to overpopulation in the detention centres.

Article 11 (par. 3 of the HRC Concluding Observations)

Regarding the prohibition of imprisonment due to the inability to fulfil contractual obligations, the GNCHR acknowledges that the amendment of Article 1047 of the Civil Code by Article 62 of Law 3994/2011 is in accordance with the ICCPR. However, the prohibition does not cover all claims, without distinction. The competent court can order personal detention in specific cases provided by law and for claims exceeding thirty thousand (30,000) Euros.

Article 14

Legislative developments guaranteeing the right to a fair trial

The GNCHR welcomes the voting and entry into force of Laws 3900/2010 "Rationalization of process and Acceleration of proceedings in administrative courts and other provisions", 3994/2011 "Rationalization and improvement in the administration of civil justice and other provi-

sions" and 4055/2012 "Fair trial and its reasonable duration".

The GNCHR highlights the observations and recommendations made during the drafting process of the above statutes. Indicatively, the following GNCHR proposals were endorsed by Parliament:

1) GNCHR proposals on maintaining the provisions of Article 22 of Presidential Decree 18/1989. According to the aforementioned, the Rapporteur's Report should be attached to the case file three days before the trial. Otherwise following a request of one of the parties, the trial must be postponed (Article 6(1) of Law 3900/2010).

2) The GNCHR proposal for the mandatory hearing of the objector or his legal representative by the judge, when requested (Article 55(1) of Law 3900/2010).

3) The GNCHR proposal to allow the UN High Commissioner for Refugees to intervene before the Council of the State or any other administrative court when the dispute concerns the recognition of refugee status or any other status granting international protection (Article 67(4) of Law 3900/2010).

4) The GNCHR proposal to ensure the fastest process for examining whether the Administration has complied with court judgments (Article 56 of Law 3900/2010).

Rapid rise in court fees for exercising a legal remedy

The GNCHR recalls and strongly underlines its previous position on the increase of costs which adversely affect the right to judicial protection. This is the more so as a large and rapidly increasing segment of the Greek population is exposed to poverty and social exclusion⁶², while the minimum monthly wage was

62. According to EUROSTAT, in 2011, 31% of the Greek population (3.031.000 people) were exposed to poverty and social exclusion or were below the poverty line. See European Commission, *Assessment of the 2013 for Greece*, SWD(2013) 358, Brussels, 29.5.2013, p. 14 and 30, http://ec.europa.eu/europe2020/pdf/nd/swd2013_greece_el.pdf. This percentage has now obviously increased, along with the rapidly rising unemployment, the constant drastic reduction of salaries and pensions and

reduced by virtue of the second Memorandum of Understanding, so as to reach EUR 586,08, for workers over 25 years old and EUR 510,95, for workers under 25 years old. Indeed, in times of serious and growing turbulence in the labour and social security field, when fundamental social rights are constantly limited, a greater number of persons than ever needs effective judicial protection.

As court fees are only imposed on individuals, the GNCHR has proposed that when a remedy exercised by the State or a legal entity of public law fails, the claimant should pay the trial costs as well as a financial penalty, as a deterrent. Also, the GNCHR recommended, as a measure of support of those hard hit by unemployment, job insecurity and deregulation of collective agreements, that court fees be abolished at least for claimants in labour and social security cases and considerably reduced in all other cases, in compliance with Articles 21, 22 (1) and (5), and Article 25 of the Constitution.

The GNCHR welcomes the introduction of a new domestic remedy aimed at affording just satisfaction in cases of excessive length of administrative court proceedings (Articles 53-60 of Law 4055/2012). These provisions also guarantee the acceleration of proceedings. However, as it results from ECtHR case law, just satisfaction should not have been excluded where the final judgment was delivered before the entry in force of the Law⁶³.

Acceleration of judicial proceedings

The GNCHR recalls the concerns that it had repeatedly expressed in the past regarding the risk that the measures aimed at simplifying judicial procedures might create more problems than those they would solve. The efforts to accelerate penal proceedings, in particular, are necessary, as Greece has been frequently found

the desorganisation of social infrastructures. See "GNCHR Recommendation: on the imperative need to reverse the sharp decline in civil liberties and social rights", Annual Report 2011, p. 119 ff.

63. See ECtHR, *Ioannis Anastasiadis and others v. Greece*, 18.7.2013, par. 37; *Fergadioti-Rizaki v. Greece*, 18.7.2013, par. 21.

in breach of the ECHR by the ECtHR in this respect. However, some measures create doubts as to their effectiveness and coherence. The GNCHR recalls indicatively some proposals it had made regarding the Bill "Rationalization and improvement of criminal justice proceedings". The GNCHR believes that the overload of cases before courts leading to significant delays could be tackled through the decriminalization of less important crimes and administrative infringements. Indeed, the overloading of penal courts cannot be addressed without a daring and extensive revision of substantive penal law.

Article 17

As for the use of recording and monitoring devices, the GNCHR welcomes the State's efforts to comply with No. 1/2009 Recommendation of the Hellenic Data Protection Authority and harmonise its legislation with European data protection norms. However, the GNCHR recalls its doubts about the effectiveness of this measure which constitutes a strong intervention in people's privacy.

Article 18

Religion and religious education

The GNCHR stresses that the exercise of the right to abstain from religious education courses is regulated in a way which is not compatible with religious freedom, as it is made subject to prior formal justification. The GNCHR underlines that religious education, should include an introduction to the history and the main principles of each religion, so as to comply with constitutional and international law requirements and modern European cultural reality.

Conscientious objectors

The GNCHR acknowledges the basic principles deriving from the Council of Europe Committee of Ministers' Recommendation R 87 (8), regarding alternatives to military service. Alternative service must not have a punitive character, while its length must be proportionate to the length of the service of non conscientious objectors. Moreover, the authority decid-

ing whether a person should be assigned to an alternative service or not, must be independent from the military services. The GNCHR recalls the *Bayatan v. Armenia* ECtHR judgment which is of fundamental importance. In this case, the ECtHR explicitly held for the first time that conscientious objection to military service falls under Article 9 ECHR (freedom of thought, conscience and religion).

Religious oath

The recent ECtHR judgment (*Dimitras v. Greece*, 08.04.2013) that found Greece in breach of Article 9 ECHR (freedom of religion) is the fourth since 2008 finding such a violation. However, it should be noted that the Court did not take into account recent amendments to the Greek Criminal Procedure Code regarding the religious oath of witnesses.

According to these amendments, the witness can choose either to take a religious or a political oath before providing his/her testimony. However, the GNCHR is not fully satisfied with this solution. Firstly, choosing a political oath instead of a religious one may be viewed as a sign that the witness is not a Christian Orthodox. This may lead to bias as to the integrity of the witness, due to the predominance of the Greek Orthodox Religion in Greek society. Secondly, witnesses are often not asked whether they would like to choose between a religious and a political oath. Consequently, the witness must request it his/herself, thus revealing that he/she is most probably not a Greek Orthodox.

The GNCHR, therefore, repeats that the religious oath should be fully replaced by a political oath, so that the negative religious freedom is protected.

Article 19

Racist Violence and hate speech - Antiracist Legal framework

The GNCHR welcomes the efforts made by the judiciary in order to combat and prohibit discriminatory treatment. However, it stresses that more measures should be adopted for combating discrimination and xenophobia more effectively.

The GNCHR has addressed this issue and has submitted comments on the Draft 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". Some of the most important GNCHR recommendations include:

- The existing legislation (Law 927/1979) should be amended in accordance with the provisions of Council Framework Decision 2008/913/JHA, 28 November 2008. Such an amendment was brought before the Hellenic Parliament on 20 November 2013. It aims to make the legislation more effective by introducing protective legal measures and effective and proportionate penalties.
- The GNCHR highlights that States should strike a fair balance between the combating of certain forms and expressions of racism and xenophobia, on the one hand, and the freedom of expression on the other. Therefore, every expression or opinion that questions certain crimes (i.e. the holocaust) should not be prohibited in an absolute way. Otherwise it would lead to an interference with the freedom of expression which is contrary to the principles of a democratic society.
- A safety net should be established for the protection of victims and basic witnesses in cases of racist violence. This could be achieved through the suspension of the victim's detention and expulsion and the granting of temporary residence permits by interim order of the prosecutor, until the final decision on the case is reached.

Finally, considering the rise in the number of attacks against refugees, migrants and other groups of people by extremists, the GNCHR concludes that the framework is ineffective as concerns the investigation of racist motives during criminal prosecution. For all these reasons, the GNCHR recommends that (a) an offence having a racist motive be made a special offence, or (b) racist motivation be made an aggravating circumstance, a specific penalty frame being provided, or (c) the above be combined in some circumstances.

The GNCHR highlights that the State should take up initiatives and prove that society cannot tolerate violence and racism. At this point, it is also important to note that Nils Muižnieks, the Council of Europe High Commissioner for Human Rights, in his recent report on the escalation of racist violence in Greece, stated that the Greek Authorities should undertake initiatives in order to combat racism and extremism.

Combating Racist Violence

At this point, the GNCHR reports that it took a very long time for the three powers - legislative, executive and judicial - to acknowledge that there is organized criminal racist violence in Greece. Even though the GNCHR considers the State responsible for tolerating the Nazi criminal acts of Golden Dawn, it nevertheless applauds the efforts made for investigating the criminal acts of this political party.

Acknowledging the necessity to combat racism and xenophobia, the GNCHR has extensively dealt with this phenomenon, which is exacerbated in times of immense social tension. The GNCHR has adopted two special reports:

In its first report "*Police and the Judiciary: Combating racist violence*", the GNCHR focused on how the Police and Judiciary systems should deal with racist violence. ECtHR jurisprudence, the recommendations of international organizations and relevant research prove that the Greek legislation, the monitoring system of incidents of racist violence and their treatment are ineffective or even inexistent.

In its second report "*Extremist Groups, Public Discourse and Racism in Sports*", the GNCHR highlights the concerns and recommendations of international and European bodies dealing with the protection of human rights regarding the acts of extremist groups which target aliens.

Given the extent of the issue and the limited amount of space, the GNCHR refers to its 2011 Annual Report.

The GNCHR applauds the initiative taken by the Ministry of Public Order and Citizen Protection: Presidential Decree 132/2012 regulates the "Establishment of departments and offices responsible for combating racist violence"

(FEK A' 239/11-12-2012). The GNCHR also welcomes the creation of a new helpline (11414) which receives complaints for racist violence, assuring anonymity and privacy. Also, the GNCHR welcomes the establishment of educational programs, which are addressed to the police officers working in the departments and offices that are responsible for combating racist violence. However, people without the necessary legal documents are not protected by this presidential decree. Therefore, if they decide to go to the police and report an incident, they will most likely face detention and ultimately expulsion.

Furthermore, the State must condemn any arbitrary actions and violence carried out by members of the police force.

Racist Violence Recording Network

The Racist Violence Recording Network was established by the GNCHR and the UNHCR Athens Office with the participation of NGOs. The Racist Violence Recording Network started operating on 1st October 2011 and published its first report in April 2013. The form used for reporting an instance of racist violence is common for all, so that the quantitative and qualitative trends of racist violence can be demonstrated in the best possible way. All stakeholders participating in the recording network maintain confidentiality. The Racist Violence Recording Network receives the findings of any research into the reported incident, without any reference to personal data. Its mission is to submit recommendations and raise public-awareness of the fight against racism. The findings published in the first report of the Racist Violence Recording System were reported in the Media and encouraged the State to start taking some more effective measures. However, there is still much that needs to be done.

Article 24

Protecting Children from Violence (par. 16 of the HRC Concluding Observations)

The GNCHR welcomes the introduction of Law 3500/2006 on 'Combating Domestic Violence' and Article 21 of Law 3328/2005 (prohibiting any form of corporal punishment of secondary education students). However, the

GNCHR reiterates its previous positions, included in the 3rd Periodic Report on the Implementation of the UN Convention on Children's Rights, in relation to the shortcomings of Law 3500/2006. More specifically, Article 4 provides that Article 1532 of the Civil Code (consequences of improper exercise of child custody) refers only to physical violence against minors for punitive reasons. However, the relevant rule should include every form of violence against minors. The GNCHR recalls that the UN Committee for the Rights of the Child recognizes that different forms of violence against children (such as corporal punishment, bullying, sexual harassment and abuse, and verbal and emotional abuse) are interlinked, and that violence in the family and school reinforce one another. Action against violence therefore must take a holistic approach and emphasize non-tolerance of all forms of violence.

Furthermore, reference should be made to the Specialized Committee on Researching and Combating Bullying in School, established in June 2001 under the auspices of the GNCHR. The work of this Committee culminated in the publication of the booklet 'Group Violence and Aggression in Schools'.

The GNCHR applauds the recent establishment of the Observatory for the Prevention of School Violence and Bullying under the auspices of the Ministry of Education and Religion, which focuses on recording and researching incidents of school violence and disseminating its findings to specialized bodies, responsible for combating school violence and bullying.

Unaccompanied minors (par. 17 of the HRC Concluding Observations)

The GNCHR acknowledges that the legislation regarding the guardianship of minors, following the amendment of Presidential Decree 220/2007, was improved and now includes all unaccompanied minors irrespective of prior application for asylum. However, the GNCHR shares the UNHCR doubts as to the practical application of this provision, as, according to the findings of the new Asylum Service, more often than not no final appointment of a guardian is made, and neither the interim guardian nor any legal repre-

sentative of the minor appear in Court or during the minor's interview.

For all the above reasons, the GNCHR reiterates its Recommendations:

- Police detention of alien minors for illegal entry in the country should be abolished and replaced by alternative measures of hospitality and/or protective custody in suitable facilities as long as their identification, the inquiry into the conditions and grounds of their entry, the search for their family and the determination of their legal status last.
- Deportation should be replaced by repatriation, when this is feasible and ensures the minor's rights and social re-integration in their country of origin.
- An advisor or a custodian should be appointed to every minor, especially in the field of child welfare, the minor's best interests prevailing.
- Unaccompanied minors/ asylum seekers constitute a particularly vulnerable group. Therefore, specialized personnel accompanied by an interpreter should be provided free of charge by the State in order to guarantee access to psychological medical and legal assistance.
- In case the minors are victims of abuse, torture, inhuman or degrading treatment or armed conflict, they should have free access to healthcare and housing in accommodation centers under the auspices of the Services of the Ministry of Health. They should also be entitled to education made accessible through courses of Greek language.

Article 27 (par. 20 of the HRC Concluding Observations)

Article 27 refers to people belonging to ethnic, religious and linguistic minorities. Even though Greece has signed the Framework Convention for the Protection of National Minorities, it has not yet ratified it. Also, despite the recommendations of EU and Council of Europe bodies, Greece has not yet ratified the European Charter for Regional or Minority Languages.

Specific topics of the Draft Report

Freedom of assembly

The GNCHR applauds Supreme Court judgment No. 74/2012 which recognises that the restrictions applied to applications for the establishment of minority associations, which leads to the refusal of their registration in the registry of associations, violates the Constitution, the Civil Code and the ECHR.

Muslim Minority of Thrace

The GNCHR applauds the measures taken in order to guarantee the rights of the Muslim minority and to ensure their social inclusion. However, it expresses its deep concern regarding the implementation of the Holy Muslim Law (Sharia) instead of the Greek Civil Code in matters of family law or succession law.

Competences and selection procedure of Muftis

The GNCHR has already expressed the opinion that the Muftis competences deriving from public law should be limited to spiritual matters so that Muslims can have recourse to the courts in cases of family law or succession law disputes. Moreover, Muftis should be designated by the Muslim community. The GNCHR opinion was taken into account by the Council of Europe Commissioner for Human Rights in his 2008 Report on the Rights of Minorities.

B. Press Releases

1. Press Release: The GNCHR sounds the alarm for the financial crisis (20.2.2012)

The Greek National Commission for Human Rights (GNCHR) was established and is operating under the UN Paris Principles (UN General Assembly, 85th Plenary, 20.12.1993, A/RES/48/134) as an independent advisory body to the Greek State for the protection of Human Rights. In this capacity, it adopted on 8 December 2011 the hereto attached Recommendation "On the imperative need to reverse the sharp decline in civil liberties and social rights".

This Recommendation deplores the dramatic deterioration of living standards in Greece, which is coupled with the dismantling of the Welfare State, with unprecedented negative effects on the enjoyment of a wide spectrum of human rights. These phenomena are not, however, unique in Europe. They are part of an all too slippery ground on which many EU countries are currently situated, a fact leading to a radical change of heart of Europeans vis-à-vis the process of European integration and is undermining the Union's cultural and democratic foundations.

In Greece, the economic crisis and the avalanche of strict austerity measures have led to a 5,5% recession. Unemployment, according to official statistics, which usually tend to underestimate real figures, was 21% in November 2011, having doubled in two years time, and is alarmingly increasing, whereas youth unemployment is close to 50%. Thus, the unemployed have exceeded one million, while about three million people (i.e. about 1/3 of the population) live below the poverty line. Vulnerable groups, such as immigrants, Roma, the handicapped, the elderly, etc. are obviously more hardly hit. This situation affects the very core of human dignity; it is generating social tensions, posing a serious threat to social peace and stability.

The Recommendation recalls that, by virtue of the Treaties, the Fundamental Rights Charter and the Court's case law, civil liberties and social rights are fundamental values and objectives of the EU, in fact its cornerstone. Moreover, the

fulfillment of EU social objectives conditions the effectiveness of its economic objectives. There is thus no way out of the socio-economic and political crisis, which plagues Europe as a whole – in fact no future for the Union – if civil liberties and social rights are not effectively guaranteed. However, the tendency to adopt measures of EU 'economic governance' of a monetarist character is growing. In particular:

Both the 'Treaty on Stability, Co-ordination and Governance in the Economic and Monetary Union', presented at the informal EU Council of 30.01.2012 and scheduled to be signed in March, and the 'Treaty establishing the European Stability Mechanism' signed by the Euro area Member States on 02.02.2012, lack the required social dimension. Moreover, none of them refers to the above fundamental values and objectives or to the Charter, which are nevertheless binding on EU institutions and Member States in all areas of EU jurisdiction.

The GNCHR is once more sounding the alarm and calling for an immediate joint mobilization of all European forces with a view to saving the values on which the European civilization is founded. Furthermore, common action of EU and national institutions is urgently needed, so that every measure of 'economic governance' be adopted and implemented with due respect for and in a manner that safeguards fundamental civil liberties and social rights. **The very survival of the Union is at stake.**

2. Press Release: Cruel and degrading treatment of our fellow beings: the responsibility of the State (25.5.2012)

We are recently witnessing acts of public authorities unworthy of a democratic State. Ill and degraded women, victims of sexual and financial abuse, tolerated by the State, are being criminally prosecuted, insulted and humiliated as sub-humans. All this is done, allegedly, in the name of public health protection.

Despite the intense social and scientific objections and the international outcry, these acts continue, creating a ***situation of flagrant violation of the principle of the Rule of Law and fundamental human rights, which annihilates human dignity, disrupts social cohesion and downgrades our civilization.***

The GNCHR, as an independent advisory body to the State for the protection of human rights, expresses its deep concern for this ***cruel and degrading treatment of our fellow beings*** which constitutes a violation of the Constitution, European and international law rules; in particular the rules imposing the respect and protection of human dignity, the inviolability of private life and personal data (including medical data), the right of every person to social aid and healthcare, and the presumption of innocence¹.

The GNCHR asks some indicative questions, to which it intends to come back:

- ❖ Why is Article 8 of Law 3625/2007, which allows the disclosure of personal data relevant to criminal prosecutions, pursuant to an order of the prosecutor, still in force, since, as we have pointed out, it violates norms of the Constitution and European and international law?

- ❖ Why are the victims punished, while offenders are forgotten? In particular:

- Why has there been no attempt to find and prosecute procurers and traffickers who exploit these women?
- Why has paragraph Article 351(3) of the Criminal Code which punishes the users of the services of such women, never been applied, although it is in force for over a decade?

- ❖ Why is Article 84 (1) of Law 3368/2005, which prohibits and criminally punishes the medical treatment of undocumented immigrants, except in cases of emergency hospitalization, still in force, since, as we have stressed, this leads to their inhuman and degrading treatment, violates their right to social aid and healthcare, whilst even endangering public health? **Instead of repealing** this rule, the *Ministry of Health's circular* of 2/5/2012 recalls the obligation to apply it, doctors being thus forced to violate their duty under the Constitution and the Hippocratic Oath.

- ❖ Why have seropositive people become the lepers of our times, when precautionary measures, eliminating the threat of contagion are known and accessible?

Moreover, this is not the proper way to deal with prevention of and information on serious diseases. The stigmatization of seropositive people or drug abusers does not protect public health, but harms it, since it pushes them away from health services.

The GNCHR calls on all state authorities to fulfil their constitutional obligations. They must refrain from the aforementioned actions, even when they are ordered by their superiors, since they are in breach of the Constitution, the compliance with which is the primary obligation of any state authority. They must contribute to the repeal of provisions that permit or impose such actions and publicly disapprove them. They must inform and reassure public opinion.

The GNCHR recalls its proposals and recommendations on the aforementioned issues, as well as those regarding the fight against human trafficking (2008), the disclosure of data relevant to criminal prosecutions (2008), the protection of the rights of people living with HIV (2010): www.nchr.gr.

1. Namely, Articles 2 para. 1, 9, 9A, 21 paras. 2, 3, and 6 of the Constitution, Articles 1, 4, 7, 8, 9, 26, 24, 35 and 48 of the Charter of Fundamental Rights of the EU, Articles 3, 6, 8 of the European Convention for Human Rights, the European and International Convention against torture and other means of cruel, inhuman or degrading treatment or punishment, the European Convention for the protection from the processing of personal data.

3. Press Release: GNCHR's participation in the meeting of the Standing Committee of Public Administration, Public Order and Justice of the Parliament regarding the bill on Detention Centers of Aliens (29.8.2012)

The Greek National Commission for Human Rights (GNCHR) presented yesterday, 28 August 2012, before the Standing Committee of Public Administration, Public Order and Justice, its views on the bill of the Ministry of Public Order and Citizen Protection "Sanctioning of the Act of Legislative Content 'Regulation of contract issues concerning Reception Centers and Detention facilities for aliens illegally residing in Greece and ways of detention' and other provisions".

The GNCHR stated that it is aware that EU immigration policy implies an unfair burden distribution to the detriment of Greece and seeks to deal, together with its counterpart European human rights institutions, with the different aspects of this complicated issue such as the revision of the Dublin II Regulation.

The GNCHR presented its concern *inter alia* about the following issues:

- Identification and location of persons belonging to vulnerable groups and requiring special protection (victims of trafficking, minors, etc.); respecting the human relations that have been created.
- Treatment of asylum seekers, as well as ensuring that aliens whose deportation is impossible are not involved in a fruitless detention procedure with no firm guarantees.
- Detention conditions, as many ECtHR judgments and reports by competent bodies – including the GNCHR – stress significant deficiencies (e.g. regarding the facilities, the inadequate staff of competent services, including the Hellenic Police).
- The announcement of delegation of police activities to individuals, which conflicts with provisions of the Constitution according to which police power and citizens' security belong to and are exercised by State authorities.

- The exclusive application of detention measures, whilst the relevant Directive and the legislation transposing it provide that detention is not the first but the last measure aimed at ensuring removal. In any case, it is noted that if Law 3907/2011 is not fully and effectively implemented, i.e. if the Reception Centers (KEPY) do not function, along with an effective asylum system respecting the removal related guarantees, this endeavour is fragmentary and ineffective.
- The adoption of ineffective practices, which have contributed to the aggravation of problems and have caused serious reactions by the international community regarding the country. International and regional human rights organizations find a lack of coordination regarding migration flows, especially at operational level.

The GNCHR, fulfilling its mission, provides objective and realistic information to international and European bodies dealing with the protection of human rights, in order to help them form a clear opinion of the multifaceted Greek situation. In this regard, committed to its duty, as prescribed by law, the GNCHR shall try as far as possible to assist the State in the formulation of a consistent immigration policy, asylum policy and management of migration flow which respect human rights.

4. Press Release of the Greek National Commission for Human Rights on the announcement of the transfer of aliens to a camp in Kozani (22.3.2012)

The Greek National Commission of Human Rights (GNCHR) is an advisory body to the State specialised in human rights issues regarding Greek citizens as well as citizens of other countries residing in Greece. In this capacity, the GNCHR seeks to prevent human rights violations; therefore, it considers that it should intervene regarding the new measures, announced by the Minister of Public Order Mr. Chrisochoidis for combating criminality in Athens and other big cities in Greece. According to this announcement, all undocumented immigrants will be transferred to a «camp» near Kozani, while the procedures and criteria for this transfer and the living conditions in the camp are not specified.

The GNCHR acknowledges the need for safe living conditions, but stresses that the State should honour its commitment to protect all persons in need of protection, such as victims of trafficking, drug addicts and others. Among the persons generally referred to as «illegal immigrants», there are many who arrived in Greece seeking international protection, as foreseen by the International Conventions ratified by the Greek State. The State should adopt measures compatible with its obligations. The ECtHR has found violation of the ECHR regarding the detention centers of Evros which do not ensure human and decent living conditions.

The GNCHR is ready to assist the Ministry of Public Order and Citizen Protection so that the measures to be adopted are fair and respectful of human rights. It is important to note that in the framework of public debate, any statement which targets aliens and equates criminality with immigration should be avoided by all sides. Lastly, we do hope that the same willingness will be shown for combating criminal act of racist groups and circles.

5. Press Release: The European Committee of Social Rights (ECSR) refers to the GNCHR Recommendation on the impact of the economic crisis (30 October 2012)

The European Committee of Social Rights (ECSR) recently published its decisions on collective complaints by *GENOP-DEH and ADEDY v. Greece* (Case Nos. 65/2011 and 66/2011). The ECSR found violations of Article 4(4) of the European Social Charter (ESC) regarding the possibility for the employment to be terminated without notice within the first twelve months of employment on a permanent contract from the date it becomes operative (No. 65/2011), as well as violations of Article 4(1) on the minimum wages for workers under 25 years of age and apprentices falling below the poverty line, of Article 7(7) on the deprivation of the three-week paid annual holiday for younger persons, of Article 10(4) on the apprenticeship system provided by Law 3475/2006 and lastly of Article 12(3) concerning the social security system in the framework of special apprenticeship contracts.

The ECSR referred to the Greek National Commission for Human Rights (GNCHR) Recommendation «On the imperative need to reverse the sharp decline in civil liberties and social rights». Especially, the ECSR emphasized the deep concern of the GNCHR *inter alia* about:

- the ongoing drastic reductions in even the lower salaries and pensions;
- the reversal of the hierarchy and the weakening of collective labour agreements which set out protective minimum standards of wages and working conditions for all workers;
- the facilitation of dismissals and the restrictions on hiring;
- the rapid increase in unemployment and the overall job insecurity;
- the disorganization, reduction or elimination of social infrastructures;
- the drastic reduction or withdrawal of vital social benefits;
- the lack of support for maternity, paternity, children and the family in general, while the number of unemployed parents with young children is continuously increasing;

- the lack of prospects for the young, who are either unemployed or employed under detrimental and precarious conditions.

On the occasion of the decisions of the European Committee of Social Rights, the GNCHR recalls that there is no way out of the socio-economic and political crisis, which plagues Europe as a whole, nor any future for the Union, if fundamental civil liberties and social rights are not guaranteed and if the consequences of the fiscal measures on social protection and security are not measured by the State.

6. Press Release: The Committee on Freedom of Association (CFA) of the International Labour Organization (ILO) publishes its decision on the complaint of the Greek General Confederation of Labour (GSEE) v. Greece (19.11.2012)

The tripartite Committee on the Freedom of Association (CFA) of the International Labour Organization (ILO) recently published its decision on the complaint of the *Greek General Confederation of Labour (GSEE) v. Greece* regarding the labour measures applied in the context of the international loan mechanism for Greece, since January 2010.

The complaint concerned mainly violations of the freedom of association, free collective bargaining, collective autonomy, collective agreement (CA) clauses and of fundamental collective rights of workers, in general,, guaranteed by International Labour Conventions Nos. 87 (Freedom of Association and Protection of the Right to Organize), 98 (Right to organize and collective bargaining, 151 (Labour Relations (Public Service)) and 154 (Collective Bargaining). The complaints concerned the provisions of Laws **3833/2010, 3845/2010, 3871/2010, 3899/2010, 4024/2011, 4046/2012** etc. with specific reference to the intervention in the system of minimum wage setting by National General CAs and the exclusion of vulnerable groups of workers from them (young workers up to 25 years old), the binding nature and validity period of these CAs, the abolition of fundamental collective protection principles (principle of favourability, extension of CAs), the core of free association (associations of persons), as well as the intervention in wage setting and working conditions of employees in the public and broader public sector (wage reduction, labour reserve).

The ILO Committee stated that it is aware of and takes into account the severe and exceptional circumstances of the financial and economic crisis, under which the measures under examination were adopted. It noted, however, that these measures were adopted in an environment of lack of social dialogue and repeated

and extensive interventions in the fundamental collective rights of freedom of association and free collective bargaining, and that they lead to the destabilization of labour relations in general and deprive of their rights and the means to defend their economic and social interests.

Quoting in detail its conclusions on the incompatibility of these measures with the core ILO Conventions Nos 87 and 98 and recalling the exceptional character that they must have, the obligation to repeal them within a short period of time, as well as the obligation to guarantee adequate compensatory measures, the ILO Committee requests that the ILO Governing Board immediately recommend that the Greek government starts a tripartite constant and intensive dialogue regarding all issues addressed on the complaint, aimed at reviewing the adopted measures without delay and fully complying with the principles of freedom of association and effective recognition of free collective bargaining and the binding nature of their results, which are guaranteed by the international conventions ratified by Greece. Regarding these issues, the ILO intends to provide technical assistance, if so requested by the Greek Government. A detailed report regarding the abolition of the Workers Housing Organization (OEK) and the Workers Foundation is also demanded. This report must also set out the measures guaranteeing that the abolition of these bodies has not resulted in severe interference in the operation of trade unions and of the Organization of Mediation and Arbitration (OMED).

The Committee Report mentions the GNCHR resolution on the economic crisis (2010), regarding which the Greek government stated that the Greek legislation allows the modification and limitation of the rights of workers in accordance with the changing socio-political conditions, while the core of international law, including international minimum standards of protection, guaranteed by ILO instruments.

7. Press Release on the Document of the Deputy Minister of Internal Affairs regarding the suspension of the procedures for granting Greek nationality (20.12.2012)

The Greek National Commission for Human Rights (GNCHR), an independent advisory body to the State on matters of human rights protection, expresses its great astonishment at Document No 965/15.11.2012 of the Deputy Minister of Internal Affairs addressed to the services competent for issues of Greek nationality.

The aforementioned document states that: *"In view of the forthcoming judgment of the Council of the State concerning the review of constitutionality of Articles 1(a) and 24 of Law 3838/2010, you are requested to suspend the procedure for granting Greek nationality (submission of new applications, examination of the file, publication of the decision, oath taking, registration in the community register), of all applications based on the aforementioned articles".*

The document refers to a case pending before the plenum of the Council of the State (StE) following a referral by judgment No 350/2011 of the fourth Chamber of the Council of the State regarding an application for the annulment of ministerial decisions of general applicability concerning the granting of Greek nationality. These decisions rely on provisions of Law 3838/2010, which introduced new prerequisites for granting Greek nationality. The plenum of the Council of the State will review the constitutionality of these provisions.

Since the judgment of the plenum of the Council of the State has not yet been issued, the ministerial decisions the annulment of which is sought are still in force and they must be implemented. As for the provisions of Law 3838/2010, they are valid and binding on all administrative authorities. If the plenum of the Council of the State finds the provisions unconstitutional, it is the Legislator, and not the Administration, who is competent for their amendment. Moreover, in case the ministerial decisions are annulled, adequate transitional measures must be adopted, so that the procedures for granting nationality do not freeze until the Law is amended.

The aforementioned document No 965/15.11.2012 violates the separation of powers imposed by the Constitution. Alas, if every time the constitutionality of legal provisions is challenged before the courts, the Administration would suspend their implementation.

It is, therefore, obvious that the aforementioned document has no legal effect whatsoever and it does not bind any administrative authority. On the contrary, the Administration must implement the provisions in force, even if their constitutionality has been challenged and is in the course of being judicially reviewed. Therefore, the competent administrative authorities must apply the administrative acts which were challenged and must proceed with all acts regarding the granting of Greek nationality; their eventual refusal to do so will constitute a breach of duty.

8. Press Release: Working and living conditions of alien workers: the State's responsibility for the grim exploitation of our fellow beings (29.4.2013)

The Greek National Commission for Human Rights (GNCHR), an independent advisory body to the State on matters of human rights protection, is appalled by the cowardly attack of the employer's henchmen of alien workers in Manolada and hopes that the punishment of all those involved will be prompt, exemplary and effective.

However, the recent criminal acts did not come as a surprise. They constituted the culmination of systematic criminal behaviour of employers. Many of our fellow beings – usually victims of trafficking – work and reside **in other regions of the country as well**, under conditions of slavery and poverty, which are tolerated by the State.

Situations of gross violation of the principle of the rule of law and fundamental rights, have thus been created, which annihilate human dignity, threaten social cohesion and degrade our civilization.

These situations have repeatedly been denounced by mass media. In 2008, the Ombudsman urged the competent authorities to intervene, the Labour Inspectorate responded at once, but then the controls declined.

This cruel and degrading treatment constitutes a gross violation of rules of the Constitution and European and international law, which are binding on all state authorities and guarantee fundamental rights which belong to every human being without any discrimination.

These rules impose respect and protection of the human dignity, the life and the physical integrity of every human being; they prohibit slavery and any inhuman or degrading treatment, including trafficking; they impose fair and decent working and living conditions, equal remuneration, social security and assistance and health protection.

All state authorities are bound to ensure the unimpeded and effective exercise

of all human rights. Not only should they not violate these rights by their own acts or omissions, but they should also take timely and effective measures in order to prevent and repress any infringement by individuals. Unfortunately, they do not always fulfil their obligations. Alien workers are thus ***victims of the grim exploitation by employers, but also of breaches of the competent authorities' duty***, for many years.

The GNCHR has repeatedly submitted its proposals for the protection of the aforementioned rights. It now stresses that ***the recession and the crisis must not lead to disorganisation and inertia of the control mechanisms and urges all state authorities to fulfil, without delay***, their duties; especially, it calls on:

➤ the control mechanisms, such as the Labour Inspectorate (which has acknowledged its responsibility since 2008 and now visited the area), the Control Service of Non-Insured Labour of the Greek Social Insurance Institute (IKEA) and the agents of the Agricultural Insurance Organisation (OLGA), to conduct regular and unannounced inspections,

➤ the Government and Parliament to reinforce the personnel, the material, infrastructure and the periodic training of the Labour Inspectorate, without any limitations,

➤ the Trafficking Investigation Department of the Hellenic Police to be actively involved,

➤ every competent authority to ensure to the victims, as required by the Constitution, the international conventions and European Union law (especially the Charter of Fundamental Rights, Directive 2009/52 which was transposed by Law 4052/2012, as well as other relevant Directives), in particular:

- lawful residence and possibility of employment in Greece, medical care and compensation for any material and moral damage which they may have suffered,
- full and retroactive satisfaction of all their labour, social security and other rights and guarantee of these rights for the future without discrimination in comparison to Greek workers.

9. Press Release: Memorandum of the Greek National Commission for Human Rights (GNCHR) on the Antiracist Legislation (16.9.2013)

The GNCHR has closely monitored the initiatives for the modification or reinforcement of the current antiracist legislation. Despite the disruption of the legislative procedure, GNCHR restates its positions, as it considers that the clear, explicit and without any differentiation or reserve condemnation of racially motivated violent crimes are of primary importance for the Greek State, democracy and the Rule of Law. This message must be sent both inside and outside the country with determination and sincerity both in theory and in practice.

The need to address and combat racism and xenophobia has never been more flagrant given that we find ourselves amidst a conjuncture of tremendous social tension. Racially motivated incidents of extreme violence tend to constitute a permanent and extensive phenomenon. The GNCHR highlights the universally acknowledged incomplete criminal addressing of acts of racist violence and calls the State to address the particularly serious deficiencies in this field. To this purpose, it pinpoints certain positive steps in principle: the establishment of departments and Offices for Addressing Racist Violence by the Hellenic Police and the placement of a public prosecutor in charge of issues of racist violence. It also highlights that a lot remains to be done in order for these steps to be effective.

At the same time, the GNCHR calls attention to the danger of focusing public attention on the criminalization of racist speech acting as a counterweight to the absence of any sanctions for acts of violence whatsoever. The GNCHR does not overlook the fact that combating racist speech can prevent acts of racist violence. However, it highlights that under no circumstances does it fulfill the obligation to investigate and punish – and in essence actually discredit – acts of racist violence. In the same spirit, the GNCHR strongly emphasizes the need to take parallel and effective educational initiatives at schools and bring into effect measures for sensitizing the 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.

It is recalled that the GNCHR has previously stressed the need to address racist violence and has, thus, issued two special reports; the first one referring to Police and Justice (2011) and the second one to extremist groups, public discourse and racism in sports (2012). It also notes its previous decision (3.17.2011) on the then Bill of the Ministry of Justice, Transparency and Human Rights aiming at the alignment with the provisions of the Council Framework Decision 2008/913/JHA (28 November 2008) on combating certain forms and expressions of racism and xenophobia by means of criminal law. The GNCHR deems crucial to formulate some of its basic positions.

- Regarding the **current legislative framework**, Law 927/1979, it is recalled that its application considerably concerned international bodies which have repeatedly expressed their concern about the ineffective combat against racial discrimination and racially motivated crimes and advise Greek authorities to “to take vigorous action to ensure that violations of Law No 927/1979 are punished so as to combat incitement to racial hatred”. Therefore, ensuring the conditions that shall permit and reinforce the application of the corresponding laws must be a primary consideration for the effectiveness of every legislative initiative towards combating racism.

- Regarding the **public incitement to violence and hate crimes**, the GNCHR deems that **punishability must be linked to the danger to public order** and that the potential of each individual act to produce direct and imminent danger to the peaceful social coexistence (public order) and to the rights of the group or individual against which it is directed must be assessed. It is also right to explicitly define, besides public order, the rights of the individual or group against which the act is directed, as protected legal benefits. Protection must also extend to groups or individuals that are defined not only on the basis of race, colour, religion,

genealogical origin, national or ethnic origin but also on sexual orientation or gender identity. Moreover, apart from violations against group or individuals, demonstrations of racism and xenophobia against objects (movable or immovable) must also be considered punishable with the latter being exclusively used by the aforementioned groups or individuals (e.g. religious objects, national symbols, places of worship, accommodation, educational, entertainment facilities, etc).

- The GNCHR stresses the decisive role that public servants must exercise in combating racism and xenophobia, as well as the need to account for the actions falling under the scope of antiracist legislation. Therefore, **the commission of an act by a public servant or employee ought to constitute an aggravating circumstance**, in line with Article 4(c) of the International Convention on the Elimination of All Forms of Racial Discrimination, according to which states shall not permit public authorities or public institutions, either national or local, to promote or incite racial discrimination or discrimination on the basis of sexual orientation.

- **Regarding public glorification, negation or annihilation of crimes, the GNCHR highlights that total prohibition of simple expression or opinion contrary to the acknowledgement of the crimes in question would constitute non-acceptable limitation to freedom of expression.** Ideas that may shock or disturb, especially in the context of public discourse, fall under the scope of protecting freedom of expression within a democratic society. This freedom is fundamental to democratic society and one of the most basic preconditions for every individual's progress and fulfillment. However, freedom of expression is subject to limitations for the protection of other legal benefits in all international texts, such as the rights and reputation of others, public order, health, morals etc. (Article 10(2) ECHR, Article 19(3) ICCPR). In the Greek Constitution, freedom of expression is subject to the general reservation of law and strictly defined limitations for the protection of other protected legal benefits (Article 14(1) of the Greek Constitution). The GNCHR deems that, as results from interna-

tional jurisprudence, the application of relevant restrictions will be justifiably extremely difficult. **The GNCHR recommends the thorough examination of the limiting pre-conditions of imposing punishment in any case, in order to secure that the necessary conditions for the protection of scientific research and exchange of opinions are strictly observed.**

- Regarding victims' protection, an issue of primary importance, the GNCHR highlights that the **effective prevention and suppression of racist crime preconditions the victim's actual ability to safely file a complaint without fear of being in a particularly adverse position capable of preventing the victim from filing the complaint.** The State ought to encourage victims -regardless of their regime of residence in the country- to report any threats or attacks against them without the risk of being detained to be deported. More specifically, the GNCHR recommends the protection of victims and essential witnesses to acts of racist violence by suspension of detention and deportation (in case they lack legal documents) and the granting of a temporary permit of residence according to a special Public Prosecutor's provision which shall consider the complaint valid, for the time period until an irrevocable decision is issued against the perpetrator during criminal trial. Hence, filing a complaint and investigating these acts will be possible, regardless of the victims' legal status and without risk of being arrested, broadening, facilitating and accelerating, thus, prosecution against perpetrators. Succinctly, the State's message must convey total respect to bodily integrity and safety of all persons living within the Greek territory. It must be clear to the State that the possibility of prosecuting and punishing such crimes does not only concern the victims' moral satisfaction, but it is primarily about safeguarding legal order and suppressing criminality. Consequently, protecting victims of racist crimes - based on the current regime about protecting trafficking victims- constitutes not only fulfillment of the State's constitutional obligation to provide every individual -without exception-within the Greek territory with legal protection but also fundamental exercise of the

basic obligation of every legal State to prosecute and punish crime, whoever the perpetrator might be.

- Furthermore, the GNCHR highlights the actually serious insufficiency regarding the investigation of racist motivation in the case of criminal acts. For this reason, it stresses **the need to investigate racial motivation at the stage of prosecution regardless of the aggravating circumstance during the stage of sentencing**. To this end, committing a racially motivated crime ought to (a) be defined as a crime of particular legal status (b) or to be combined with increasing sentencing for certain types of crimes (e.g. crimes against life, bodily integrity, personal freedom, property) (c) or to constitute a general aggravating circumstance with a specific frame of sentencing.

- Regarding **the recognition of the right to civil action to legal entities or associations**, the GNCHR deems that reference to the ECOSOC system is not the most adequate criterion and proposes this right be extended to associations and legal entities, the statute of which establishes in a clear and exclusive way human rights protection as its purpose and particularly combating various forms of discrimination; mostly those that fall under the scope of the law.

10. Press Release: Memorandum of the Greek National Commission for Human Rights (GNCHR) on the Bill on Combating Racism and Xenophobia (17.12.2013)

The GNCHR, closely monitoring the initiatives for modifying or reinforcing the current anti-racist legislation, restates its positions on this issue. 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 is brought before the Greek Parliament, the GNCHR highlights the impact of its positions on the drafting of a new legislative text.

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 - "Memorandum of GNCHR 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 annual report as a special topic dedicated to racist violence.

Given the crucial current social conjuncture during which the present bill is about to be examined, the GNCHR seizes the opportunity to express the strong belief that the message for a clear, explicit and without differentiation or reserve condemnation of racially motivated crimes must be sent both inside and outside the country, with determination and sincerity, both in theory and in practice. Effectively combating demonstrations of racism and xenophobia and punishing bigotry and racist rhetoric is of primary importance to the Greek State, 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 pointed out by international bodies, with the provisions of the Council Framework Decision 2008/913/JHA (28 November 2008). The amendment thus, of Law 927/1979 appears to be *a priori* aimed at "creating a modern and effective institutional framework for combating expressions of racism and xenophobia, as well as crimes having such motives, so that particular aspects of the issue can be covered by the introduction of legal means of protection and of 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 discredit - acts of racist violence. For this reason, it is important to strongly emphasise the need to take parallel and effective educational initiatives at schools and bring into effect measures for sensitising the 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.

PART III.
GNCHR'S ACTIVITIES AT NATIONAL, EUROPEAN AND
INTERNATIONAL LEVEL

A. GNCHR's Activities at National Level

1. Submissions to State Authorities

The GNCHR, during 2012-2013, addressed the following letters to State Authorities and officials by which it expressed its concerns and views regarding human rights related issues:

a. Letter to the Minister of Citizen Protection regarding the mapping of the problems of the asylum procedure (27.1.2012).

b. Letter to the Minister of Justice, Transparency and Human Rights on the Draft Declaration of the Conference of Ministers of the Council of Europe under the UK presidency regarding the amendment of the ECHR and the future of the ECtHR (10.4.2012).

c. Letter to the Minister of Citizen Protection regarding the implementation of the operational plan "Xenios Zeus" (7.8.2012).

d. Letter to the Prime Minister regarding the attitude of the General Secretary of the Government towards Human Rights guaranteed by the Constitution and International and European Human Rights Law, as well as by International and European Institutions which protect them (21.12.2012).

e. Letter to the Attorney General of Areios Pagos regarding the investigation of alleged prisoners' abuse by state officers (11.3.2013).

f. Letter to the Minister of Citizen Protection regarding the case of Bulut Yeyal, who was kidnapped under obscure conditions in the center of Athens (10.6.2013).

g. Letter to the Prime Minister regarding the GNCHR's Decision on the non-conformity of austerity measures to international human rights standards and recommendations and decisions of international bodies. The same letter has also been addressed to the Ministers of Health, Finance, Administrative Reform and E-Governance, Justice Transparency and Human Rights, Foreign Affairs and Labour and Social Insurance (12.7.2013).

h. Letter to the General Secretary of Transparency and Human Rights of the Ministry of Justice regarding the drawing up of a National Human Rights Action Plan (3.12.2013).

i. Letter to the Minister of Justice, Transparency and Human Rights regarding the recognition of the same sex civil unions and the judgment of the Grand Chamber of the European Court of Human Rights in the case *Vallianatos and others v. Greece* (16.12.2013).

2. Contribution to administrative procedures

a. Asylum Appeals Committees

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, regarding the procedure for granting international protection, has been recognized by the legislator through the institutionalization of the GNCHR's contribution to the recruitment and operation of the Appeals' Committees, the new Appeals' Authority and the Committees which have been established pursuant to Presidential Decree 114/2010.

More specifically, according to article 3(3), of Law no. 3907/2011 "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 GNCHR, in accordance with its Rules of Procedure.

Similar is the provision of article 26 of Presidential Decree 114 (OJ A 195) for 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 specialized in refugee law or human rights law, as well as of their alternates, who will participate in the Appeals' Committees functioning under the Ministry of Citizen Protection, is performed from a list established under the responsibility of the GNCHR.

b. Naturalization Committees

According to article 12 of the Code of Greek Citizenship, as amended by Article 8 of

Law No. 3838/2010 (OJ A 49), "Modern provisions for Hellenic Nationality and political participation of nationals and lawfully resident immigrants and other provisions" and replaced by Article 26(1) and (2), of Law No. 3938/2011 (OJ A 61) "Creation of a Bureau for addressing events of arbitrariness in the Ministry of Citizen Protection and other provisions", in each one of the Naturalization Committees, which give their opinion regarding the fulfillment of the requirements that aliens who wish to become Greek citizens must meet, one of the members, as well as his/her alternate, are indicated by the GNCHR.

c. Migration Committees

Pursuant to Article 89 of Law No. 3386/2005, as amended by Article 42 of Law No. 3907/2011, three-member Migration Committees are established within the Ministry of Interior in order to provide their opinion regarding whether third-country nationals have established special bonds with the social life of the State, for the purpose of granting a residence permit, as well as in any case referred to them within the framework of the granting or renewal of residence permits by Decision of the Minister of Interior. The third member of these Committees is a representative of Civil Society, proposed by the GNCHR.

B. GNCHR's Co-operation and Activities at National, European and International Level

1. International and European Activities

➤ Experts' meeting organized by the Office of the UN High Commissioner for Human Rights on "Human Rights and the financial crisis". The GNCHR was represented by Ms. S. Koukoulis-Spiliotopoulos, chair of the Fifth Sub-Commission (Vienna, 1.7.2013).

➤ GNCHR participation in the Seminar of the Fundamental Rights Agency and the EU Danish Presidency on the application of the Charter of Fundamental Rights within the EU. The GNCHR was represented by Ms. S. Koukoulis-Spiliotopoulos, chair of the Fifth Sub-Commission (15-16.3.2012).

➤ Annual Meeting of the Fundamental Rights Agency and National Institutions for Human Rights. The GNCHR was represented by Ms. S. Koukoulis-Spiliotopoulos, chair of the Fifth Sub-Commission (Vienna, 18.4.2012).

➤ Annual Meeting of the Fundamental Rights Agency. Ms. S. Koukoulis-Spiliotopoulos, chair of the Fifth Sub-Commission and Ms. T. Stavrinaki, Legal Officer of the GNCHR, participated in the meeting (Brussels, 6-7.12.2012).

2. Meetings with Counterpart Bodies

➤ Annual meeting of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) and the European Coordinating Committee of NHRIs (ECC). The GNCHR was represented by its Legal Officer, Ms. Ch. Papadopoulou (Geneva, 19-22.3.2012).

➤ Participation of the GNCHR in the National Human Rights Institutions' Meeting within the framework of the Euro-Arabic dialogue, on the Social Participation and the Role of National Human Rights Institutions. The GNCHR was represented by its Legal Officer, Ms. Ch. Papadopoulou (Algiers, 9-11.10.2012).

➤ Participation of the GNCHR President in the annual meeting of National Human Rights Institutions held in Geneva (6-8.5.2013). A

new European coordinating committee was elected under the Chairmanship of the Scottish Commission and with the Commissions of Albania, France, Germany, Georgia and Denmark as members. The establishment of a European secretariat of the National Human Rights Institutions in Brussels was one of the meeting's outcomes.

➤ Participation of the GNCHR President in conferences organized by the German Institution for Human Rights in Berlin and Brussels on the effects of the financial crisis on Human Rights. The cases of Greece, Spain and Ireland were examined. The UN Special Expert, Mr. C. Lumina, also participated in these conferences (12-13.6.2013).

➤ Participation of the GNCHR in a meeting for the Arab-European dialogue held in Copenhagen. The GNCHR was represented by its First Vice-President, Ms. A. Chrissochidou-Argyropoulou (25-27.9.2013).

3. Meetings with representatives of the State, International and National Organizations

a. International Meetings

➤ Meeting of the GNCHR with EU representatives (European Commission's Directorate-General on Home Affairs), on the action plan for migration and asylum. The GNCHR was represented by its Legal Officer, Ms. L. Bolani (14.2.2012).

➤ Participation of the GNCHR in the 2nd Coordinating Meeting on unaccompanied minors, organised by the UN High Commissioner for Refugees. The meeting is part of the interstate programme run by the High Commissioner simultaneously in Greece, Italy and France. The GNCHR was represented by its Legal Officer Ms. T. Stavrinaki (26.4.2012).

➤ Participation of the GNCHR in the round table discussion on issues of migration and asylum, with the EC Commissioner, Ms. C. Malmström, responsible for matters of Home Affairs. The GNCHR was represented by its First Vice-President Ms. A. Chrissochidou-Argyropoulou (9.10.2012).

➤ Participation of the First Vice-President, Ms. A. Chrissochoidou-Argyropoulou, the chair of the Fifth Sub-Commission, Ms. S. Koukoulis-Spiliotopoulos and the Legal Officer, Ms. T. Stavrinaki as GNCHR representatives in a stakeholders' meeting with a representative of the International Coordinating Committee for Human Rights Institutions on the issue of HIV positive women in Greece. Apart from the representatives of the GNCHR, representatives from the Greek Council for Refugees and the Ombudsman also participated in the meeting. The GNCHR worked on the investigation of the detention conditions and the situation of HIV female prostitutes that were being temporarily held at Korydallos. The GNCHR issued on 25.5.2012 a Press Release on the degrading treatment of these HIV positive women. (30.5.2012).

➤ A series of meetings of the GNCHR with various stakeholders took place upon their request, aimed at informing them on GNCHR actions concerning issues of immigration and racist violence:

1) Meeting with the Green MEPs within the framework of an event which took place in Greece (2.11.2012),

2) Meeting with representatives of the American Embassy on racist violence (8.11.2012) and

3) Meeting with a Dutch MEP on racist violence (3.12.2012).

During these meetings, the GNCHR was represented by its Legal Officer, Ms. T. Stavrinaki.

➤ Meeting of the GNCHR Board and scientific staff with the UN Special Rapporteur on the Human Rights of Migrants, Mr. F. Crépeau (27.11.2012).

➤ Meeting of the GNCHR Board and scientific staff with the UN Working Group on Arbitrary Detention. The UN Working Group visited our country and took part in a series of meetings with governmental and other representatives on issues of arbitrary detention (22.1.2013).

➤ Meeting of the GNCHR Board with the CoE Commissioner for Human Rights, Mr Nils Muiznieks, who visited Greece on 28.1-1.2.2013. Representatives of GNCHR member NGOs were also invited by the Commissioner to participate in

the meeting. The purpose of the Commissioner's visit to Greece was to address the need to combat racist violence (29.1.2013).

➤ NCHR meeting with Ms. L. Maury Pasquier, President of the Commission of Social Affairs, Health and Sustainable Development of the CoE Parliamentary Assembly within the framework of a *fact-finding* visit to our country on 'The equal access to healthcare'. The GNCHR was represented by the First Vice-President, Ms. A. Chrissochoidou-Argyropoulou and the chair of the Fifth Sub-Commission Ms. S. Koukoulis-Spiliotopoulos (12.4.2013).

➤ NCHR meeting with the UN Special Rapporteur on the effects of foreign debt on Human Rights, Mr. C. Lumina. The GNCHR was represented by the Board and the chair of the Fifth Sub-Commission, Ms. S. Koukoulis-Spiliotopoulos. Mr. C. Lumina presented his initial findings from his visit to Greece during a press conference. (22.4.2013).

➤ NCHR meeting with representatives of the European Commission on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, on detention conditions (prisons, detention of immigrants at police stations/maltreatment etc.). The GNCHR was represented by the President, the First Vice-President Ms. A. Chrissochoidou-Argyropoulou and the chair of the Fifth Sub-Commission Ms. S. Koukoulis-Spiliotopoulos (3.4.2013).

➤ NCHR meeting of the Board and the chair of the Fifth Sub-Commission Ms. S. Koukoulis-Spiliotopoulos, with representatives from the OSCE on the freedom of peaceful assembly, in order for the Organisation to carry out a study in its member-states (14.6.2013).

➤ Meeting of the GNCHR First Vice-President, Ms. A. Chrissochoidou-Argyropoulou, with the Rapporteur, Ms. R. Mandal, on the protection mechanisms for the rights of refugees and asylum-seekers within the UN framework (at both a Treaty-Committee level as well as special-procedures level) (19.6.2013).

➤ Meeting of the GNCHR President and the Vice-President, Ms. A. Chrissochoidou-Argyropoulou, with representatives from the OSCE and specifically, the American Rabbi, Mr. A.

Baker, "Personal OSCE Representative on combating Anti-Semitism", Ms. T. Izhevskaya, "Personal OSCE Representative on combating Racism, Xenophobia and Discrimination in general (Roma, LGBTs), also focusing on Intolerance and Discrimination against Christians and Members of Other Religions" and Mr. A. Akhmetov, "Personal OSCE Representative on combating discrimination against Muslims" (19.9.2013).

b. National Meetings

➤ NCHR participation in an NGO and other stakeholders' meeting organised with the contribution of the UNHCR, on current issues concerning the protection of asylum seekers and refugees. The GNCHR was represented by its First Vice-President Ms. A. Chrissochoidou-Argyropoulou (11.10.2012).

➤ Meeting of the GNCHR First Vice-President, Ms. A. Chrissochoidou-Argyropoulou, with the General Secretary of Transparency and Human Rights, Mr. G. Sourlas in order to establish a relationship of cooperation for issues concerning Human Rights (27.8.2012).

➤ Working meeting of the GNCHR Board and scientific staff with partners of the General Secretary of Transparency and Human Rights of the Ministry of Justice on issues of human rights within the jurisdiction framework of the Ministry of Justice. Special emphasis was granted to issues of racist violence (13.9.2012).

➤ NCHR participation in the 4th inter-state meeting with an open debate on the implementation of the TORRE – Inter-state Observatory on the Re-establishment of Refugees in Europe Programme (30.5.2013).

➤ Meeting of the GNCHR President and the legal officer, Ms. T. Stavrinaki, with the Deputy Prosecutor of the Supreme Court, Mr. D. Dasoulas on issues of racist violence (27.6.2013).

➤ Meeting of the GNCHR President and the legal officer, Ms. T. Stavrinaki, with the Deputy Prosecutors, Mr. D. Dasoulas and Mr. Ch. Vourliotis, following the conclusion of the investigation and the issuance of a report on Golden Dawn. During a discussion which took place with the new Prosecutor on racist crimes, Mr. S. Pappas, both parties expressed the need

to re-establish a regular communication, especially in light of the –then- new antiracist bill (18.12.2013).

➤ The President of the GNCHR, as one of the coordinating parties of the Recording Network on Racist Violence, visited the two investigators in charge of the Golden Dawn case (20.11.2013).

➤ Meeting of the GNCHR President and legal officer, Ms. T. Stavrinaki, with the General Secretary of the Ministry of Justice, Mr. J. Ioannidis on the cooperation between the Ministry and the Commission (January 2012).

4. Participation in Parliamentary meetings

➤ Participation of the GNCHR President in the meeting of the Standing Committee of Public Administration, Public Order and Justice, on the examination of the Draft Bill "Code of Narcotics" (19.1.2012).

➤ Participation of the GNCHR President in the meeting of the Special Standing Committee on Equality, Youth and Human Rights, on the subject of "The Homeless of Athens". The Mayor of Athens, the Deputy Minister of Health and the Archdiocese of Athens also participated in the meeting (24.1.2012).

➤ Participation of the GNCHR in the meeting of the Special Permanent Committee on Equality, Youth and Human Rights on the subject of the economic crisis and its effects on Human Rights. The GNCHR was represented by its member, Ms. S. Koukoulis-Spiliotopoulos and the legal officer, Ms. T. Stavrinaki. (29.2.2012).

➤ The GNCHR participated in the meeting of the Special Permanent Committee on Public Administration, Public Order and Justice, in order to present its opinion on the Draft Bill of the Ministry of Public Order and Citizens Protection "Ratification of the Legislative Act on 'Regulating contract issues related to First Reception Centres and Detention establishments for irregular migrants and the way to guard them' and other provisions". The GNCHR was represented by its First Vice-President, Ms. A. Chrissochoidou-Argyropoulou and the legal officer Ms. T. Stavrinaki (28.8.2012).

➤ The GNCHR President participated in the meeting of the Standing Committee on Public Administration, Public Order and Justice, on the Ministry of Foreign Affairs Legislative Act "Ratification of the 31.12.2012 Legislative Act on "Regulating the emergency issues under the jurisdiction of the Ministries of Internal Affairs, Labour, Social Security and Welfare, Public Order and Citizens Protection, the General Secretariat of the Government and the Minister of State' and other provisions". (2.4.2013).

➤ The GNCHR participated in the meeting of the Special Permanent Committee on Equality, Youth and Human Rights, on the subject of "The monitoring of workers by the Labour Inspectorate and regional Agricultural Insurance Organisation for providing agricultural work" (on the occasion of the Manolada events). The GNCHR was represented by its Second Vice-President, Ms. E. Varchalama (23.4.2013).

➤ Participation of the GNCHR President in the meeting of the Standing Committee on Public Administration, Public Order and Justice, on the Ministry of Justice Draft Bill on the "Amendment of Law 927/1979 (A' 139) and its adjustment to the framework decision 2008/913/EC OF November 28, 2008, on combating certain forms and expressions of racism and xenophobia by means of criminal law (L 328)" (28.11.2013).

5. Participation in law commissions and working groups

➤ Participation of the GNCHR, through its legal officer, Ms. Ch. Papadopoulou, in a consultation of the Ministry of Health on the subject of mental health and revision of the programme PSYCHARGOS (12.1.2012).

➤ The GNCHR participate through its legal officer, Ms. Ch. Papadopoulou, in the legislative preparatory committee for the creation on a national mechanism on the prevention of torture (the legislative preparatory work was concluded on 15.2.2012).

➤ At the initiative of the General Secretary of Transparency and Human Rights, a series of meetings were organised between co-competent Ministries and bodies in order to draft a National Action Plan on Human Rights. The GNCHR participated in these meeting. An *ad hoc* inter-minis-

terial committee was established for the drafting of the Action Plan. The co-competent Ministries were wholly in charge of writing the text. The GNCHR participated as an observer and sent an auxiliary text with recommendations based on the decisions it delivered throughout the last couple of years. The GNCHR was represented by its First Vice-President Ms. A. Chrissochidou-Argyropoulou, its Second Vice-President Ms. E. Varchalama, and the legal officer, Ms. Ch. Papadopoulou (September 2012-December 2013).

➤ The GNCHR President was appointed as a Member of the Coordinating Committee of the Observatory on the Prevention of Violence in School and Bullying, established by the Ministry of Education (5.2.2013).

6. GNCHR's written submissions to European and International Organisations

a. Letter to the Executive Secretary of the European Committee of Social Rights, Mr Regis Brillat (22.10.2012)

Dear Mr Brillat,

We would like to thank you very warmly for your contribution to the two very important recent decisions of your Committee regarding austerity measures in Greece and for the explicit reference to our Commission's Recommendation of December 2011 made in these decisions.

These decisions are really groundbreaking and we are sure that they will have a far reaching impact at both national and European level. We are issuing a Press release regarding them and we will disseminate them as widely as possible.

We are looking forward to the Committee's decisions on the other pending collective complaints against Greece and we remain at your disposal for any information that you might need.

b. Letter to the President of the European Committee of Social Rights, Mr Luis Jimena Quesada (22.10.2012)

Dear Mr President,

Please receive our warmest thanks for the texts of the two very important decisions of your Committee regarding austerity measures

in Greece, which you kindly sent us. We also very warmly thank you for the explicit reference to our Commission's Recommendation of December 2011.

These decisions are really groundbreaking and we are sure that they will have a far reaching impact at both national and European level. We are issuing a Press release regarding them and we will disseminate them as widely as possible.

We are looking forward to the Committee's decisions on the other pending collective complaints against Greece and we remain at your disposal for any information that you might need.

c. Written Submission to the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) for the General Discussion on Women's Access to Justice (18.2.2013)

The Greek National Commission for Human Rights (NCHR), which was established and is operating under the UN Paris Principles¹ as an independent advisory body to the Greek State for the protection of Human Rights, has the honour to present to the CEDAW Committee this contribution to the General Discussion on Women's Access to Justice. Our observations are based on our numerous submissions to Greek authorities and international and European treaty bodies, including recommendations, declarations and comments regarding legislative action and administrative practices, where the GNCHR is constantly stressing the importance of effective judicial or legal protection as a universal fundamental right and putting forward concrete proposals for the guarantee of this right.

1. General observations

The GNCHR highly welcomes the Committee's decision to elaborate a General Recommendation on women's access to justice and to hold a general discussion with interested stakeholders on this very important issue. The GNCHR also welcomes the Committee's Concept Note, which

sets out fundamental aspects of this issue and prepares the ground for the discussion. It is indeed crucial to have a Recommendation which will be "a practical and action oriented tool issuing clear and precise guidelines for State parties" and "will touch upon the obstacles and barriers faced by women in accessing justice in the successive stages of the justice chain", as the Concept Note very pertinently underlines. It is within this framework that we would like to draw attention to the following:

2. The right to effective judicial or legal protection of women's rights

The right to effective judicial or legal protection is inherent in every human right, including women's rights. The CEDAW guarantees women's rights against all forms of discrimination, in all fields. Moreover it imposes the promotion of *de facto* – substantive – gender equality in all fields, which can only be achieved by adequate and effective positive or affirmative measures in favour of women. Such measures do not constitute exceptions or derogations from gender equality – they must not be considered discrimination –, but necessary means to accelerate *de facto* equality (Article 4(1) CEDAW). Consequently, the term "positive discrimination" used by some legal authors is inexact and misleading – indeed, harmful to women's rights and gender equality. This should be constantly stressed².

Effective judicial or legal protection includes effective access to justice, a fair trial, effective sanctions (adequate in relation to the damage sustained and capable to have a deterrent effect on the perpetrator of the discrimination) and effective implementation of judicial decisions. These are the essential "stages of the justice

1. UN General Assembly, 85th Plenary, 20.12.1993, A/RES/48/134.

2. On the nature and effects of gender equality see A. Yotopoulos-Marangopoulos, *Affirmative Action*, Sakkoulas/Bruylant, 1998; H. Masse-Dessen, "The place of gender equality in European equality law", *European Gender Equality Law Review (EGELR)*, 1/2011, p. 6-12; S. Prechal, "EU gender equality law: a source of inspiration for other EU law areas?", *EGELR*, 1/2008, p. 8-14; S. Prechal/S.Burri, *EU Gender Equality Law. Update 2010*; S. Koukoulis-Spiliotopoulos, "The Lisbon Treaty and the Charter of fundamental rights: maintaining and developing the *acquis* in gender equality", *EGELR* 1/2008, p. 15-24: <http://ec.europa.eu/justice/gender-equality/document>

chain". Moreover, judicial remedies should be coupled with effective non-judicial remedies, including recourses to independent equality bodies and competent government authorities, such as the labour inspectorate, which should include stages and guarantees corresponding to the above.

The above remedies should address gender discrimination of all forms, in all fields. Moreover, as the principle of gender equality is a proactive principle, which goes further than the prohibition of gender discrimination, the above remedies should also lead to a thorough review of the adequacy and effectiveness, in law and in practice, of existing positive measures, to the annulment of the withdrawal of useful positive measures, and to an injunction to adopt further adequate and effective measures in areas where this is needed.

3. Barriers to access to court and to effective judicial protection and means to overcome them

It is well known that women are reluctant to claim their rights before the courts or other competent authorities, due to the fear of being victimized or labelled troublemakers and due to lack of evidence. This reluctance is increasing with the economic and financial crisis and the ensuing austerity measures, such as the deregulation of labour relationships, the cuts in salaries and pensions as well as in social benefits, the diminution and even abolishment of social infrastructures, including those providing care for children and other dependent family members, the raising of taxes. Such measures, coupled with growing unemployment, affect women and their families very heavily and are leading women to humiliating compromises. Moreover, gender stereotypes are strengthened in such situations.

There are procedural rules in EU gender equality directives which require that trade unions and other organizations have standing to pursue the claims of victims of discrimination before the courts and other competent authorities, even in cases where these victims are not their members, and that the burden of proof of discrimination be shifted, in certain circum-

stances, to the respondent³. These rules aim to encourage the pursuance of claims of victims of discrimination and protect them from victimization due to their recourse to the courts or other authorities. However, they are not adequately and correctly transposed and/or applied in all EU Member States and they are not widely known to judges and lawyers. This problem should be effectively addressed in EU Member States, while these rules should be also adopted in States which are not EU members, as a very important means to achieve judicial protection and quasi-judicial protection of CEDAW rights.

Furthermore, access to justice is impeded by high litigation costs and inadequate legal aid. In times of economic crisis and where there are considerable delays in judicial procedures, States tend to raise litigation costs in order to limit litigation and for budgetary reasons, while the conditions of legal aid are so strict that very few people can benefit from such aid. In particular, the payment of high amounts is required as a condition of the admissibility of a claim, so that the door of justice is shut to people with low income and justice becomes the privilege of the rich. As women are heavily stricken by poverty, in particular in times of economic crisis, they are particularly affected by such situations and measures, which constitute gross violations of the CEDAW.

d. Information note to the 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, Mr Cephias Lumina, delivered by the Bureau of the GNCHR during his visit to Greece (22.4.2013)

3. E.g. in Directive 2006/54/EC, on equal treatment of men and women in employment and occupation (recast), transposed by Act. 3896/2010, OJ A 207/08.12.2010; in Directive 2004/113/EC, on equal treatment of men and women in access to and supply of goods and services, transposed by Act 3769/2009, OJ A 105/01.07.2009; in Directive 2010/41/EU on equal treatment of men and women engaged in an activity in a self-employed capacity, transposed by Act 4097/2012, OJ A 235/03.12.2012.

Information note to the Independent Expert of the United Nations for the effects of foreign debt on the enjoyment of human rights, particularly economic, social and cultural, Mr C. Lumina, which was forwarded by the Bureau of GNCHR during his visit to Greece

*Human Rights and Structural Labour Market Adjustments in Greece. An Initial Assessment: Internationally binding human rights' Conventions and the lack of coherence in policy making*¹

The urgency of the need for solutions due to the immediate critical challenges that several countries, including Greece, are facing as a result of their large foreign debts and wide fiscal deficit has in many cases led to agreement on an international loan conditionality framework where human rights suffocate due to the lack of space for them to be exercised.

In this dire situation, in which Governments are unable to stand up for the protection of ratified core human rights' conventions, a key question arises regarding the respect of international standards and the need for policy coherence.

Undisputedly, a country's creditors are neither entitled nor competent, under the legal framework that defines their field of competence, to persistently impose a sine qua non conditionality that requires measures in direct breach of ratified human rights' Conventions that are legally binding not only on the country but also on its creditors, and set out the level playing field and the minimum protective universal standards on human rights in the global community.

Your report on the effects of foreign debt and the impact of policies adopted by States to address them on the full enjoyment of all human rights can universally deliver a strong and explicit message.

The message should be that social justice and human rights are prerequisites for effective national economic policies that lead to recovery, growth and decent work. The Government of any country threatened by the economic crisis should not be pressed to adopt measures that

are not in conformity with its international obligations derived from the respect of fundamental human rights. The core obligation of any government to respect internationally protected fundamental labour standards should not be theoretical or illusory and must be fulfilled through constant respect for fundamental labour rights and their proper exercise.

Within this framework of principles, the ability of UN Bodies and Organisations, as the ILO, regarding labour issues, to offer their valuable expertise should be sought by any international organization involved in countries' loan conditionalities, given that the package of adjustment measures imposed in the context of the economic crisis and the economic governance policies usually comprises not only fiscal and financial measures, but also structural reforms that have serious direct impact on the enjoyment and exercise of human rights, which are within their mandate and for which they have particular expertise.

We are sounding the alarm and calling for an immediate joint mobilization of all global forces with a view to saving human rights and their fundamental values from any kind of threat. The message is recurrent, urgent and clear: There is no way out of the socio-economic and political crisis which plagues the global community, nor any sustainable future for it, if human rights are not guaranteed and realized.

e. Oral Statement of the GNCHR delivered by the Geneva Representative of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), Mr Bruce Adamson, during the 23d session of the United Nations Human Rights Council on the report of the Special Rapporteur on the Human Rights of Migrants, Mr François Crépeau, following his visit to Greece (27.5.2012)

The Greek National Commission for Human Rights (NCHR) warmly thanks the Special Rapporteur for visiting Greece and holding a consultation with the GNCHR. We fully agree

¹ Ellie Varchalama, 2nd Vice President, Representative of the Greek General Confederation of Labour (GSEE)

that progress has been made in Greece, but that much remains to be done.

We are very glad to see that the Special Rapporteur recalls that Greece is the custodian of an external EU border and notes the need for a European-wide approach to migrants' human rights.

The GNCHR fully agrees with the Conclusions and Recommendations. We particularly thank the Special Rapporteur for recommending the reinforcement of the GNCHR through the provision of competent staff and resources.

The GNCHR is very glad that the Report includes recommendations to the European Union and that it stresses the need for more solidarity and responsibility-sharing among EU member states. The recommended revision of the Dublin Regulation is crucial. In view of the growing migration flow, it is not merely by providing financial assistance to Greece that the EU will fulfil its primary duty to protect human rights. The EU asylum system must be re-designed and focus on human dignity and rights – not merely on ways to stockpile human beings in some member states.

PART IV.

THE IMPACT AND EFFECTIVENESS OF THE WORK OF THE GNCHR AT
NATIONAL, EUROPEAN AND INTERNATIONAL LEVEL

A. A brief presentation of the impact and effectiveness of the work of the GNCHR at National, European and International level for 2012-2013

The work of the GNCHR has an important impact at both national and international level. At national level it is taken into account on several occasions, in particular in the legislation. At European and international level, it is quoted in European Court of Human Rights judgments and in decisions and reports of international and European treaty bodies and independent experts regarding the compliance of Greece with the human rights treaties the implementation of which they are monitoring. Moreover, all UN and CoE fact-finding missions are visiting the GNCHR and exchanging information and ideas on the object of their mission.

The GNCHR is fruitfully cooperating with the European Network of NHRIs (ENNHRI) and the ICC, of which it is a member, *inter alia*, in the framework of UN, CoE, EU and OSCE sponsored meetings and projects.

Examples of the impact of the work of the GNCHR are the following:

a. At national level

- The GNCHR stressed the need to amend Law 927/1979 as an effective response to racism and presented its comments on the bill of the Ministry of Justice, Transparency and Human Rights on the "Amendment of Law 927/1979 and adaptation to Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law", before the parliamentary Standing Committee on Public Administration, Public Order and Justice (28.11.2013). Law 927/1979 was finally amended and many of the proposals of the GNCHR were adopted through Parliament in **Law 4285/2014**.

- The GNCHR presented to Parliament its recommendations on the bill "Just satisfaction for the exceeding length of civil and penal proceeding and proceedings before the Court of Auditors". The Parliament adopted the GNCHR

proposal for the reduction of court fees in **Law 4239/2014** (Article 3 (6)).

- On 20.3.2014 the GNCHR adopted a Recommendation for the effective protection of the Right to Water, stressing, *inter alia*, the dangers of the ongoing privatization of the Athens Water Supply and Sewage Company's (EYDAP). The Hellenic Council of State - Judgment **No. 1906/2014** (Grand Chamber) annulled the decision to privatize EYDAP holding that uncertainty as to the continuity of affordable utilities of public interest by a private company infringes Article 5 of the Constitution, in particular paragraph 5 of this article, which enshrines the right to protection of health, and Article 21 (3) which requires that the State ensure the health of citizens.

- The GNCHR has, on a number of occasions, stressed the need to tackle the problem of the existence of barriers to access to justice and, more specifically, of the unreasonable length of proceedings and the high fees for initiating legal proceedings, by formulating proposals and recommendations on the matter¹. More specifically, the GNCHR presented recommendations on the bill of the Ministry of Justice, Transparency and Human Rights on "Just satisfaction for excessive length of judicial proceedings before the civil and penal courts and the Court of Auditors", before the parliamentary Standing Committee on Public Administration, Public Order and Justice (29.1.2014). The GNCHR had already provided Parliament with a series of reports on the right to fair trial and to a reasonable length of proceedings as well as on the acceleration of administrative and penal proceedings. This last parliamentary debate on just satisfaction revealed the importance of these reports. The Parliament

1. See GNCHR, *Comments on the Bill of the Ministry of Justice on the "Acceleration of proceedings in administrative courts and other provisions"*, Annual Report 2010, p. 58, *Recommendations regarding the Bill of the Ministry of Justice on the "Fair satisfaction due to the excess of the reasonable length of proceedings in civil and criminal courts and the Court of Audit"*, 30. 1. 2014, available at: http://www.nchr.gr/images/pdf/apofaseis/dikaih_dikh/SN%20Dikaih%20ikanopoihsh.pdf and *Written submission to the CE-DAW Committee for the General Discussion on Women's Access to Justice*, 18.2.2013.

adopted, *inter alia*, the GNCHR proposal for the reduction of court fees (Article 6 (8) and (9) and Article 21) and amended Article 89 of **Law 4055/2012** by which the parental leave of judges was curtailed, which the GNCHR had strongly criticized.

- Furthermore, the GNCHR presented to Parliament Comments on the Bill of the Ministry of Justice titled "Acceleration of proceedings in administrative courts and other provisions" (2010). The GNCHR recommendations on ensuring the fastest process to examine whether the Administration has complied with court judgments were adopted by **Law 3900/2010** (Article 56). Moreover, the proposal of the GNCHR to allow the intervention of the Office of the UN High Commissioner for Refugees in asylum or refugee cases heard by the Supreme Administrative Court or other administrative courts was also endorsed in Law 3900/2010; this is very important for the in depth investigation of such cases and the judicial protection of the persons concerned. Furthermore, Law 3900/2010 (Article 45) introduced barriers to access to justice, in particular by increasing court fees for individual litigants in administrative proceedings. In its aforementioned Comments, the GNCHR drew attention to the findings of the explanatory report of the Bill, according to which both the State and the Public Law Legal Entities bear a serious responsibility for the delay of trials as a result of the reckless use, on their behalf, of legal remedies and appeals. For this issue, the GNCHR made reference to strong dissenting opinions in Opinion 4/2010 of the Administrative Plenary of the Council of the State (Supreme Administrative Court), which merit specific mention: "the only measure, which is essentially available to the legislator for achieving the drastic reduction of the cases brought before the Council of the State, is the drastic reduction of the legal remedies lodged by the State and Public Law Legal Entities, i.e. legal entities exercising public power; these do not enjoy the right to judicial protection, which is only guaranteed for citizens by the Greek Constitution and the ECHR"². Subsequent negative develop-

2. Minutes of the Administrative Plenary StE 4/2010, specif-

ments regarding the courts' workload constantly confirm the relevance of these opinions.

- The GNCHR presented to Parliament Comments and Proposals on the bill aimed at transposing Directive 2002/73/EC "amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions", which became Law 3488/2006; several proposals of the GNCHR were included in this Law.

- The GNCHR presented to Parliament Comments and Proposals on the bill aimed at transposing Directive 2000/43/EC "implementing the principle of equal treatment between persons irrespective of racial or ethnic origin" and Directive 2000/78/EC "establishing a general framework for equal treatment in employment and occupation", which became Law 3304/2005; several proposals of the GNCHR were included in this Law. Moreover, the definition of "harassment", which the GNCHR had considered incompatible with the directives, was subsequently improved by virtue of Article 7 of Law 3624/2007 in accordance with the relevant proposal of the GNCHR.

- The GNCHR presented to Parliament Comments and Proposals on the bill aimed at transposing Directive 2006/54/EC "on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)", which became Law 3896/2010; several proposals of the GNCHR were included in this Law.

- The GNCHR presented to Parliament Comments and Proposals on the Bill "Reforms regarding the family, the child and society", which became Act 3729/2008, by which it re-

ic opinion regarding the provision that became Article 12 of the Bill. This opinion invokes the decisions made by the ECtHR, Radio France vs. France 23.9.2003, par. 26 (on the admissibility), Monasteries vs. Greece, 9.12.1994, par. 49, and Commercial, Industrial and Rural Chamber of Timisoara vs. Romania, 16.07.2009, par. 15. To these decisions we add those of the ECtHR Section de Commune d'Antilly vs. France, 23.11.1999 (on the admissibility), and Danderyds Kommun vs. Sweden, 7.06.2001 (on the admissibility).

quested, *inter alia*, the repeal of provisions of the bill introducing amendments to Civil Code provisions on parental care, as it considered these amendments contrary to the child's best interests. These amendments were not included in the Law and have not until now been re-introduced in any other piece of legislation.

b. At European level

- Many **ECtHR judgments quote and take into consideration** GNCHR texts. Some recent examples are *F.H. v. Greece* (31.7.2014), *B.M. v. Greece* (19.12.2013), par. 51-60 and *I.B. v. Greece*, (3.10.2013), par. 30-31. In its recent judgment, ***Vallianatos and others v. Greece*** (17.11.2014), the Grand Chamber of the ECtHR repeatedly quoted and took into consideration the positions of the GNCHR on the necessity for legal recognition of the same-sex civil unions (see par. 12, 15, 21-24, 87 and 89 of the judgment).

- The **GNCHR Recommendation**: "On the imperative need to reverse the sharp decline in civil liberties and social rights" (2011)³ is quoted:

- by the **European Committee of Social Rights (ECSR)** in seven decisions finding violations of the European Social Charter (ESC) by Greece⁴ ;

3. See GNCHR, *Recommendation on the imperative need to reverse the sharp decline in civil liberties and social right*, 8.12.2011, available at: http://www.nchr.gr/images/English_Site/CRISIS/nchr_crisis.pdf. *Recommendation and decisions of international bodies on the conformity of austerity measures to international human rights standards*, 27.6.2013, available at: http://www.nchr.gr/images/English_Site/AusterityMeasuresHR/gnchr.austeritymeasures.2013.pdf.

4. 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*, as well as 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*. The European Court of Human Rights often also quotes

- by the **CoE Commissioner's for Human Rights** in his Issue Paper "Safeguarding Human Rights in times of economic crisis"⁵;

- by the **CoE Committee of Ministers** in its Resolution CM/Res CSS(2013)21, 16.10.2013 (period 1.7.2011-30.6.2012): application of the European Charter of Social Security by Greece⁶.

- The GNCHR Recommendation, together with other documents coming from the GNCHR, was attached to an open letter addressed in January 2014 by the ENNHRI to Mr. Barroso and Mr. Draghi, in which the adverse impact of austerity measures on the enjoyment of human rights in Greece was deplored and proposals for the improvement of the situation were made⁷.

- The **Fundamental Rights Agency** often makes reference to the findings of GNCHR reports and recommendations; e.g. in its 2013 **Report on Racism, Discrimination, Intolerance and Extremism**. it shared the GNCHR's concern for the rapid rise of the phenomenon of extremism and intolerance in Greece.

c. At international level

- The **GNCHR Recommendation**: "On the imperative need to reverse the sharp decline in civil liberties and social rights" (2011) is quoted:

texts of the GNCHR. See, *inter alia*, the recent judgment in the *Vallianatos and others v. Greece*, ECtHR, App. Nos. 29381/09 32684/09, 07.11.2013.

5. 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>.

6. 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).

7. See Open letter of the President of the European Network of National Human Rights Institutions, Mr. Alan Miller, to the President of the European Commission, Mr José Barroso and the President of the European Central Bank, Mr Mario Draghi (16.01.2014), available at: http://www.nchr.gr/images/English_Site/AusterityMeasuresHR/Open_letter_BARROSO.pdf and http://www.nchr.gr/images/English_Site/NEWS/OpenletterENNHRI_EUausterity.pdf.

- by the **ILO Committee of Experts on the Application of Conventions and Recommendations** (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;

- by 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, 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).

The GNCHR presented to the CEDAW Committee (54th Session) a written submission for the General Discussion on Women's Access to Justice of 18 February 2013, based on its numerous submissions to Greek authorities and international and European treaty bodies, by which the GNCHR is constantly stressing the importance of effective judicial or legal protection as a universal fundamental right and putting forward concrete proposals for the guarantee of this right⁸.

8. GNCHR, *Written submission to the CEDAW Committee for the General Discussion on Women's Access to Justice, 18.2.2013*, available at: <http://www2.ohchr.org/english/bodies/cedaw/cedaws54.htm>.

B. References of the European Court of Human Rights (ECtHR), Treaty bodies and officials and experts of international organisations to reports of the Greek National Commission for Human Rights (GNCHR)

a. The GNCHR in the CASE LAW of the ECtHR

The reports of the **Greek National Commission for Human Rights** (GNCHR) are cited in a large number of **European Court of Human Rights** (ECtHR) judgments against the Hellenic Republic. Both the applicants and the Court in the merits invoke an quote GNCHR's reports. It is a common fact moreover, for GNCHR's reports to be presented thoroughly in the relevant domestic law part of the ECtHR's judgments.

The most distinctive ECtHR's citations in the GNCHR's decisions concern matters, which are related to use of force, detention conditions, rights of persons with psychiatric background, rights of people living with HIV/AIDS, right to fair trial as well as to same sex partnerships.

In the relevant texts, the GNCHR not only assesses the situation concerning the respect of human rights in Greece but also addresses recommendations regarding the national legislation. It seems that the ECtHR is interested in both these aspects of the GNCHR's reports.

For 2012-2013 the relevant GNCHR's reports are the following and are cited in chronological order:

List of ECtHR's Judgments 2012-2013

ECtHR's Judgment information - Violation found – Judgment's section where the GNCHR's report is cited (in one of the two official languages of the judgment) –information on the GNCHR's cited text.

<p>1. <u>SAMARAS AND OTHERS V. GREECE</u>, 28.2.2012 (appl. No. 11463/2009)</p> <p>Violation of Article 3 ECHR</p>
<p>§ 39</p> <p><i>"Les constatations du médiateur de la République sont corroborées par le rapport du 10 avril 2008 de la Commission nationale pour les droits de l'homme relatif aux droits des détenus et aux conditions de détention dans les prisons grecques".</i></p>
<p>GNCHR, Decision regarding Detainees' Rights and Detention Conditions in Greek Prisons, 2008, available at: http://www.nchr.gr/images/English_Site/SINTIKESKRATISIS/Detention%20conditions%202008.pdf</p>

2. MICHELIOUDAKIS V. GREECE, 3.4.2012 (appl. No. 54447/10)

Violation of Article 6 (1) ECHR

Violation of Article 13 ECHR

Article 46 ECHR

§§ 21-24

"Le rapport de la Commission nationale des droits de l'homme

21. Cette Commission a été instituée en 1998 et placée sous l'autorité du Premier ministre. Elle a comme objectif, parmi d'autres, l'élaboration et la publication de rapports relatifs à la protection des droits de l'homme, soit de sa propre initiative soit suite à l'invitation du Gouvernement, du Parlement ou d'organisations non-gouvernementales. Le 31 mars 2005, la Commission a adopté, à l'unanimité, un rapport contenant ses propositions en vue de résoudre le problème des durées excessives des procédures devant les juridictions grecques. Après avoir fait référence tant à la jurisprudence de la Cour sur la question de la durée des procédures judiciaires ainsi qu'aux documents adoptés sur le sujet par le Comité des Ministres, la Commission nationale des droits de l'homme a proposé, entre autres, l'institution d'un recours qui serait introduit devant la Cour de cassation ou devant une juridiction de degré supérieur à celui devant laquelle la procédure en cause se déroule. La juridiction compétente adresserait une injonction ou invitation à la juridiction inférieure pour accélérer l'examen du litige pendant devant elle. Ce recours devrait être effectif selon les critères établis par la jurisprudence de la Cour sur l'article 13 de la Convention.

22. La Commission a aussi proposé la possibilité d'indemnisation de la partie qui serait victime d'un retard excessif de la procédure judiciaire en cause. L'indemnité serait versée par une juridiction qui devrait prendre en compte, dans le cadre de son calcul, le comportement de la partie intéressée lors du déroulement de la procédure en cause.

23. La Commission a exprimé l'opinion que les retards excessifs des procédures judiciaires ne seraient pas dus principalement au manque de diligence de la part des juges compétents dans le traitement des affaires mais à des défauts fonctionnels de l'appareil judiciaire. En particulier, le rapport a mis en exergue les retards dans la fixation des audiences en raison principalement du nombre constamment croissant des recours par rapport au nombre de juges et de salles d'audience disponibles ainsi que du manque d'équipement nécessaire pour l'organisation adéquate des greffes des tribunaux.

24. En ce qui concerne en particulier la durée des procédures devant les juridictions pénales, la Commission a considéré, en faisant référence à la jurisprudence de la Cour, que la prise en compte de la durée éventuellement excessive d'une procédure pénale pour octroyer une réduction de la peine à l'intéressé serait aussi une mesure à adopter sous deux conditions : a) que les retards dans le déroulement de la procédure ne soient pas imputables à l'accusé, à son représentant ou aux témoins à décharge et b) que le principe de proportionnalité soit respecté".

GNCHR, "Comments and Proposals regarding the Draft Law of the Ministry of Justice, concerning the fair trial and its reasonable duration", 2012 available at: http://www.nchr.gr/images/pdf/apofaseis/dikaih_dikh/EFDA_parat_polunomosxedio_tel.pdf

3. AHMADE V. GREECE, 25.9.2012 (appl. No. 50520/09)

Violation of Article 3 ECHR

Violation of Articles 3 and 13 ECHR

Violation of Articles 13 and 3 ECHR

Violation of Article 5 (1) ECHR

Violation of Article 5 (4) ECHR

§ 110

"Le requérant affirme que les carences du système grec d'asile pendant la période 2007-2009 ont été largement relevées et commentées dans des rapports publiés par des gouvernements, des organisations internationales et d'autres sources indépendantes. Il dit fonder son affirmation sur de nombreux extraits de rapports du médiateur de la République, de la Commission nationale des droits de l'homme, de l'organisation non gouvernementale ProAsyl, du HCR, de Human Rights Watch et du Commissaire des droits de l'homme du Conseil de l'Europe, et fait référence à des décisions prises quelques années auparavant par la Norvège, la Suède, la Finlande et l'Allemagne en faveur de l'arrêt des expulsions des demandeurs d'asile en Grèce. Le requérant ajoute que, entre 2007 et 2009, l'accès aux procédures d'asile en Grèce était – et le serait encore en 2011 – très problématique et que cela conduisait à un refus de facto du bénéfice de la protection internationale instituée à cet effet par la Convention de Genève de 1951 sur le statut des réfugiés".

GNCHR, "Comments on the Bill by the Ministry for Citizen Protection: "Establishment of Asylum Service and First Reception Service, adjustment of Greek Legislation to the provisions of Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals' and other provisions", 2010, available at: http://www.nchr.gr/images/English_Site/PROSFYGES/2010_asylum_return_en.pdf

4. GLYKANTZI V. GREECE, 30.10.2012 (appl. No. 40150/09)

Violation of Article 6 (1) ECHR

Violation of Article 13 ECHR

Article 46 ECHR

§§ 20-22

"Le rapport de la Commission nationale des droits de l'homme

20. *Cette Commission a été instituée en 1998 et placée sous l'autorité du Premier ministre. Elle a comme objectif, parmi d'autres, l'élaboration et publication de rapports relatifs à la protection des droits de l'homme, soit de sa propre initiative soit suite à l'invitation du Gouvernement, du Parlement ou d'organisations non-gouvernementales. Le 31 mars 2005, la Commission a adopté, à l'unanimité, un rapport contenant ses propositions en vue de résoudre le problème des durées excessives des procédures devant les juridictions grecques. Après avoir fait référence tant à la jurisprudence de la Cour sur la question de la durée des procédures judiciaires qu'aux documents adoptés sur le sujet par le Comité des Ministres, la Commission nationale des droits de l'homme a proposé, entre autres, l'institution d'un recours qui serait introduit devant la Cour de cassation ou devant une juridiction de degré supérieur à celui devant laquelle la procédure en cause se déroule. La juridiction compétente adresserait une injonction ou invitation à la juridiction inférieure pour accélérer l'examen du litige pendant devant elle. Ce recours devrait être effectif selon les critères établis par la jurisprudence de la Cour sur l'article 13 de la Convention.*

21. *La Commission a aussi proposé la possibilité d'indemnisation de la partie qui serait victime d'un retard excessif de la procédure judiciaire en cause. L'indemnité serait versée par une juridiction qui devrait prendre en compte, dans le cadre de son calcul, le comportement de la partie intéressée lors du déroulement de la procédure en cause.*

22. *La Commission a exprimé l'opinion que les retards excessifs des procédures judiciaires ne seraient pas dus principalement au manque de diligence de la part des juges compétents dans le traitement des affaires mais à des défauts fonctionnels de l'appareil judiciaire. En particulier, le rapport a mis en exergue les retards dans la fixation des audiences en raison principalement du nombre constamment croissant des recours par rapport au nombre de juges et de salles d'audience disponibles ainsi que du manque d'équipement nécessaire pour l'organisation adéquate des greffes des tribunaux".*

§ 79

"La Cour admet aussi que, dans certains cas, la durée de la procédure n'entraîne qu'un dommage moral minime, voire aucun. Sur ce point, la Cour considère, à l'instar de la Commission nationale des droits de l'homme, que le comportement de la partie intéressée lors du déroulement de la procédure devrait aussi être pris en compte afin de se prononcer sur sa contribution éventuelle au retard de la procédure et d'ajuster ainsi l'indemnité à allouer au titre du dommage moral subi (voir paragraphe 21 ci-dessus)".

GNCHR, "Comments and Proposals on the Bill by the Ministry of Justice, regarding the fair trial and its reasonable duration", 2012 available at: http://www.nchr.gr/images/English_Site/PROSFYGES/2010_asylum_return_en.pdf

5. A.F. V. GREECE, 13.6.2013 (appl. No. 53709/11)

Violation of Article 3 ECHR

§ 36

"Le rapport établi par la Commission nationale des droits de l'homme et le médiateur de la République à la suite de leur visite du 18 au 20 mars 2011

36. La Commission nationale des droits de l'homme et le médiateur de la République ont visité les centres de rétention des étrangers dans la région d'Evros. Leur rapport du 30 juin 2011 constatait que la partie des locaux de la police des frontières de Feres réservée à la détention consistait en une construction de plain-pied composée de trois dortoirs. A la date de la visite, il y avait 37 femmes et 89 hommes. Il y avait aussi deux mineurs non accompagnés. La durée de la détention variait en principe entre deux et cinq mois, mais à la date de la visite, elle était réduite à un ou deux mois. Le problème de surpopulation était particulièrement sévère et les détenus étaient obligés de dormir dans les deux petites cours existantes devant les dortoirs. Il y avait un effort pour séparer les hommes des femmes, mais cela n'était pas efficace compte tenu du fait que les deux dortoirs, à la droite de l'entrée, communiquaient au moyen d'une petite cour et que leurs portes restaient ouvertes".

§ 66

"Le requérant souligne que le Gouvernement admet dans ses observations que les locaux de la police des frontières de Feres ne conviennent que pour des détentions de courte durée. Il se prévaut des constats de divers organes ou organisations à caractère international tels que le CPT, le rapporteur spécial des Nations unies sur la torture ou l'organisation non gouvernementale allemande ProAsyl, ainsi que de ceux faits par des institutions grecques, à savoir la Commission nationale pour les droits de l'homme et le médiateur de la République".

§ 76

"Les conditions de détention prévalant dans les locaux de la police des frontières de Feres sont révélées par plusieurs rapports des organisations grecques et internationales qui les ont visités soit lorsque le requérant y était détenu (le Rapporteur spécial des Nations unies sur la torture, et l'organisation non gouvernementale allemande ProAsyl) soit peu après sa libération (le CPT, la Commission nationale des droits de l'homme et le médiateur de la République)".

GNCHR, "Findings of the in situ visit undertaken by the National Commission of Human Rights and the Greek Ombudsman in detention centers for migrants in the Evros Region", 2011, available at: http://www.nchr.gr/images/English_Site/ASTYNOMIA/Evros_2011.pdf

6. I.B. V. GREECE, 3.10.2013 (Appl. No. 552/10)

Violations of Articles 14 and 8 ECHR

§§ 30-31

"B. *The National Commission for Human Rights*

30. *On 27 January 2011 the National Commission for Human Rights drew up a report on "issues relating to the protection of the rights of HIV-positive persons". The introduction to the report reads as follows:*

"The National Commission for Human Rights has been prompted to examine issues relating to the protection of the rights of HIV-positive persons by the observed lack of enjoyment of fundamental rights by the said individuals, which is exacerbated by stigmatisation, manifestations of intolerance, violations of confidentiality and other forms of social discrimination to their detriment.

The impetus for this was judgment no. 676/2009 of the Court of Cassation, in which that court actually upheld the lawfulness of the dismissal of an HIV-positive employee and endorsed the conditions in which he was dismissed. Having regard to the importance of that decision – which is the first judicial ruling of its kind in the judicial annals of the country – and to the fact that it highlighted a unique but important aspect of the problems facing HIV-positive persons, the Commission organised a consultation with several other organisations and institutions campaigning for the protection of the rights of such persons. A number of issues were raised during the discussion, but the ones considered to be the most important were the following: a) stigmatisation as a result of HIV/Aids, b) discriminatory treatment of persons infected with the virus, particularly in the workplace, c) access by such persons to health services, and d) protection of their private life."

31. *In its final considerations the Commission observed:*

"There is a current and pressing need to protect the rights of HIV-positive persons and to institutionalise and apply the fundamental principles on which these rights are based, having regard to the fact that, according to the latest official statistics, the disease appears to have reached alarming levels in our country.

The risks do not stem only from the disease itself and the fact that it is spreading, but also from the formation and consolidation of dangerous and scientifically unfounded misconceptions through court rulings which maintain that HIV-positive employees constitute a "danger" in their workplace.

Lastly, we should point out that the protection of the rights of HIV-positive persons does not concern them alone but public health in general, in that if these people are not protected they will hesitate to be tested ... which will undermine the efforts being made by public-health organisations to limit the spread of the disease".

GNCHR, "Protection of the rights of people living with HIV/AIDS", 2011, available at: http://www.nchr.gr/images/English_Site/YGEIA/NCHR%20Report%20on%20the%20rights%20of%20people%20living%20with%20HIV%20_2_.pdf

7. VALLIANATOS AND OTHERS V. GREECE, 7.11.2013 (appl. No. 29381/09 and 32684/09)

Violation of Articles 14 and 8 ECHR

§ 12

"The National Human Rights Commission, in its observations of 14 July 2008 on the bill, referred in particular to the concept of family life, the content of which was not static but evolved in line with social mores (see paragraphs 21-24 below)".

§ 15

"On 27 September 2010 the National Human Rights Commission wrote to the Minister of Justice reiterating its position as to the discriminatory nature of Law no. 3719/2008. In its letter, the Commission recommended drafting legislation extending the scope of civil unions to include same-sex couples".

§ 21-24

"Report of the National Human Rights Commission

21. This Commission was established in 1998 and placed under the authority of the Prime Minister. One of its objectives is to prepare and publish reports on human rights protection, either on its own initiative or at the request of the Government, Parliament or non-governmental organisations.

22. On 14 July 2008 the Commission unanimously adopted a report setting forth proposals regarding the bill entitled "Reforms concerning the family, children and society". The Commission stated that it could not understand why the bill bore this title given that it authorised a new form of non-marital partnership. It added that the bill amended the family-law provisions of the Civil Code in a fragmentary, hasty and inadequately reasoned manner, without prior public consultation of the social, academic and professional stakeholders.

23. In its report the Commission also observed that certain passages in the explanatory report on the bill implied that the authors saw civil unions as a legal institution ranking below that of marriage. It added that, despite referring explicitly to the fact that other European countries had introduced civil unions for same-sex couples, the explanatory report offered no justification for excluding same-sex couples from the scope of the bill.

24. With particular reference to the last point, the Commission noted that it had been calling on the competent authorities since 2004 to grant legal recognition to civil partnerships between same-sex couples. In its proposals, the Commission based its arguments on the evolution of international law on the subject, referring in particular to the Court's case-law on Articles 8 and 14 of the Convention. It considered that the Greek State had missed a unique opportunity to remedy the discrimination against same-sex couples with regard to the possibility of entering into legally recognised civil partnerships. It stressed that the legislation made reference to de facto partnerships as an alternative to marriage for different-sex couples, and considered that the introduction of civil unions was more suited to the needs of same-sex couples than different-sex couples".

§ 87

"The Court notes in that regard that in its report on the draft legislation the National Human Rights Commission observed that it was not made clear why exactly the bill had been given the title "Reforms concerning the family, children and society", when it actually provided for a new legal form of non-marital partnership (see paragraph 22 above)".

§ 89

"The Court points out in that connection that the explanatory report on the legislation at issue offers no insight into the legislature's decision to limit civil unions to different-sex couples (see paragraph 10 above). It further notes that the National Human Rights Commission considered the bill to be discriminatory since it did not apply to same-sex couples (see paragraphs 23-24 above) and that the Scientific Council of Parliament adopted a similar position (see paragraph 13 above)".

GNCHR, "Comments on the Bill "Reforms for the Family, the Children and the Society"", 2008, available at: http://www.nchr.gr/images/English_Site/DIAKRISEIS/Civil_Union_Pact_2008.pdf

GNCHR, "Letter to the Minister of Justice for the establishment of Bill that will legally predict the homosexual living", *Annual Report 2010*, p. 190.

8. B. M. V. GREECE, 19.12.2013 (Appl. No. 53608/11)**Violation of Article 3 ECHR****Violation of Articles 13 and 3 ECHR**

§§ 51-60

"Les constats de la Commission nationale pour les droits de l'homme et du Médiateur de la République

51. Du 18 au 20 mars 2011, la Commission nationale pour les droits de l'homme et le Médiateur de la République ont visité les centres de rétention des départements d'Evros et de Rodopi afin d'examiner les conditions de détention des étrangers et l'application de la législation relative à l'asile.

1. Le centre de rétention de Soufli

52. Selon le directeur du centre, la capacité maximale du centre est de 36 personnes, à la condition que la détention ne dure que quelques jours, le centre ne se prêtant pas à des détentions de longue durée. A la date de la visite de la Commission, le centre en accueillait 56, dont la plupart étaient détenues pendant trois ou quatre mois. Dans un passé récent, le nombre avoisinait les 150 personnes. Les conditions de détention étaient « inadmissibles ». La plupart des détenus dormaient par terre, dans les dortoirs mais aussi dans le hall qui servait pour la promenade des détenus.

53. L'une des deux toilettes-douches était en panne. Ainsi l'ensemble de détenus utilisait l'autre avec toutes les conséquences du point de vue de l'hygiène que cela pouvait entraîner.

54. La promenade dans la cour extérieure du centre dépendait du nombre des détenus, car celui des gardiens ne suffisait pas pour assurer la sécurité et empêcher les évasions.

55. La Commission et le Médiateur concluaient que la présence d'un médecin, d'un psychologue et d'une infirmière ne pouvait pas compenser les conditions de détentions inhumaines et dégradantes.

2. Le centre de rétention de Venna

56. Avant d'être transformé en centre de rétention, le bâtiment servait comme lieu de stockage de céréales. A la date de la visite de la Commission, le centre, d'une capacité de 214 personnes, en accueillait 202.

57. La Commission et le Médiateur constataient que les détenus étaient répartis dans six grands dortoirs, suffisamment éclairés et ventilés. Les détenus sortaient dans la cour extérieure du centre de 10 h à 12 h, puis de 15 h à 17 h.

58. Les détenus se voyaient distribuer des produits d'hygiène corporelle. Toutefois, les dortoirs n'étaient pas nettoyés et les matelas devaient être remplacés en raison de l'usure et du manque de nettoyage.

59. Il y avait deux interprètes dans le centre et un accès libre aux avocats et représentants des organisations non gouvernementales.

3. Le centre de rétention de Feres

60. A la date de la visite de la Commission et du Médiateur, le centre, d'une capacité de 40 personnes, en accueillait 126. Le problème de la surpopulation était particulièrement intense et les détenus étaient obligés de dormir dans la cour ».

§ 68

"La Cour relève que ni le requérant ni le Gouvernement ne précisent la durée pendant laquelle le requérant a été détenu dans le commissariat d'Alexandroupoli puis dans les postes-frontière de Feres, Venna et Soufli. Il ressort du dossier que sur une période totale de cinq mois environ, le requérant a été détenu la plus grande partie du temps au poste de Soufli. La Cour a pris note des constats concernant ce poste effectués par le CPT, le représentant du Haut-Commissariat des Nations unies pour les réfugiés et la Commission nationale pour les droits de l'homme et le Médiateur de la République. Il en ressort que rien n'avait changé par rapport à la situation relevée dans les arrêts précités lors du séjour du requérant à Soufli. Même si une certaine évolution a été constatée par la Commission nationale pour les droits de l'homme et le Médiateur de la République, leur visite s'est déroulée après le séjour du requérant".

GNCHR, "Findings of the in situ visit undertaken by the National Commission of Human Rights and the Greek Ombudsman in detention centers for migrants in the Evros Region", 2011, available at: http://www.nchr.gr/images/English_Site/ASTYNOMIA/Evros_2011.pdf

b. The GNCHR in the decisions of the European Committee of Social Rights (ECSR)

1. GENERAL FEDERATION OF EMPLOYEES OF THE NATIONAL ELECTRIC POWER CORPORATION (GENOP-DEI)/CONFEDERATION OF GREEK CIVIL SERVANTS' TRADE UNIONS (ADEDY) V. GREECE, 23.5.2012, (Complaint No.: 66/2011)

Violation of Article 4 (4) ESC

"12. The Government further states that the above-mentioned Act added a subsection to paragraph 2 of Section 10 of Act No. 1876/1990. It reads as follows:

"Throughout the period of application of the Medium-Term Fiscal Strategy Framework, the firm-level labour collective agreement shall prevail in case of concurrent implementation with a sectoral labour collective agreement and in all cases it is not permitted to include working conditions that are less favourable for the workers than the working conditions provided for by national general labour collective agreements, in accordance with paragraph 2 of Section 3 of this Act." (cf. Section 37, paragraph 5, of Act No. 4024/2011).

13. In this framework, the Greek National Commission for Human Rights expressed deep concern *inter alia* at: the on-going drastic reductions in even the lower salaries and pensions; the reversal of the hierarchy and the weakening of collective labour agreements which set out protective minimum standards of wages and working conditions for all workers; the facilitation of dismissal and the restrictions of hiring; the rapid increase in unemployment and the overall job insecurity".

GNCHR, "Recommendation and decisions of international bodies on the conformity of austerity measures to international human rights standards", 2013, available at: http://www.nchr.gr/images/English_Site/AusterityMeasuresHR/gnchr.austeritymeasures.2013.pdf

2. FEDERATION OF EMPLOYED PENSIONERS OF GREECE (IKA- ETAM) V. GREECE, 12.7.2012, (Complaint No.: 76/2012)

Violation of Article 12 (3) ESC

"B – Evaluation of the Greek situation by other international and national bodies

c) The Greek National Commission for Human Rights

38. On 8 December 2011 the Greek National Commission for Human Rights adopted a recommendation on "the imperative need to reverse the sharp decline in civil liberties and social rights". Numerous questions are addressed in this document.

Concerning the social security situation in Greece, the Commission expressed great concern in relation to "the ongoing drastic reductions in even the lower salaries and pensions; (...)"

GNCHR, "Recommendation on the imperative need to reverse the sharp decline in civil liberties and social rights", 2011, available at: http://www.nchr.gr/images/English_Site/CRISIS/nchr_crisis.pdf

3. PANHELLENIC FEDERATION OF PUBLIC SERVICE PENSIONERS (POPS) V. GREECE, 12.7.2012, (Complaint No.: 77/2012)

Violation of Article 12 (3) ESC

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34. On 8 December 2011 the Greek National Commission for Human Rights adopted a recommendation on "the imperative need to reverse the sharp decline in civil liberties and social rights". Numerous questions are addressed in this document.

Concerning the social security situation in Greece, the Commission expressed great concern in relation to "the ongoing drastic reductions in even the lower salaries and pensions; (...)"

GNCHR, "Recommendation on the imperative need to reverse the sharp decline in civil liberties and social rights", 2011, available at: http://www.nchr.gr/images/English_Site/CRISIS/nchr_crisis.pdf

4. PENSIONERS' UNION OF THE ATHENS - PIRAEUS ELECTRIC RAILWAYS (I.S.A.P.) V. GREECE, 12.7.2012, (Complaint No.: 78/2012)

Violation of Article 12 (3) ESC

"B – Evaluation of the Greek situation by other international and national bodies
34. On 8 December 2011 the Greek National Commission for Human Rights adopted a recommendation on "the imperative need to reverse the sharp decline in civil liberties and social rights". Numerous questions are addressed in this document.

Concerning the social security situation in Greece, the Commission expressed great concern in relation to "the ongoing drastic reductions in even the lower salaries and pensions; (...)"

GNCHR, "Recommendation on the imperative need to reverse the sharp decline in civil liberties and social rights", 2011, available at: http://www.nchr.gr/images/English_Site/CRISIS/nchr_crisis.pdf

5. PANHELLENIC FEDERATION OF PENSIONERS OF THE PUBLIC ELECTRICITY CORPORATION (POS- DEI) V. GREECE, 12.7.2012, (Complaint No.: 79/2012)

Violation of the Article 12 (3) ESC

"B – Evaluation of the Greek situation by other international and national bodies

c) The Greek National Commission for Human Rights

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6. PENSIONERS' UNION OF THE AGRICULTURAL BANK OF GREECE (ATE) V. GREECE, 12.7.2012, 12.7.2012, (Complaint No.: 80/2012)

Violation of Article 12 (3) ESC

"B – Evaluation of the Greek situation by other international and national bodies The Greek National Commission for Human Rights

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c. The GNCHR in the Observations and Reports of ILO bodies

1. ILO, Committee of Experts for the Application of Conventions and Recommendations, OBSERVATIONS (CEACR) - ADOPTED 2012, PUBLISHED 102ND OF ILC SESSION (2013), PROTECTION OF WAGES CONVENTION – GREECE (RATIFICATION: 1955)

Article 12: Timely payment of wages. Prompt settlement of wages upon termination of employment.

"In the light of such developments, the Greek National Commission for Human Rights, in its capacity as an advisory body to the Government in matters of human rights protection, has issued a recommendation in December 2011 expressing its deep concern at, among others, the ongoing drastic reductions in even the lower salaries and pensions".

GNCHR, "Recommendation on the imperative need to reverse the sharp decline in civil liberties and social rights", 2011, available at: http://www.nchr.gr/images/English_Site/CRISIS/nchr_crisis.pdf

2. ILO, Committee of Experts for the Application of Conventions and Recommendations, OBSERVATIONS (CEACR) - ADOPTED 2012, PUBLISHES 102ND OF ILC SESSION (2013). SOCIAL SECURITY (MINIMUM STANDARDS) CONVENTION - GREECE (RATIFICATION: 1955)

Concern for Justice and Equity in handling the crisis

"The Committee notes that while the Government has not replied to this question, the Greek National Commission for Human Rights and the Greek Court of Auditors have expressed strong criticism of its austerity policies. On 8 December 2011 the Greek National Commission for Human Rights – an advisory body to the Government in matters of human rights protection – issued the Recommendation with the self-explanatory title "The imperative need to reverse the sharp decline in civil liberties and social rights", where it condemned the "ongoing drastic reductions in even the lower salaries and pensions" and "the drastic reduction or withdrawal of vital social benefits".

GNCHR, "Recommendation on the imperative need to reverse the sharp decline in civil liberties and social rights", 2011, available at: http://www.nchr.gr/images/English_Site/CRISIS/nchr_crisis.pdf

3. ILO, Committee on Freedom of Association, REPORT IN WHICH THE COMMITTEE REQUESTS TO BE KEPT INFORMED OF THE DEVELOPMENTS - REPORT NO.365, NOVEMBER 2012 NO. OF CASE 2820 (GREECE) – DATE OF COMPLAINT: 21-OCTOBER-2010 - FOLLOW-UP

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"As regards the resolution of the National Commission for Human Rights, the Government indicates that the national law may stipulate and amend the social rights, including the workers' rights, either by improvements or restrictions, according to the evolving socio-political conditions, observing always the core of the international law, including the ILO standards. The Government considers that the resolution does not demonstrate a violation of human rights due to the severity of the measures taken, but rather expresses reasonable concern for the risks created by the economic crisis and emphasizes the need to apply the principle of proportionality".

GNCHR, "Recommendation on the imperative need to reverse the sharp decline in civil liberties and social rights", 2011, available at: http://www.nchr.gr/images/English_Site/CRISIS/nchr_crisis.pdf

