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FOREWORD BY THE NCHR PRESIDENT
Mr. KOSTIS PAPAIOANNOU

Foreword
By the NCHR President, Kostis A. Papaioannou

The Annual Report of the National Commission for Human Rights (NCHR), issued as prescribed by its founding law, refers to its activities throughout the year 2011.

Overview of the Report

The Report begins by describing the legal framework and organizational structure of the NCHR (its mission, composition, organisation and operation). In the second part, a brief presentation of its activity follows, i.e. of the plenary sessions and the sections. Special reference is made to actions stemming from operations or initiatives of the NCHR and its institutional participation in other organs. NCHR's decisions-positions and the State's response to its statements-recommendations are listed in the third part. A special reference to the rise of racist violence is made in the fourth part, an issue which was high in NCHR's agenda during the previous year. In the fifth part, our contributions to the work of international monitoring bodies and other competent State bodies on topical issues. The NCHR carefully selected, and subsequently scrutinized the issues it prioritized: the operation of the Refugee Committees recently established by law, the legislative framework on granting or renewing residence, work permits and the refugee status, or the racist slogans used by Special Forces military groups during the military parade on Independence Day. The international and national synergies and activities of the NCHR with the United Nations, the Council of Europe, the European Union, and with homologue committees and other State representatives or international actors are outlined in the sixth part of the report. Finally, the activity reports of the ministries participating in the NCHR on human rights related issues are also included in this volume.

Specific human rights issues

The 2011 Report covers an extremely crucial as well as unpropitious period for our country. The fiscal crisis and the subsequent measures adopted in order to tackle it have a significant impact on the society as a whole and severely affect large societal groups. This reality confirms the NCHR's prior assessment that the entire spectrum of human rights will be dramatically affected by the current socioeconomic conjuncture. At the same time, factors such as the intensity of social protest, the widespread sense of injustice and lawlessness, the unprecedented –in the post 1974 era- delegitimisation of the people's representatives and of the quasi totality of State institutions, combined with the often incommensurate way of handling social protests by the police forces, creates a highly inflammable mix with unpredictable consequences for democracy and the rule of law.

The NCHR, fully aware of the inconvenience of the usual rights based perception and address of the crisis, took into account both the limits of the fiscal situation as well as the necessary balance required in order to achieve a constructive intervention from a human rights perspective. Therefore, after its 2010 decision regarding the consequences deriving from the measures against the fiscal crisis in terms of human rights, the NCHR adopted a new recommendation entitled 'The imperative need to reverse the sharp decline in civil liberties and social rights'. In this recommendation the dramatic deterioration of living standards is de-

scribed, as well as the concomitant degradation of the Welfare State. The NCHR sought to mobilize many European bodies for the rescue of the values on which the European Union is founded. The Commission also undertook the initiative for coordinating the European NHRIs for the same goal.

The principal consequence of the current crisis is the dramatic upsurge of xenophobia and racism. In the previous year, the NCHR dedicated much of its attention to the issue of racism and, more specifically, to the issue of tackling racist violence by police and the judicial authorities. Within the context of this engagement, and beyond the relevant decision taken by the plenary session, the NCHR took the initiative, in cooperation with the Office of the UN High Commissioner for Refugees in Greece (UNHCR), to create the Racist Violence Incidents' Recoding Network. This Network consists of entities which, while providing medical, social and legal services, come to direct contact with victims of racist violence. The main objective is to demonstrate the problematic absence of an official Observatory monitoring the occurrence of racially motivated crimes in the country. Given that incidents of racist violence are rarely reported, let alone investigated, in most of the cases the perpetrators remain uncaught. The situation is even gloomier in the midst of the socioeconomic crisis. The degradation of the quality of life and the rise of delinquency in areas with large numbers of marginalized migrants and refugees, constitute a fertile soil for social tensions, xenophobic behaviors and tolerance vis-à-vis racist violence. The existence and operation of organized racist groups, with participation of minors in some of the attacks, and the simultaneous occurrence of police brutality incidents with racist motivation are alarming. The first observations collected by the Network, which only represent a tiny part of the overall situation, attracted considerable media attention and strengthen our will to pursue this initiative.

The NCHR's interest in asylum and migration issues is permanent. In March 2011, a joint team of the NCHR and the Ombudsman conducted a visit in the region of Evros and Rodopi, in order to investigate the detention conditions of foreign nationals, the implementation of the asylum legislation as well as special issues of migration and refugee flows management at points of entrance. We met with a number of local entities and exchanged views and proposals regarding the situation. We subsequently adopted and publicized our common findings including recommendations to the competent authorities. Furthermore, continuous monitoring of the asylum system took place, as well as cooperation with ministry officials and non-governmental organizations and preparation of proposals for the improvement of the asylum system.

Special attention is given by the Commission to issues pertaining to the right to health. During the period covered by this report, the NCHR repeatedly consulted with relevant stakeholders and experts in the field in order to develop a well-rounded view regarding the rights of HIV positive persons, as well as issues of protection of the rights of persons with psychiatric experience within the framework of the psychiatric reform in Greece. These two resolutions adopted by the Commission are not just trying to bring forward two groups of the population facing prejudice and social exclusion, but are aiming to demonstrate the consequences of the current socio-economic reality on the protection of vulnerable groups.

In the same spirit, the Commission participates in the Bill drafting committee on the issue of homelessness and is doing its utmost in view of the care provided to these groups.

Reference to the aforementioned topic is simply indicative; only a close reading of the NCHR's decisions and recommendations can demonstrate the full scope of its activities.

Indicative of the role and authority of the Commission is its participation in a series of institutions and functions. In this context, we note the constant collaboration with the legal officers that we have recommended as members to the Refugee Committees, the operation of the Naturalization Committees, as well as the Immigration Committees. Moreover, members of the Commission's staff have participated in the Proposal's Evaluation Committee within the framework of the European Integration Fund and the National Intranet Migration within the framework of the European Migration Network

Assessment of the institutional functioning of the Commission

The National Commission has completed twelve years of operation and has, by now, created its own distinctive mark in the field of human rights protection in Greece. The fundamental element that makes the Commission's identity is its multifaceted composition. Throughout the years the Commission has built a culture of dialogue, which is uncommon in other manifestations of social and political life. The representative composition of the Commission, the quality of its reports, the remarkable level of opinions exchanged, the constant flow of ideas and suggestions and the rare degree of independence reflected in its resolutions, constitute an important achievement that is credited to all those contributing in its operation.

The Commission has preserved its independent advisory and consultative role by closely monitoring rights issues raised by topical situations, while never succumbing to opportunistic positions that would harm the authoritative character of its interventions. Furthermore, the Commission systematically sought the cooperation and consultation with civil society organizations in order to enrich both the debates and views, as well as to create channels of constant communication with bodies other than those involved in the Commission. The readiness of all those invited to effectively contribute to our work should be underlined. Such consultations have taken place, inter alia, on issues pertaining to special education, mental health, rights of Roma, detention conditions, drugs, bullying, environment, and racist violence.

Before concluding this foreword, I wish to emphasize that the Commission's work is the result of mainly two factors. First, to the performance of its members who, with great consistency, commitment and conviction in the value of the role of the NCHR are nurturing the Commission with ideas, views and documentation. The second factor is the dedicated work of its small in number staff, both administrative and expert. On top of their dedication, I want to highlight once again their adequacy at the professional and personal levels, under conditions that have also severely deteriorated due to the financial crisis. I am sure that the established collaboration between the Commission's Bureau and the staff, as well as the planning and coordination meetings will continue to be a key element of its operation and that the Bureau will make every possible effort to reestablish the required number of staff.

Leaving the Presidency of the NCHR

After having completed six years as the NCHR's President, I decided not to submit a new candidature. This was not an easy decision to make.

The kind words of many Commission members during the last plenary meeting I chaired were deeply moving. In fact, those words reassure me in the best possible way that I tried to stand worthy of their trust and that I contributed, to the extent of my powers, in the strengthening of the authority, independence and wide scope of the Commission's work. I am delighted at the election of my friend Mr. Antonis Manitakis (up until now Vice President of the NCHR) to the Presidency, as I am convinced that his undisputed scientific prestige, his faith in the institutional role of the NCHR and his militant spirit will confer new momentum to the Commission's work.

I am personally greatly satisfied with the work produced throughout this 6 years' period, both for the creative work produced by the NCHR in these times where many institutions are delegitimized, as well as for the cooperation with a number of distinguished persons who contributed and still contribute to the human rights protection in our country.

I would like to thank the members of the Commission, in particular those who participated in the Bureau, my friends Mrs. Argyropoulou, Mr. Sicilianos and Mr. Manitakis, for their trust and impeccable cooperation. I would also like to thank from my heart the Commission's staff for their friendship, support and understanding. To me, our daily cooperation was a source of joyous creativity. Finally, I would like to thank the Greek Section of Amnesty International, which nominated me as its representative since the very first day of the NCHR's founding.

I am confident that the National Commission for Human Rights will persevere in performing its advisory role in a spirit of independence, endurance and audacity. Today's challenges as regards human rights render its work all the more valuable.

April 2012

LEGAL FRAMEWORK AND ORGANISATIONAL STRUCTURE OF THE NCHR

1. Law No. 2667/1998 establishing the NCHR[1]

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 subject 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, 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 organ of 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 organs 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 proposals, carry out studies, submit reports and give an opinion 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. As amended by Law 2790/2000, Law 3051/2002 and Law 3156/2003.

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 NCHR included in its NGO membership the Greek League for Women's 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 Commission 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-paras (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-paras (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) there is present the absolute majority of its members, and (b) among the members present is the President of the Commission or one Vice-President.

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 compensation 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 compensation by reason of service on councils and commissions of the public sector.

7. The Regulations for the operation 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 summoned before it, and any other detail shall be regulated by these Regulations. The Regulations 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.
[Regulations 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 NCHR

1. The President of the Special Parliamentary Commission for Institutions and Transparency, Mr. M. Papaioannou, and since July 2011 Mr. A Tsouras.

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. D. Pappas and Mr. N. Hatzopoulos 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 Ms. G. Zervou as his alternate; for the Hellenic

League for Human Rights, Mr. I. Ioannidis and Mr. K. Tsitselikis as his alternate (until February), and since July Mr. E. Mallios and Ms. E. Kalampakou as his alternate; for the Marangopoulos Foundation for Human Rights, Mr. L.-A. Sicilianos (until May), and since July Mr. D. Gourgourakis and Ms. A. Yotopoulou-Marangopoulou as their alternate; for the Greek Council for Refugees, Ms. A. Chrissochoidou-Argyropoulou and Ms. I. Nikolakopoulou-Stefanou as her alternate; for the Greek League for Women's Rights, Ms. S. Koukouli-Spiliotopoulou and Ms. P. Petroglou as her alternate; and for the Panhellenic Federation of Greek Roma Associations, Mr. V. Dimitriou.

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. D. Marouda and since July Ms. M. Dimitrakopoulou-Siouna as her alternate; for KKE Mr. I. Malagaris and Mr. D. Kaltsonis as his alternate; for SYRIZA, Mr. N. Theodoridis and Mr. S. Apergis as his alternate; for LAOS Ms. V. Tsabieri and Mrs. E. Deska as her alternate.

6. The Greek Ombudsman, Ms. K. Spanou (since July) and Mr. V. Karydis as her alternate;

7. One member of the Hellenic Data Protection Authority, Mr. A. Roupakiotis and Ms. P. Founthedaki as his alternate until April, and Mr. K. Christodoulou since September.

8. One member of the Greek National Council for Radio and Television, Ms. I. Avdi-Kalkani and since April Ms. O. Alexiou, and Ms. E. Demiri as their alternate.

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

10. Two personalities widely recognized for their expertise in the field of human rights protection, designated by the Prime Minister: Mr. S. Perrakis and Mr. K. Remelis.

11. One representative of the: Ministry of Interior, Mr. A. Takis and Mr. K. Kintis as his alternate; Ministry of Foreign Affairs, Ms. M. Telalian and Mr. E. Katsanas as her alternate; Ministry of Justice, Transparency and Human Rights, Ms. L. Pappa and Ms. K. Hatzi as her alternate; Ministry of Citizen Protection, Ms. A. Tsoukala and Mr. E. Katriadakis as her alternate; Ministry of Education, Long-Term Learning and Religious Affairs, Ms. D. Karoussou until May, and Ms. E. Petraki as her alternate; Ministry of Labour and Social Security, Mr. D. Daskalakis and since April Ms. A. Stratinaki and Mr. A. Karydis as their alternate; and Secretariat General of Communication and Information, Mr. G. Petroulakis and Ms. M. Zakynthinaki as his alternate.

12. From the Faculty of Law, National Kapodistrian University of Athens, Mr. P. Sourlas and Ms. E. Divani as his alternate; from the Faculty of Law, Aristotle University of Thessaloniki, Mr. A. Manitakis and Mr. P. Stangos, 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, Ms. M. Kouveli and Mr. T. Christopoulos as her alternate.

It is worthy to note the originality of the law provisions concerning the NCHR membership and the election of Members, of the President and the two Vice-Presidents. Each institution participating in the NCHR 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 NCHR. This particular, liberal system ensures the NCHR's independence and impartiality.

3. The organisational structure of the NCHR

Since October 2006, *Mr. Kostis Papaioannou* is the President of the NCHR. *Ms. Angeliki Chryssohoidou-Argyropoulou* is the 1st Vice-President. *Ass. Prof. Linos-Alexandros Sicilianos* was the 2nd Vice-President until 20.05.2011. *Professor Antonios Manitakis* was elected 2nd Vice-President on 29.09.2011.

NCHR has established five Sub-Commissions:

1. The Sub-Commission for Civil and Political Rights
2. The Sub-Commission for Social, Economic and Cultural Rights
3. The Sub-Commission for the Application of Human Rights to Aliens
4. The Sub-Commission for the Promotion of Human Rights
5. The Sub-Commission for International Communication and Co-operation

According to the Rules of Procedure the Plenary convenes every two months. In practice the Plenary meets every month. The Sub-Commissions' work consists of the preparation of reports on issues related to their specific field of action. All these reports are subsequently submitted to the NCHR (Plenary) for discussion and decision.

The NCHR employs three Legal/Research Officers (Ms. Christina Papadopoulou, Ms. Lydia-Maria Bolani and Ms. Tina Stavrinaki); Its Secretariat has two staff-members (Ms. Katerina Pantou and Mr. Nikos Kyriazopoulos, since July 2011).

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

RESOLUSIONS, DECISIONS, AND OPINIONS OF THE NCHR

1. Protection of the Rights of People Living with HIV/AIDS

I. Introduction

HIV/AIDS was identified in 1981. In Greece, the first case was reported in 1983 and since 1986 it became mandatory for HIV cases to be reported. Since 2000 the Hellenic Center for Disease Control and Prevention (hereinafter HCDCP) operates the Record for HIV-infected Persons maintaining anonymity and medical confidentiality. The total number of people living with HIV who have been reported in Greece from 1983 to the 31.10.2010 is 10.452. HIV infection in Greece has significantly increased after 2004. Especially in 2008 and 2009 the reported cases are over 600. In 2010, 519 new cases were reported. However, it has to be noted that the data collection for 2010 is yet to be completed. From the monthly records available it is estimated that the number of infections will be quite high, probably higher than that of 2009.

The NCHR decided to address the issue of human rights protection of people living with HIV/AIDS because of the established deficit in the enjoyment of fundamental rights, further intensified by stigmatization, discriminatory treatment, violation of confidentiality etc.

The NCHR was motivated by the Supreme Court's judgment 676/2009 which basically sanctioned the legality and the conditions under which an HIV-positive employer was dismissed. Given the importance of this judgment – as it constitutes the first case in Greek case-law addressing the issue- and the fact that it dealt with a single but essential aspect of the problems which people living with HIV (hereafter PLHIV) face, the NCHR convened a consultation with several institutions and stakeholders to discuss the protection of people living with HIV/AIDS. Several issues were raised, but the ones considered as a priority are: a) HIV/AIDS stigma, b) discriminatory treatment of PLHIV, especially in employment, d) access to health services and e) protection of privacy.

II. HIV/AIDS stigma

In 1987 J. Mann, at the time the Director of WHO's World AIDS Program, specified the three stages of HIV/AIDS epidemic as follows: the epidemic of HIV infection, the epidemic of AIDS itself, and the epidemic of stigma, grinding down its victims with shame and isolation.

UN/AIDS defines HIV-related stigma and discrimination as: "…a 'process of devaluation' of people either living with or associated with HIV and AIDS… Discrimination follows stigma and is the unfair and unjust treatment of an individual based on his or her real or perceived HIV status."

During ILO's Conference in June 2010 Rec. 200(2010) concerning HIV and AIDS and the World of Work was adopted. According to the Recommendation, "stigma" means "the social mark that, when associated with a person, usually causes marginalization or presents an obstacle to the full enjoyment of social life by the person infected or affected by HIV".

HIV stigma and the resulting unequal treatment increases the impact of infection on the patients, because they risk to be marginalized, not to have access to health services, to get fired or not to have access to the labor market, etc. Because of the stigma, PLHIV persons may not inform their closest relatives and friends about their situation and it might be difficult for them to take measures to protect their partners. People who are suspecting that they

might be HIV positive may avoid the examination and therefore the treatment. Thus, the stigma and the discriminatory treatment might be both the consequence and the cause of HIV status.

It will be proven that all the problems that PLHIV people face are directly or indirectly connected with the stigma. The fact that it is not an airborne transmitted disease that may be transmitted by ordinary social contact with seropositive persons, hasn't been fully understood by the public and, therefore, results in fear and prejudice against seropositives.

The only way to combat HIV stigma is through the constant and detailed information of the general population, and of specific professional groups such as nurses, doctors, judges etc. We also need to note that accurate information is necessary not only for combating HIV stigma but also for preventing new infections.

According to the Committee on Economic Social and Cultural Rights**,** article 12 par. 2 (c) of the ICESCR requires the establishment of prevention and education programmes for behaviour-related health concerns such as sexually transmitted diseases, in particular HIV/AIDS, as well as information campaigns.

The ILO's Rec. 200/2010 also provides that prevention of all means of HIV transmission should be a fundamental priority, that measures to address HIV/AIDS in the world of work should be part of national development policies and programmes, including those related to labor, education, social protection and health, and that Member States should take every opportunity to disseminate information about their policies and programs on HIV/AIDS and the world of work through organizations of employers and workers, other relevant HIV/AIDS entities, and public information channels (par. 3 (d), (j) and 8).

Therefore, in order to fight HIV stigma and promote prevention, it is necessary to immediately implement the National Action Plan for HIV/AIDS of the Ministry of Health & Social Solidarity, which provides for information activities. Moreover, given that: a) the average age of sexually active people has decreased, and b) there is an information deficit at schools- according to HCDCP officers who have made presentations at schools- it is necessary to introduce sex education at schools.

III. Discriminatory treatment of people living with HIV/AIDS in employment

A) HIV status as ground of discrimination

It should be noted that no international, European or national binding instrument which addresses the prohibition of discrimination in general or in the field of employment in particular, refers expressly to HIV status as a discriminatory ground.

a) European Union Law

Directive 2000/78/EC prohibits direct or indirect discrimination in employment and occupation for several grounds, including disability without defining it. Law 3304/2005 transposing the Directive reiterates these prohibitions.

The question arising is whether the term "disability" encompasses HIV status. The European Court of Justice hasn't so far adjudicated upon this issue. However, in the case *Chacon Navas* the Court held that: "The concept of 'disability' is not defined by Directive 2000/78 itself. Nor does the directive refer to the laws of the Member States for the definition of that concept. It follows from the need for uniform application of Community law and

the principle of equality that the terms of a provision of Community law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the Community, having regard to the context of the provision and the objective pursued by the legislation in question." It also held that: "Directive 2000/78 aims to combat certain types of discrimination as regards employment and occupation. In that context, the concept of 'disability' must be understood as referring to a limitation which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life. However, by using the concept of 'disability' in Article 1 of that directive, the legislature deliberately chose a term which differs from 'sickness'. The two concepts cannot therefore simply be treated as being the same. Recital 16 in the preamble to Directive 2000/78 states that the 'provision of measures to accommodate the needs of disabled people at the workplace plays an important role in combating discrimination on grounds of disability'. The importance which the Community legislature attaches to measures for adapting the workplace to the disability demonstrates that it envisaged situations in which participation in professional life is hindered over a long period of time. In order for the limitation to fall within the concept of 'disability', it must therefore be probable that it will last for a long time. […] The prohibition, as regards dismissal, of discrimination on grounds of disability contained in Articles 2(1) and 3(1) (c) of Directive 2000/78 precludes dismissal on grounds of disability which, in the light of the obligation to provide reasonable accommodation for people with disabilities, is not justified by the fact that the person concerned is not competent, capable and available to perform the essential functions of his post."

On the basis of the aforementioned it is evident that a national court which adjudicates on a case concerning the treatment of an HIV-positive person in employment or occupation, may or -in the case of a court of the last instance-must, according to article 267 of the EU Treaty, request a preliminary ruling from the European Court of Justice in order for the latter to clarify the meaning of Directive 2000/78 in that respect and the case to be resolved in compliance with EU law.

b) International human rights treaties

According to Resolutions of the Commission on Human Rights the term "or other status" used by several Human Rights Treaties concerning the prohibition of distinctions in the scope of their application (such as article 2 par. 1 of the ICCPR) should be interpreted in such a way so as to include the health status of the individuals, including HIV/AIDS. Furthermore, the Committee on Economic, Social and Cultural Rights has interpreted the term "other status" of article 2 of the Covenant as referring to the health status of a person and by consequence to HIV status, which it uses as an example of ground for differential treatment.

ILO Convention concerning Discrimination in Respect of Employment and Occupation (No 111) does not refer to HIV status. However, according to article 1 par. 1 (b) the protection of the Convention may be extended to any "other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after con-

sultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies." For the more effective protection of PLHIV in employment, HIV status should be included in the grounds of discrimination prohibited by the Convention.

ILO Rec. 200/2010 refers also to ILO Convention No 111. According to par. 10 of the Recommendation "real or perceived HIV status should not be a ground of discrimination preventing the recruitment or continued employment, or the pursuit of equal opportunities consistent with the provisions of the Discrimination (Employment and Occupation) Convention". Moreover, according to par. 12 of the Recommendation: "When existing measures against discrimination in the workplace are inadequate for effective protection against discrimination in relation to HIV and AIDS, members should adapt these measures or put new ones in place, and provide for their effective and transparent implementation".

Because HIV status is not expressly included in Law 3304/2005, PLHIV fall under the protective scope of the Law via the discriminatory ground of disability. The term disability is not defined by the Law. In theory several definitions of 'disability' have been developed based on its medical or social model perception. The latter seems to be prevailing given also the definition of 'disability' provided by the UN Convention on the Rights of Persons with Disabilities.

Irrespective of any definition, the fact that in Greece PLHIV belong, on the basis of a Ministerial Decision, to the categories of persons with disabilities, renders clear that they fall under the protection of Law 3304/2005.

B) HIV status and employment

Discriminatory treatment of PLHIV in employment or occupation may have different manifestations: mandatory HIV screening as a precondition for hiring, denial of promotion or/ and downgrading, dismissal or enforced resignation. At this point we need to note that PLHIV thanks to antiretroviral treatment may live for many years and be capable for employment.

a) Access to employment

The Legal department of HCDCP has received complaints against public institutions and the private sector (banks, public enterprises, hotels, casinos), which had requested HIV negative status certificate in order to employ or promote employees. The Greek General Confederation of Labour has also received complaints by employees with HIV positive status concerning either their unequal treatment after their status became public or their fear for unfavourable treatment in employment and further in the society if their status is made known.

According to ILO Recommendation 200 (2010) HIV testing or other forms of HIV screening should not be required from workers and must be genuinely voluntary and free of any coercion. Furthermore, testing programmes must respect international guidelines on confidentiality, counseling and consent (par. 24 and 25).

Moreover, according to recommendations and guidelines of international organizations HIV testing should not be a requirement for employment.

A typical example of violation of the above is the complaint filed to the Greek Ombudsman by the NGO "Kentro Zois", which provides psycho-social support to people living with HIV/AIDS. According to the complaint in order for the selected students to enroll in the Professional Schools of the Organisation of Tourism Education and Training they had to submit medical examinations, including HIV testing. It should also be noted that for the traineeship of students in tourism enterprises the issuance of a health booklet by the Health Prefectural Authorities is required, some of which request HIV testing. The Greek Ombudsman reached the conclusion that: "the request of specific medical exams as certification of the health status of the students or trainees, which could result in their disqualification is problematic on the basis of article 5 par. 1 of the Constitution and articles 1, 2, 4 par. 1 (b), 7, 8, 9 of Law 3304/2005 given that this constitutes indirect discrimination on the basis of disability, which in accordance with Circulars of the Ministry of Health is not justified by the nature of the specific professional activities".

Therefore, conditions for hiring requesting HIV testing do not comply both with international recommendations and the national law and should, thus, be omitted.

This should apply to all professions. Any effect of HIV status on the performance of some duties related to a specific profession e.g. pilot, may be ascertained or excluded via general testing –patient's medical history, symptoms, neurological testing, and not HIV testing.

b) Remaining in employment

The two cases that follow illustrate how HIV status results or might result in dismissal.

The first case concerns a Naval Officer, who was dismissed after he was diagnosed with HIV status, although his physical condition was perfect. His dismissal was due to the fact that according to PD 133/2002 on the physical ability in the armed forces, persons with HIV status fall under category I4 (i.e. to be discharged due to impairment or inadequate physical and/or mental condition).

According to the Greek Ombudsman, the dismissal of a person who does not pose any risk to his environment and whose ability to perform his/her duties is not reduced contravenes the Constitution (article 22). Furthermore, PD 133/2002, on the basis of which the Naval Officer was discharged, provides that "physical impairment does not preclude service in the Armed Forces, if it does not affect the mission or vice versa" (article 3 par. 1). According to the Greek Ombudsman the dismissal was not legal because it was not necessary, appropriate and proportionate to the HIV positive status.

Provisions which automatically result in the dismissal of a person exclusively because of his/her HIV positive status, even in the case of armed or security forces -which Law 3304/2005 excludes from its scope (article 8 par. 4)-, do not comply with the Constitution and the principles of necessity and proportionality and must, therefore, be abrogated.

The second case concerns the dismissal of an HIV-positive employee (hereinafter referred as X), who was working on the Orders Department of an enterprise. After the state of his health became known, his colleagues claimed that his presence caused insecurity and posed a threat to their health and put pressure to their employer to fire X, which he actually did. X sought recourse to courts and won the case both in the 1st and 2nd instance. The Appeals Court of Athens in its judgment 764/2008 held that: "the concerns of his colleagues, as well as their reaction, in the context of which they requested his dismissal, were scientifically unjustified. Given the ways the virus is transmitted, for which they were informed by the Labour physician, there was no risk to their health. Thus, ***the fear***

and concerns were in essence the result of prejudice and not of an existing danger and therefore X's disease could not adversely affect the regular functioning of the enterprise. The Appeals Court taking also into account the legitimate expectation of X to be employed in a difficult moment in his life, held that on the basis of the good faith principle X's interest to preserve his employment prevails.

On the contrary Areios Pagos with its judgment 676/2009 held that the dismissal was legal, given that: "the dismissal did not take place due to vengeance or hostility towards X, but it was completely justified by the interests of his employer since it aimed at assuring the tranquility of the others employees and restoring the regular functioning of the business that had been seriously disturbed by the grave and contagious disease of X, which had provoked insecurity and fear for their own health." Thus, it overturned the decision of the Appeals Court.

It needs to be noted that none of the courts took into consideration Directive 2000/78/EC or Law 3304/2005. On the basis of the aforementioned, the Appeals Court could have requested a preliminary ruling by the ECJ, which would have been very useful; although the Areios Pagos was obliged to do so, it eventually did not.

It is quite clear that the dismissal of an employee with HIV positive status when the pressure is exclusively or mainly due to the infection is illegal and constitutes prohibited discrimination on the basis of Law 3304/2005.

Beyond the legal aspects, the Areios Pagos' judgment demonstrates the issue of stigmatization and prejudice towards PLHIV, which unfortunately the Court embraced.

c) Conditions of employment

According to article 11 of National General Collective Labour Agreement 2004-2005 "employees under contract who have been employed for four years by the same employer, live with HIV/AIDS and are capable for employment, are entitled to an additional month of paid leave each year, after notifying their employer." Furthermore, Law 3304/2005 in articles 10 (reasonable accommodation for disabled persons) and 12 (positive action and specific measures) provides for the adoption of measures to facilitate the exercise of their duties.

The implementation of the above provisions, in particular the one concerning the additional leave, however, is hindered by the reluctance of PLHIV themselves to invoke them, as this presupposes that their health status is made known. Due to the stigma and prejudice, and the fear/risk of being dismissed they prefer to conceal it.

IV. Access to health services

A) Denial of health services

The notion of Health Services includes all medical or other services provided by a physical (physician, psychologist, nurse) or legal (hospital, clinic, social security body) person of the health sector to a healthy or not individual. In several cases PLHIV reveal their HIV status to medical staff, in order for the latter to take all necessary precaution for the prevention of a potential infection. However, this may result in the refusal of provision of health services. The Greek Ombudsman has, indeed, received complaints concerning refusal of treatment and hospitalization.

According to article 9 par. 2 of the Code of Medical Ethics, "a doctor may not refuse to provide services for reasons which are not related with his/her scientific proficiency, unless the provision of services is not objectively feasible due to a specific reason". Moreover, according to article 441 of the Penal Code "Doctors and midwives, who without justified obstruction refuse to perform their duties […] are punished with a fine or detention up to three months […]". Furthermore, the refusal to provide health care may constitute the objective requirements of other crimes, such as, exposure to danger (article 306 PC). In addition, according to ILO Recommendation 200/2010 States should ensure that workers living with HIV benefit from full access to health care, whether this is provided under public health, social security systems or private insurance or other schemes.

We note that when the State Chemical Laboratory (SCL) of Greece refused to examine syringes that had been used by drug addicts the Prosecutor of Areios Pagos issued an advisory opinion stressing that the obligation of SCL to execute the requests of police authorities [let alone the obligation of doctors to provide their services] "is not precluded by the potential risk of infection". The potential exposure to risk should be addressed in the same way it is addressed by all those exposed to the same risk (doctors, medical personnel, etc), i.e. by taking the necessary precautions, (use of gloves, masks etc.)

It becomes evident that the denial of health services apart from being illegal, forces PLHIV to conceal their HIV status. International organizations recommend the general use of preventive measures, and several countries have adopted the recommendation. Thus, HIV status of patients and/or health professionals becomes irrelevant as to the prevention of infections and may not constitute a basis for discriminatory treatment. However, the generalized use of preventive measures is more costly and it has been argued that the cost is disproportionate to the small number of infections prevented; thus, the targeted use of preventive measures in the case of PLHIV has been recommended. Nevertheless, this practice may result in refusal of provision of health services, in HIV testing without the consent of the patient, and even in potential infection when the PLHIV conceals their status or are not aware of it.

In Greece, individuals that are to be operated are often tested for HIV without having previously consented to that. However, this practice provides no actual safety because: a) precautionary measures need to be taken for all infectious diseases (which are numerous and more frequent than HIV), and b) the testing might take place during the so-called "window period", i.e. the period between HIV infection and the production of antibodies. During this time, an antibody test may give a 'false negative' result even though a person is infected with HIV.

Furthermore, testing without the consent of the patient contravenes art. 47 of L.2071/1992 and art. 11 and 12 of L.3418/2005, requiring that the patient is informed for every medical action and consents to it.

On the other hand, the conflict of rights that might arise should not be ignored. For example, a surgeon who has taken all precautionary measures during the surgery is scratched with the scalpel. In that case the surgeon has valid interest (the protection of his/her health) to request from the patient to be tested for HIV. The patient's consent is necessary. However, in case he/she refuses the testing, the person who has a legitimate interest to protect his/her health should be able to have recourse to a competent authority capable of ensuring the balanced satisfaction of conflicting rights.

Furthermore, the staff should be trained on protection from contagious diseases; this certainly does not entail the testing of all patients, but rather taking specific sterilization measures provided for and applied in Greece and elsewhere.

The Greek Ombudsman after having investigated the complaints submitted and having held meetings with health professionals in hospitals, reached the conclusion that the refusal or delays in providing health services to PLHIV is due to fear on the part of part of the medical personnel. The fact that even in the case health professionals there may be prejudice vis-a-vis PLHIV, manifests the need for further information and training on HIV/AIDS. Moreover, the Greek Ombudsman noted that the lack of clear clinical instructions and guidelines concerning the legal responsibility that such a refusal of provision of services entails, further aggravates the problem.

B) Access to antiretroviral treatment

Unhindered access to antiretroviral treatment is crucial, as if the patient does not receive the treatment even for one day, the virus may become more resistant. People living with HIV receive their treatment from the Special Infections Units in hospitals covered by their social security schemes. However, several problems have arisen in practice:

a) Greek seamen are covered by their social security body for the time they are not aboard. While they are aboard they are covered by private insurance companies -paid by the shipping company- which, however, do not cover people living with HIV. Given that antiretroviral treatment is provided on a monthly basis by the hospital Units the people concerned may not receive their treatment for the entire period they are aboard.

At this point we would like to note the issue of private insurance companies. According to draft private insurance agreement and under the title “Dangers excluded”, diagnose tests and treatment which are due in whole or in part, directly or indirectly to AIDS and its complications are not covered. On the basis of this clause private insurance companies have refused to sign a contract with PLHIV.

b) In case one changes his/her social security institution, due to bureaucratic delays, there might be a period during which an HIV-positive has no social security.

c) Greeks with no social security and annual income under 9.000 € are entitled to have the so-called ‘booklet of destitute’, with which they can receive antiretroviral treatment. Once more, the person in question may stay without social security, as the issuance of the aforementioned booklet may take two months.

d) The treatment of Greeks without social security and income over 9.000 € is usually covered after their case is examined by the Committee of Social Welfare and after a doctor’s statement on the cost of the treatment (a portion of the cost may be requested by the person concerned). Again the problem arises with the in between period.

HCDCP has recommended the antiretroviral treatment to be covered by the States budget and to be provided irrespective of the social security status of the person involved.

V. Protection of privacy

A) Private life

Private life of an individual is according to article 9 of the Constitution “inviolable”. The notion of private life, according to the prevailing social views, includes the domains of love

life, physical handicaps, and health problems. Therefore, HIV positive status is protected under article 9 of the Constitution and article 8 of ECHR. The ECtHR has dealt with cases of PLHIV in the context of article 8.

In the case *Z v. Finald,* the ECtHR held that the writing of the name of the complainant in a court’s judgment which referred to her HIV status and which led to the publicizing of her health status in newspapers violated article 8 ECHR. The ECtHR also noted that the disclosure of such data may dramatically affect his/her private and family life, as well as social and employment situation, by exposing him/her to opprobrium and the risk of ostracism. For this reason it may also discourage persons from seeking diagnosis or treatment and thus undermine any preventive efforts by the community to contain the pandemic.

In the case *I v. Finland* which concerned an HIV positive nurse receiving treatment in the hospital where she was employed, the ECtHR held that there was a violation of article 8 because all personnel had access to the patients’ files of the hospital. The ECtHR also noted that it is crucial not only to respect the sense of privacy of a patient, but also to preserve his/her confidence in the medical profession and in the health services in general.

Moreover, the ECtHR has noted that obligations for the States Parties may concern the adoption of measures for the protection of private life, even in the case of private actors. Therefore, the State needs to care for the protection of private life and to create a protective ‘fence’ against potential violations of the said right irrespective of whether they originate from public or private actors.

B) Protection of personal data

The protection of personal data constitutes a right provided for by article 9^{A} of the Constitution and regulated by Law 2472/1997 “Protection of individuals with regard to the processing of personal data”. Article 23 par. 1 of Law 3471/2006 replaced in article 7^{A} par. 1 of Law 2472/1997 the term “medical data” by the term “health data”. The term “health data” is broader and includes besides patient’s medical history (‘medical data”) and genetic data, any other information related to health, such as use of drugs, medicines etc. Health data and therefore, HIV status, fall under the notion of sensitive personal data.

In practice several issues have arisen concerning the protection of personal data on health. The most significant is the citation of the disease in public documents.

For instance, the indication ‘HIV/AIDS’ was often noted in the dismissal certificates issued by the army. The Hellenic Data Protection Authority (HDPA) with its decision 1620/2000 held that: The certificate of military service status needs to state: 1) that a person has completed his military service, and 2) in case of exemption, that he was exempted according to the law, without mentioning the specific reason of exemption. However, this is not always the case and several complaints have been filed with NGOs.

Moreover, while the disease is not mentioned in the health booklets, the disability certificates issued by the Health Committees of the Prefectures do mention it. The HDPA has held that the certificates of the Health Committees which are required by Law in order for one to fall under the protective provisions for the disabled, should not state the type of disability and/or disease. The percentage of disability and its chronic character suffices.

Furthermore, it is necessary to control the use of data by the administrative services

of the hospitals; the latter should have access only to the information required for the provision of health services. For example the administrative services should use codes in order for the patient's identity not to be revealed and by extension his/her health status.

Thus, beyond the strict implementation of the HDPA decisions further measures need to be taken for the effective protection of personal data and, consequently, the private life of PLHIV.

C) Violation of medical confidentiality

Breach of medical confidentiality constitutes one of the many violations of PLHIV's private life. HCDCP, NGOs and the Greek Ombudsman have received complaints concerning this issue.

Medical confidentiality is mainly regulated by article 13 of the Code of Medical Ethics (Law 3418/2005, OG A' 287). Its breach constitutes a criminal offence under article 371 of the Penal Code, and also entails the disciplinary responsibility of the physician (article 36 of Law 3418/2005).

Because of the HIV/AIDS stigma an atmosphere of confidence is required so that patients overcome their reluctance to use health services. Therefore, medical confidentiality needs to be strictly observed.

A conflict of rights situation may arise in the case of lifting medical confidentiality when informing a person of the HIV positive status of their partner.

According to article 13 par. 3 of the Code of Ethics lifting medical confidentiality is permitted when […] 'the physician aims at safeguarding a legitimate or otherwise justified, substantial public interest or interest of the physician or of another person, which may not be preserved otherwise'.

The prevention of a disease and the direct protection of third person may justify the breach of confidentiality. However, informing a third person without the patient's consent should be the last resort.

Public health professionals consider the notification of the sex partner as a method of prevention and access to treatment. Various laws and practices apply in different States, which require or encourage PLHIV to inform their partners themselves. In case they refuse to do so, the health professionals may be allowed to inform the third party after they have exhausted all other means and under specific conditions.

According to *Recommendation No. R (89) 14 of the {Council of Europe's} Committee of Ministers to Member States on the Ethical Issues of HIV Infection in the Health Care and Social Settings,* States should ensure that as a general rule there is no notification of the partner without the consent of the patient, and should consider procedures of consultation in accordance with national codes of medical ethics and regulations for the extreme case where a patient refuses to co-operate in the notification of an unsuspecting third party known to the health care worker.

Thus, if an HIV-positive person is not persuaded to inform his/her partner of his/her condition, the physician should have recourse to the Legal Committee of the HCDCP, to the Ethics Committees provided by law, to the Public Prosecutor, or to the HDPA to be given permission.

VII. Recommendations

On the basis of the aforementioned the NCHR recommends the following:

- Information and sensitization campaigns for the general public on HIV/AIDS aiming at prevention and at combating social stigma
- Implementation of the National Action Plan on HIV/AIDS 2008-2012 of the Ministry of Health & Social Solidarity
- Introducing sex education in schools
- Incorporation of the provisions of ILO Recommendation 200 (2010) on HIV/AIDS
- Making use of a) the important role of workplaces in terms of information, prevention, access to treatment, care and support for combating HIV/AIDS at the national level and b) the special role of labour unions and employers associations to promote and support national efforts to address HIV/AIDS within and via the field of employment
- Providing for the institutional participation of NGOs, in particular those representing people living with HIV/AIDS, in the social dialogue on HIV/AIDS
- Ratification of the UN Convention on the Rights of Persons with Disabilities
- Inclusion of HIV status in the grounds of discriminatory treatment of Law 3304/2005 and expansion of its ratione materiae
- Abrogation of HIV testing as a requirement for access to employment or education, where such requirement exists
- Abrogation of HIV negative status as a requirement for remaining employed, where such requirement exists
- Announcement of HIV status to the person concerned exclusively by medical staff and provision of psychological support by specialised staff
- Ensuring effective access of PLHIV to competent controlling mechanisms (e.g. Labour Inspection Body) and their protection on the part of the latter
- Specialised and periodic training of health and administrative hospital personnel concerning HIV/AIDS and their obligations while performing their duties
- Organising a system of co-operation between the patients' physicians and the hospital of admission
- Generalised implementation of precautionary measures for contagious diseases in all hospitals
- Implementation of provided criminal and disciplinary sanctions in cases of breach of medical confidentiality by the competent authorities.

2. Comments on the Bill by the Ministry of Justice, Transparency and Human Rights on "Combating certain forms and expressions of racism and xenophobia by means of criminal law"

I. Introductory comments

The bill presented by the Ministry of Justice, Transparency and Human Rights introduces criminal law provisions, in order to combat racist and xenophobic behaviour. The provisions are in line with the scope of the International Convention «on the elimination of all forms of discrimination» (CERD) (1966). The National Commission for Human Rights (NCHR) received a draft in order to comment on it and provide useful feedback, according to its mandate as established by law.

The draft was introduced at a time of immense social tension. The necessity to fight racism and xenophobia has never been more obvious. While in a state of general and social crisis, Greece discovers its intolerance against discrimination. Regardless of the general crisis, the increase of racism and xenophobia by the occurrence of violent behaviours undermines the principles of democracy and the rule of law.

The introduction of the bill generated various reactions and led to heated debate. On the one hand, some expressed the view that penalization of free expression in the public sphere even, based on a racist motive but not targeting specific persons or leading to violence, can contribute to the formulation of an authoritarian society. Therefore, penalization of this behavior is not considered as an acceptable limitation on the right to freedom of expression in a democratic society. On the other hand, there is the opinion of those who do not agree with the protection of vulnerable groups. And then there is the opinion of those who are in favor of the bill, namely persons or groups that are targets of racist acts. More specifically, these persons ask for stricter penalties or introduction of more vulnerable groups in the bill's scope.

Furthermore, it seems that the deficiency of criminal punishment for racist behaviour up until recently underlines the added value of the present bill. NCHR urges the state to deal with the shortcomings of the fight against racism and stresses out the underlying danger in replacing the penalization of racist speech with the penalization of racist behaviour. NCHR claims that penalization of hate speech can act preventively as far as the treatment of racist behaviour is concerned. However, it points out that the bill should in no case be considered a waiver of the state's obligation to introduce legislation punishing racist behaviour.

For NCHR the bill also bears an educational purpose. Taking though into consideration the difficulty to fully understand subjects related to racism, the specific qualities of every society, as well as the difficulty of identifying victims, the present bill is expected to generally sensitize people on the fight against racism.

II. Current legal framework and international obligations

The active legislation (Law 927/1979), which is in compliance with Greece's international obligations deriving from the International Convention "on the elimination of all forms of racial discrimination" (1966), has troubled many international bodies like CERD and ECRI, due to difficulties in its application. As explained by a Greek judge presiding over a second instance court, this Greek legislation has not been widely implemented since its enactment due to the existing constitutional guarantees on freedom of expression, which did not leave room for the punishment of racist behavior. Moreover, in practice, as victims generally belong to vulnerable groups, they rarely lodge complaints because of their powerlessness - social and financial.

Overall, the international legal order expresses its strong disapproval for racist discrimination, as evidenced in articles 4 and 6 of the CERD. Furthermore, the UN Committee on the Elimination of Racial Discrimination has stated that any act of propaganda or speech based on racial superiority or racial hatred that can foster racial hatred and lead to violence is not vested with the guarantees of the right to freedom of expression.

III. The framework-decision 2008/913/ /JHA of the Council

Within the framework of police and justice cooperation, framework-decisions are binding upon member-states to introduce legislative measures in order to achieve the intended effect as decided by the EU. However, member-states are free to choose the way in which the framework-decision is going o be implemented. In the present case, Greece is obliged to implement the aforementioned framework-decision by introducing effective criminal law provisions according to the framework-decision's purpose. After its adoption in 2008, the European Commission reiterated the obligation of all member-states to criminalize racist and xenophobic behaviours.

It is worth mentioning that in the preamble of this framework-decision its scope is stated: combating only the particularly serious forms of racism and xenophobia by means of criminal law. Moreover, article 7 attempts to strike a fail balance between freedom of assembly and freedom of expression, clarifying at the same time that member-states are not expected to adopt legislation contravening their basic principles.

The purpose of all the provisions contained in this bill is to combat extremely serious forms of racism, by application of the proportionality principle. However, the penalization of dangerous speech and the possible endangerment of public order should not function as a Trojan horse that could eventually lead to the circumcision of public speech, pluralism and tolerance within the EU.

IV. Comments on Specific Provisions

Article 2

The term "animosity" used in the bill is preferable to the term "hatred", since it stands both for the cultivation as well as the externalization of feelings of hatred and rivalry. At this point, NCHR suggests the maintenance of all the terms used in the framework-decision, since these are terms widely used and understood by the average person.

Moreover, the term "religion" appearing in this bill refers to persons identified with various religious beliefs. At this point, NCHR notes the broadening of the legislation's scope, in harmony with the broadening of the EU framework-decision. In support of the above, CERD does indeed take into consideration religion and religious beliefs in as much as it intersects with racial discrimination ("intersection of racial and religious discrimination").

Article 3

Paragraph 1: While the framework-

decision allows member-states to opt for the punishment of either behavior disturbing public order or behavior with menacing, abusive or insulting character, the bill goes on punishing any behavior endangering the public order. The majority of NCHR finds the legislator's choice satisfactory. A second view expressed at the plenary states that behavior with menacing, abusive or insulting character should also be punished, as in the case of the ECHR. Moreover, NCHR states that the legislator's choice to punish the endangerment of public order as such is not clearly depicted in the text and calls for redrafting. Furthermore, NCHR suggests that the rights of persons or groups against whom the racist act materialized should be expressis verbis protected by the bill.

Thus, the "speaker" is not punished for the result caused by the delivery of his speech but for the danger of his speech to foster racist acts, either because of the speech's character or the circumstances under which it is speech delivered. As a result, in any future adjudication where the judge is called to apply this bill, a specific and thorough explanation of the court's decision should be provided, in spite of the difficulties in its application as shown by practice.

Furthermore, according to the framework-decision, NCHR proposes the inclusion of the "descent" as an additional element leading to discrimination. However, NCHR suggests the use of the term "origin" instead (along the lines of CERD), as it encompasses numerous forms of strict social stratification, e.g. castes.

Moreover, the Commission notes that even though the framework-decision does not include the "sexual orientation" as an additional element that leads to discrimination, the legislator expands the bill's scope by adding this as well. As a result, NCHR recommends that the bill's title should change in order to avoid conceptual confusion and provide protection to another group, namely victims of discrimination based on "sexual orientation".

Article 4

This article establishes a new crime in Greek legal order: the praise or denial of historical facts, under the restrictive conditions of (1) its likelihood to foster violence or animosity and (2) the recognition of historical events as crimes by a final judgment delivered by a Greek or an international court. The absolute prohibition of expressing a view contrary to the recognition of specific crimes would be an unacceptable limitation to the right to freedom of expression; however, this right is subject to limitations in all major international documents for the protection of other rights.

It is obvious from the bill's article 4, as well as international jurisprudence, that the application of this provision will be extremely difficult. NCHR therefore proposes the rigorous examination of any existing limitations before imposing a penalty, in order to provide the space needed for academic dialogue and exchange of views.

Article 7

This article implements the recommendations of the international bodies, establishing an additional disdain due to the racist motivation of the act. As a result, the aggravating factor in article 79, para.3 of the Greek Penal Code is introduced. The new bill introduces more lenient provisions, as the perpetrator will be punished according to article 361, Greek Penal Code for insult, following a complaint by the victim. However, the act can be punished more severely due to the aggravating circumstances.

Article 8

NCHR is satisfied that legal entities or associations are holders of a right to civil action. The Commission expresses the view that the reference to the ECOSOC system is not the most adequate criterion and proposes the granting of locus standi to all associations and legal entities having as objective and aim the protection of human rights and the fight against various forms of discrimination. In international practice this kind of provisions have contributed to the case-law regarding Roma issues.

As a conclusion to this issue, NCHR urges the state to rapidly advance the introduction of the individual complaint mechanism of CERD in Greek legal order, a move that will undoubtedly empower the protection of victims of racist behaviour.

3. Rights of People with Psychiatric Background: Protection Issues within the Framework of Psychiatric Reform in Greece

I. Background of NCHR's concern by the rights of persons with mental health problems

The first time the NCHR touched upon the issue was in 2003, when it adopted a resolution on "Human Rights protection issues in the case of custody of incapacitated persons in psychiatric hospitals". The resolution concluded with a series of recommendations for the reform of the penal law referring to the abovementioned persons.

Furthermore, in January 2004, the NCHR elaborated and submitted to the competent authorities a proposal for the ratification of the Optional Protocol *(18/12/2002*) of the United Nations Convention Against Torture (UNCAT, 1984, N. 1782/1988). The Protocol (hereinafter, the OPCAT), aims at enforcing the effective implementation of the Convention, through the creation of a preventive system of visits to places of custody, including psychiatric hospitals, psychiatric clinics and other units of psychiatric care. These visits are to be held by an international independent body (the Sub-Committee) and by national independent bodies (the National Preventive Mechanisms: NPMs). It is to be noted that Greece signed the Protocol on 3/3/2011.

In September 2004, the NCHR examined the issues presented before it by the report of Mr.Varouhakis, a psychiatrist, (President of the Association "Eunomia" for the promotion of rights of persons with mental illnesses or disabilities, and ex- President of the Medical Service of the Athens Psychiatric Hospital), on the living conditions of mentally ill patients, hospitalized in three hotels in the centre of Athens, who were moved there temporarily, due to the severe damages provoked by the earthquake of 1999 to the Athens Psychiatric Hospital. The NCHR performed a series of in situ visits and formulated its "Observations and Recommendations" on the subject matter. This was NCHR's first direct contact with the field of mental illness and with the complex context of the psychiatric reform in Greece.

In September 2005, the NCHR commented on the "Draft Guide on Quality Standards in the Units of Mental and Social Rehabilitation", which was submitted to it by the Ministry of Health. The guide included evaluation indicators and criteria for the services provided.

The NCHR did once again deal with mental patients' related matters in mid 2009, when it examined a report submitted by the "Argo" Network of Psycho-social Rehabilitation and Mental Health Institutions. In this report, the member institutions highlighted the problems they confronted, due to the lack of continuity and coherence of the funding received, which in turn had a disastrous impact on the therapeutic care services offered. The severe problems in this area caused the intervention of the European Commissioner for Employment, Social Affairs and Equal Opportunities, V. Spidla and the subsequent adoption of a Memorandum co-signed by the Minister of Health and the EU Commission on the full implementation of the psychiatric reform as well as that of the "Psychargo" programme. The NCHR convened two consultations with a wide range of authorities and specialised institutions. The first was addressed to mental health professionals, administrative personnel of mental health units, public hospitals' psychiatric sections representatives, independent authorities and a series of other collectivities; the second consultation was addressed to the associations formed by the persons having a psychiatric background and their families. Through these meetings, the NCHR was able to formulate a clearer view of the challenges related to the protection of human rights in this specific area, and collected a large number of recommendations. Prior to the present report, the NCHR conducted new in situ visits to psychiatric hospitals and units of mental care services and it held a series of working meetings with mental health professionals.

In addition, many bodies/members of NCHR (the Greek Ombudsman, Amnesty International/Greece, the Marangopoulos Foundation for Human Rights, the Hellenic League for Human Rights, SY.RIZ.A. and PASOK political parties etc), have been active in mental patients' related matters.

II. Terminology used; stigmatization

Mental health is a term used to describe a level of cognitive and psychological well-being and/or as the absence of a mental disorder. Cultural gaps, subjective evaluation and various scientific theories can influence the society's views and perceptions on mental health and mental illness.

There is clearly a lack of consensus as to the terms to be used and as to the content attributed by the legislator to these terms; this is also true for the society as a whole and for the "community" of mental patients. The difficulties encountered in selecting the appropriate terms when it comes to mental illness are perhaps even greater than the difficulties one has when talking of disability. *Recipients* or *users* of mental health services, *people with mental health problems, mentally ill, mentally disturbed, patients, psychiatric patients, psychiatric survivors, people with psychiatric background,* are some of the terms currently used. The periphrastic term *"person with a psychiatric background"* seems to prevail lately in the mental health field, as it is considered as less stigmatizing than others, as it refers to this background as part of a broader set of characteristics and experiences of the person.

The medical approach was dominant for a long time in both legal treatment and policy matters. The mentally ill people were considered as unable to take care of themselves, or even dangerous. However, there is no "patient" wishing to be classified according to his medical diagnosis alone. This would reinforce them being perceived as "disabled", focusing on their dysfunction, causing a 'compassion' reaction from the society, and thus feeding to the charity conservatism and/or populism.

The psychiatric reform movement is based on the ideological conviction and findings that society has the ability to revitalize its weakest members through social solidarity mechanisms. The main concerns about mentally ill people have to do with their unpredictable and potentially hazardous behavioral manifestations of their disease. However, it is scientifically proven that when there is a strong social support system that does not isolate / exclude a "different" person, the vulnerability to mental illness is lower. At the same time, this context helps the mentally ill persons to regain their functionality more easily. It is also proven, that the appropriate and timely treatment, even when dealing with psychotic patients -the most common inmates in psychiatric hospitals-, renders the patients socially viable during long periods and it can help them completely recover even after repeated acute phases of their dis-

order.

People living with mobility problems were the first to organize themselves in the early 70s. Gradually, the social approach for disability gained ground. This had as a result the formation of pressure groups, claiming the right to equal participation in the social environment, -including 'positive discrimination' where need be-, thus weakening the medical approach.

Nowadays, social representation for mental illness has evolved around the concept of disability, whereas stereotypes equating mental illness with aggressiveness seem to have weakened. On the other hand, the use of the term "disability" carries the risk of "homogenizing" a diversified group of people –the mentally ill people-, as regards their needs, their issues and their treatment. If mental illness is considered as a "disability", stereotypes of inferiority could be reproduced, thus further stigmatizing the mentally ill.

This fear explains the hesitation of a large part of mentally ill people to integrate to the so-called 'disability movement', and therefore, collective action of mentally ill persons and/or their families is very recent.

The foundation of this fear can be seen in the results of a survey carried out by Metron Analysis in June 2009 in the Municipality of Athens: 35% of the people interviewed believed that mentally ill people are "always" or "often" a public danger, 62% believed that mentally ill people can "rarely" or "never" work in regular jobs, 26% would never sit next to a mental patient while in the bus, while 88% would not (probably not or definitely not) get married to a mental patient [a rate significantly higher from those appearing willing to get married to a migrant (45%) or a person having physical disabilities (48%)]. This reluctance was greater only towards the HIV positive persons. 41% of the people interviewed would not hire a mental patient, a rate overtopped only by the group of drug users. 31% would not be comfortable living next to a mentally ill person, while 44% would not rent their house to them. However, only 16% would oppose to the creation of a service for mental patients in their neighborhood; 94% would agree on possible initiatives regarding mentally ill people taken by the Municipality of Athens and 74% appeared willing to take part in these initiatives. Seen combined, these measurements place the so-called "Indicator of Social Distance" vis-à-vis the mentally ill, to the percentage of 27%.

III. International and national institutional framework

A) The international protection framework

Beyond the instruments forming the International Charter of Human Rights, the adoption of the Resolution *A/RES/46/119* on the "The protection of persons with mental illness and the improvement of mental health care" by the UN General Assembly on 17/12/1991 represents a significant step in the international protection of mentally ill persons. The GA Resolution on the "Rights of People with Mental Disability" of 1971 and the *A/RES/48/96* Resolution on the "Standard Rules on the Equality of Opportunities for Persons with Disabilities" (20/12/1993), are also part of the UN institutional framework.

In the framework of the Council of Europe, we should mention the CM Recommendation on the *"Legal Protection of Persons suffering from Mental Disorder placed as involuntary patients"* (22/2/1983), the PA Recommendation 1235 (1994) on the *"Psychiatry and Human Rights"* (12/4/1994), the CPT "*Standards* on the *Involuntary placement in Psychiatric Establishments*" {CPT/Inf(98)12}, the *White Paper* on the *"Protection of the Human Rights and Dignity of people suffering from mental disorder, especially those placed as involuntary patients in a psychiatric establishment"* (3/1/2000, drafted by the Working Group on Psychiatry and Human Rights of the Steering Committee on Bioethics) and finally, the *CM Recommendation (2004)10 concerning the protection of the human rights and dignity of persons with mental disorder (22/9/2004).*

As regards the EU Framework we should mention the *Charter of Fundamental Rights,* the *Council Resolution on the Promotion of Mental Health* (18/11/1999), the *European Commission Green Book {COM(2005)484}: "Improving the Mental health of the population: Towards a strategy on mental health for the European Union"* (14/10/2005), the *European Pact for Mental Health and Well-being",* signed by the EU along with the WHO in 13/6/2008, and the *European Parliament Resolution on Mental Health* {2008/2209(INI)}. Moreover, there is a number of non-binding but still important texts for the respect of rights of mentally ill people, such as the Hawaii Declaration/II (International Psychiatry Conference 1983), the Athens Declaration on the "Rights and Legal Protection of a mentally ill person" of the World Psychiatric Association (Athens 17/12/1989), and the Madrid Declaration on the "Ethical Standards for Psychiatric Practice" (G.A. of the World Psychiatric Association 25/8/1996).

Furthermore, it should be noted that after the EU's decision to sign the UN Convention on the Rights of Persons with Disabilities (the first international human rights convention ever ratified by the EU), the EU Fundamental Rights Agency initiated a research survey on mental health issues, while it has already published the results of the first part of the survey, regarding the political participation of mentally ill people in the EU member States.

The *UN Convention on the Rights of Persons with Disabilities* is by far the most important and binding international instrument. Its scope of protection includes people with mental, cognitive or sensory disabilities.

B) The domestic institutional framework

The Law 1397/1983 regulates for the first time the right to health within the Greek legal system. Provisions for the mentally ill care and rights are mainly found in Laws 2071/1992, 2519/1997 and 2716/1999, supplemented by provisions in the Civil and Penal Codes.

Law 2071/1992 establishes Psychiatric Care Units and reforms the existing system of involuntary placement. Law 2716/1999 on Mental Health Services, is following the principles of Psychiatric Reform. According to its provisions, the State is responsible for providing mental health services, aiming at prevention, diagnosis, remedy, treatment as well as the psychosocial rehabilitation of mentally ill persons. It places under State supervision both the public and the private non-profit Mental Health Units.

Law 2447/1996 introduced the measure of judicial protection. Article 1666.1 of the Civil Code provides that "an adult is submitted to judicial protection: 1. when he/she is wholly or partly unable to take care of his affairs, due to psychological or mental disorder, or because of physical disability."

Article 28 of the Code of Medical Ethics describes in great detail the context of provision of mental health care (right to information, respect of the dignity of the patient, etc.).

The Ministry of Health has established a

Mental Health Division, composed of the Hospital Care and the Outpatient Care Departments. In order to promote the rights of mentally ill persons, an *Office for the Protection of Rights of People with Mental Disabilities* has been created (within the Independent Agency for the Protection of Patients' Rights) (par. 1 of Art. 2 of Law 2716/1999). There is also a *Special Committee for the Supervision of the Protection of the Rights of Persons with Mental Disorders* operating within the framework of the National Committee for the Supervision of the Protection of Patients' Rights, created by Law 2519/1997 (paragraph 2 Art. 2 of Law 2716/1999). Moreover, a 17-member Commission for the Review of 'PSYCHARGO' Program has been established, consisting of experts in the field of mental health and other institutional agents, -including the Health Ombudsman-. This Committee should complete its work by September 2011.

IV. International monitoring bodies

A) CPT Observations and the response of the Greek Authorities

The European Commission for the Prevention of Torture (hereinafter CPT) has carried out a number of in situ visits to mental health care places. During its first visit, in 1993, the CPT visited the Psychiatric Unit at Korydallos Prison Complex, the Attica State Mental Hospital at Daphni, the Attica State Mental Hospital for children (Rafina), the Psychiatric Hospital in Leros and Public Health Establishments of Leros. As for the Psychiatric Unit at Korydallos Prison Complex, CPT made extensive observations focusing on medical and nursing staff shortcomings, overcrowding, the large number of drug addicted prisoners, the excessive use of mechanical restraint and isolation as 'therapeutic' measures, the excessive use of suppressive medication to inpatients / prisoners for behavioral control purposes, the absence of detailed medical records, and, finally, the unacceptable conditions in the intensive care unit. The observations on other institutions/hospitals included once again the excessive use of mechanical restraint and isolation, staff deficiencies, lack of qualified staff, and the large number of involuntary placement cases. The report stresses the need for a more effective implementation of the available EU funding, as well as the establishment of a complaints procedure (for inmates), and suggested the supervision of the institutions by an independent external body.

During the 1996 visit to Attica State Mental Hospital for children (Rafina), the CPT noted some improvements in material living conditions and staff adequacy. However, CPT highlighted the absence of therapeutic activities other than medication. It also expressed its concern on the fact that patients were not allowed out daily into the open air. The overall assessment was that the supposed 'Children's Psychiatric' hospital, operated in fact as a hospital residence for children and adults with severe mental hysteresis, autism, etc.

In 1997, CPT visited again the Psychiatric Unit at Korydallos Prison Complex, the Attica State Mental Hospital at Daphni, and the Thessaloniki State Mental Health (for the first time). For the Korydallos Unit, the CPT's remarks were identical to those of 1993 and they underlined the same shortcomings: the issue of excessive use of mechanical restraint and the number of involuntary placement cases for both psychiatric hospitals.

In 1999 and 2001, the CPT carried out two follow-up visits to the Psychiatric Unit of Korydallos Prison without noticing

any significant improvement, except a small increase in staff numbers.

The last CPT visit in psychiatric surrounding took place in 2005, once again in Korydallos Prison Psychiatric Unit and the Psychiatric Hospital of Corfu. Observations on Korydallos were basically similar to the previous ones, adding that medical files of patients were incomplete and recommending the introduction of drug rehabilitation programs. As regards the Corfu Psychiatric Hospital, the main problem areas were once again the recourse to mechanical restraints, the involuntary placement (including the transfer of patients by police vehicles), the absence of therapeutic activities, as well as the absence of an interdisciplinary team in incident management.

The Greek authorities' response to this last CPT report is based on the planned actions of the PSYCHARGO Programme, as well as on the overall mental health reform and the shutdown of psychiatric hospitals. It refers to the introduction of the SC LTD (Social Cooperatives Limited) and the new programs of Social Rehabilitation for mentally ill people**,** the coordinated efforts of the MHSS and the Ministry of Justice on the legislative amendments towards the resolution of issues related to the incapacitated persons' criminal treatment. In addition, the response mentions the multiplication of therapeutic programmes and activities, the reinforcement of psychosocial rehabilitation activities, as well as the nursing staff' s training on patients' rights and the prohibition of their illtreatment, the plans on recruiting specialised staff, and the recent Circular on mechanical restraint addressed to all public psychiatric hospitals. Finally, it contains a detailed catalogue of coordinated actions taken by all competent authorities for the proper implementation of involuntary placement legal provisions and the dissemination of the CPT observations to all hospitals.

B) Convictions by the European Court of Human Rights

There are so far two convictions of Greece on issues relating to the rights of the mentally ill people by the ECtHR. Both are related to the failure of legal provisions regarding involuntary placement (Articles 5§1 and 5§4 of the Convention). It should be noted that, according to a series of decisions of the ECtHR, involuntary placement is only permitted when the mental disorder has been confirmed in an indisputable way, based on a thorough medical expertise and is justified only when every other measure has been proven insufficient to safeguard public or individual interests.

V. History of psychiatric care in Greece

In Greece, as in other countries, mentally ill persons were always subjected to the double control of psychiatry and law, before they became subjects and bearers of rights. Until the '80s, the public mental health services system was based on the institutionalized care offered by approximately ten psychiatric hospitals. In the early '80s, the mental health system Reform started. It was based on WHO guidelines and EU financial support, which funded Greece under Regulation 815/84, and had as its main purpose the de-institutionalization of chronic patients while developing community based mental health services and outpatient psychiatric services. The most widely known leg of this program is the one reforming the Psychiatric Hospital of the island of Leros.

By 1992, legislation gave precedence to "guardianship" against the provision of ther-

apeutic service. It was Law 2017/1992 which first set the grounds for mental health care in outpatient structures and rendered the patient bearer of rights. In order to protect the patient, this law establishes a set of protection measures on the involuntary placement procedure. In reality, the mental health services described in the law are non-existent. Even Law 2716/1999, which introduced a series of institutional and logistical infrastructure (new housing structures, division of mental care services into sectors, etc.), did not succeed in solving the problems of a mentally ill person against the psychiatric and the penal system.

In the end of 1997 the ten-year Psychiatric Reform Program codenamed 'PSYCHARGO' was initiated with EU funding. 'PSYCHARGO' included the development of a community housing network (Hostels, Boarding houses, Apartments) and other mental health units (Psychiatric Departments in General Hospitals, Day-Care Centres, Mobile Mental Care Units, Mental Health Clinics, etc.), as well as the reduction of the number of psychiatric beds in hospitals, until the complete shutdown of psychiatric hospitals.

Today there are over 450 Psychosocial Rehabilitation Community Units, staffed by 3,600 mental health specialists, of which 1,950 in legal entities of the private non-profit sector. There are approximately 1,500 mentally ill patients treated by the remaining Psychiatric Hospitals and the General Hospitals' Psychiatric Departments. Outpatient structures and 67 non-profit entities of various types provide mental care services to approximately 3,500 people, while patients and residents of private nursing houses are estimated up to 5,000. This population represents about 10% of the people with mental health problems. The rest 90% live in their own.

According to the European Commission Country Report for Greece (March 2008) 'Quality in and Equitable Access to Healthcare Services", the mentally ill people seem to face serious organizational obstacles when trying to access health services, as hospitals insist on recommending psychiatric treatment, even when the mental disorder is under control. Moreover, the survey highlights that the mentally ill often become victims of discrimination when visiting general hospitals.

Furthermore, the OECD survey (November 2010) on Mental Health in countries/members of the Organization (in connection with the economic crisis consequences worldwide) showed a sharp increase in mental health problems in several countries, *Greece being at the 1st rank.*

VI. Connecting mental health to human rights; main challenges.

During periods of crisis, social suffering and pressure for cost savings, the anxiety of a patient intensifies, while the tolerance level of the society is reduced. At times when the rights of a 'healthy' person are under question, special care services and rights of a mental patient are likely to shrink even further.

The main problems, as identified by mental health professionals and by mentally ill people, are the following:

A) Treatment and custody of criminally incapacitated mentally ill persons in a public treatment unit

Greek law provides for two types of mandatory detention of the mentally ill persons: the preventive one (provided by Law 2071/1992 concerning involuntary placement)

applied regardless of the commission of a criminal offence, and the criminal one (regulated by Articles 69 & 70 of the Penal Code), applying to those having committed a crime, and having been judged as incapacitated and potentially harmful. The detention order (Article 69 of Penal Code) provides for the custody of the incapacitated perpetrator (into a public treatment unit) acquitted from penalty or prosecution for the offense committed (due to mental dysfunction or consciousness disorder), who is, however, considered as potentially harmful to the public safety. The decision imposing the detention order declares the perpetrator innocent for the offence committed, and the measure lasts "as long as it is required by the public safety" (Article 70 of Penal Code). The detention order does not aim at punishing the offender, but at preserving the society from his/her hazardous behavior while taking care of him/her. However, according to Article 70, the sole criterion used for the continuation of this measure is the potential harmfulness of the inmate and not his/her mental health state. It may therefore be argued that the detention order in a mental hospital is essentially a disguised penalty, whereas the mentally ill inmate has no access to the 'benefits' of criminal prisoners (suspension of sentence, discharge under condition dismissal, licenses, etc.).

Since 2003, the NCHR had made detailed proposals for the revision of the relevant criminal law:

- ***Custody should be submitted to therapeutic principles; «public safety», a very vague and ambiguous term, should not be the sole criterion for the start and continuation of custody.***
- ***In addition, legislation should explicitly set the existence or the continuation of the particular disorder of mentally ill person rendering him/her dangerous, as the primary condition of start and continuation of custody, as it is provided by Law 2071/1992 (articles 95-99 related to preventive involuntary placement of the mentally ill).***
- ***Given that the implementation of these articles has resulted in long-lasting hospitalization in practice, it is also necessary to establish maximum time limits on the custody and treatment of incapacitated persons, as well as to provide the possibility of extending that limit on a relevant court judgment.***
- ***Furthermore, the court judgment ordering custody (and that of its continuation) should be subjected to appeal judicial review, through available legal remedy.***

Mental health specialists who have the experience of the implementation of this measure in mental hospitals share these views. They note that preventive custody nullifies the treatment of the incapacitated inmate, since there is currently no appropriate treatment which is not accompanied by social activities. At the same time, this system of creates serious problems in the hospital every-day routine.

The labeling (and the corresponding institutional treatment) of the patient as 'incapacitated', is not beneficial to the patient. The attribution of the criminal act committed exclusively and entirely to psychopathology, perpetuates the stereotype of the potential harm of the "insane" person. The stigmatization caused by this prejudice makes the mentally ill person behave 'as he/she is expected to', and as the label given to them by the social context, i.e. as a dangerous but not responsible person, whose actions will not have any penal consequences.

There is currently only one “Division for Incapacitated” in the Thessaloniki Psychiatric Hospital, while the other remaining psychiatric hospitals have had them removed. It has to be noted that psychiatric hospitals are always reluctant to offer guard and care to an incapacitated offender. It should be also noted that the Ministry of Justice has rejected so far the request of the Special Committee on the Protection of Rights of Persons with Mental Disorder to visit the Korydallos Prison Psychiatric Hospital.

The **NCHR recommends**:

- ***that the proper exercise of the institutional role of this Committee be assured.***
- ***the elaboration of a specific framework for the custody/treatment of these persons, which will be based on the parallel provision of appropriate medical care services.***

B) The involuntary placement

Articles 95-100 of Law 2071/1992 regulate involuntary placement. The law provides for a mental health care system which is meant to protect his/her dignity by setting the procedure of involuntary placement under judicial control -incorporating the ECHR principles-. However, the application of this Law proved to be problematic, due to the absence of outpatient services that could be the answer/solution to involuntary placement. Law 2716/1999 introduced alternative health care services (sectorisation of services, community based psychiatric care, primary care etc.), which would act as a filter in order to make involuntary placement the “last resort” for the treatment of the patient. **Nevertheless, the numbers are telling: the percentage of involuntary placement is up to 55-65%, whereas in the rest of the EU countries it does not exceed 7-8%.** General hospitals do not welcome involuntary placement cases, as they are overcrowded with their other patients, and they do not enjoy the presence of police officers. The shutdown of the majority of Psychiatric Hospitals, combined with the lack of primary mental health care services and community based services, put a great deal of pressure on the General Hospitals as regards involuntary placement cases. Thus, General hospitals are forced to function as closed-door systems with security measures in order to prevent patients from running away, something which is not a priori part of their operations’ description. Another big issue is that of the so-called “revolving door”, i.e. the psychotic patients and their families left with no other choice but the involuntary placement in hospital units with folding beds, mechanical restraints and locked doors…, from which they are then discharged due to bed shortages. Needless to say that in these conditions any sense of therapeutic continuity is lost until a new acute phase occurs, which will drive them once again to the hospital.

Moreover, the high percentage of involuntary placement cases indicates that in spite of the law, the perception of the potentially harmful mental patient is still persisting in the minds of the prosecutor, the judge and the psychiatrist. The problems in implementing Law 2071 are identified in the entire spectrum of its provisions, i.e. from the diagnosis (lack of sufficient justification, non-individualized evaluation of the patient), to the transport of patients (in 97% of the cases by police squad cars), to the provision of information to the patient, to the judicial control, to the patient’s presence at the court hearing, and to the duration of the hospitalization.

- ***The NCHR recommends the creation of a Special Prosecutor –based on the model of Minors’ Prosecutor- for involuntary placement cases,*** in order to contribute to the proper implementation of the provisions of Law 2071.
- Furthermore, ***the NCHR suggests the immediate division of mental health services into sectors.*** In spite of being provided by art. 3 of Law 2716/1999, the sector committees have not yet been established, or they have been established but have not functioned, or they have functioned without taking actions.
- ***In order to face acute cases, the NCHR recommends the development of special training programs for the nursing staff on counseling and dealing with crisis.***
- **The NCHR also recommends** that police officers dealing with mentally ill people during involuntary placement be trained for “Crisis Intervention” programmes. ***The NCHR wishes to reiterate its proposal for a revision of the police training on human rights protection.***
- ***Finally, the NCHR recommends the establishment of an independent administrative authority, which will be responsible for examining the legality of involuntary placement cases at first grade, before the recourse to justice.***

C) Dysfunctions of the judicial protection system for incapacitated adults

Judicial protection for incapacitated adults was introduced by Law 2447/1996. Despite the fact that this institution aimed at the protection of the incapacitated person (in this case, the mentally ill person), its implementation encounters serious problems, due to the non-existence or the ill-function of the Social Services and Supervising Councils that are supposed to be part of the system of judicial protection.

According to article 1674 of Civil Code, the report of the Social Service is the basis on which the placement of a person under the system of judicial protection is decided by the Court. Mental Health Units patients (either hospitalized or in residence regime) often face insurmountable problems in dealing with some issues of their personal property due to the lack of a supportive family or social surrounding (or due to the indifference of the above). In some cases, the designation of a family member as the caretaker of the patient’s belongings is not suitable. The judicial protection institutional model provides (in article 64a of Law 2447/1996, see article1671 of Civil Code) that for *“cases in which there is no appropriate person to be designated as ‘judicial protector’, judicial protection should be confided to a suitable association or foundation, especially founded on this purpose and possessing eligible personnel and infrastructure; otherwise (judicial protection should be confided to) the social service”.* However, Mental Health Units do not have the suitable personnel nor do they have the necessary infrastructure in order to undertake this responsibility. In result, there are often serious delays in administrating the mental patients’ property affairs.

Therefore, the judicial protection framework is yet another set of provisions be-

ing annulled in practice (as is the case with Law 2071 on involuntary placement as well). The individuals to play the role of judicial 'guardian' are selected without the appropriate procedure and the social services are clearly dysfunctional.

The removal of a person's submission under judicial protection is also dysfunctional (article 1685 of Civil Code). Mentally ill people lose their legal capacity permanently in most of the cases, as the removal of this measure rarely occurs. Furthermore, there should be special legal provisions for those mentally ill persons whose mental illnesses 'fluctuate', and thus not justifying a permanent removal of their legal capacity.

- ***The NCHR recommends the introduction of a flexible system that would be put into force through rapid procedures for the acute phases and would be inactive during the rest of the time.***
- ***All services provided by the present legal framework should operate properly so as to allow the implementation of the judicial protection measures for the mentally ill persons.***

D) Right of access to medical and administrative records of a mentally ill person

The Greek Ombudsman has received complaints by inmates of psychiatric units as regards their access to their own medical files, because hospital services refuse this access to them invoking medical confidentiality reasons.

However, paragraph 4 of article 47 of Law 2071/1992 provides for the full right of the patient to be informed about his/her mental health situation. Moreover, the Administrative Procedure Code provides for the right of every person concerned to take knowledge of administrative documents related to them, after submitting a written request. Furthermore, the right of access to personal data is stipulated in Article 12 of Law 2472/1997 (for the protection of the individual from personal data processing), while the Medical Ethics Code states that the psychiatrist has the obligation to provide full information to his patient. The access of a third person to the patient's medical file is only permitted to judicial and prosecuting authorities.

- ***All competent services should recognize and enforce legal provisions on the rights of the mentally ill person to access his/her own medical records Medical confidentiality is by definition meant vis-à-vis third persons, with an aim to protect the patient.***

E) Conditions of hospitalisation

The means and measures used for the treatment of the mentally ill persons are yet another area where the patient's rights are not respected. The abuse of the mechanical restraint and isolation, and the excessive use of sedative drugs are common to several mental sections of hospitals. It is reported, however, that due to non-compliance with the treatment protocols and to staff deficiencies, quasi all mental patients with simple symptoms of disorientation or hyperactivity are also submitted to these methods.

- ***The NCHR recommends that the Special Committee on the Rights of Persons with Mental Disorders carries out regular as well as unannounced visits.***
- ***The NCHR wishes to reiterate its proposal for the ratification of OPCAT, which would contribute to the avoidance of violations through a preventive system of visits carried out by a specialised body.***

VII. Conclusions

NCHR's findings and conclusions can be summarized as follows:

1. The process of the Psychiatric Reform initiated 20 years ago is incomplete. The important challenges should be acknowledged and it is certain that major improvements in the mental health field have indeed taken place. However, there are many mechanisms and instruments that are still to beestablished.

2. While the legal framework is generally adequate, there are many provisions that are not implemented, either due to omissions of the administrative authorities, or due to omissions of the judicial authorities.

3. The model of provision of mental health services remains medical-centered (and hospital-centered); there are not adequate prevention or primary care services. This results in that fact that most of the mental health care system function only as a response to acute situations. Hospital care becomes the sole solution in practice.

4. The 'sectorisation' of mental health care services has not yet been carried out, while the network of outpatient services remain poor. As long as a community based service network is not in place, the mentally ill person will continue to be forced to rely on hospital care.

In order to deal with these problems:

- A revision of the PSYCHARGO program based on an independent evaluation of its progress is required.
- Implementation of division of health services (including mental health ones) into sectors is a total priority, in conjunction with the creation of a network of community based preventive and primary care services, as well as a network of mental health care services for children.
- Any confusion between "hospitalization" and "residence" of mental patients in both Public and Private legal entities should be clarified.
- The control of the quality and respect of patients' rights within private clinics should be part of the mandate of the Ministry of Health.
- It is essential to empower patients' groups. Experiences are personal but demands are collective. Furthermore, patients should have full information on their rights during (voluntary or involuntary) placement.
- It is also crucial to support the groups of patients' families.
- Training is essential not only for Prosecutors, but also for doctors dealing with cases of involuntary placement.
- Measures to combat stigmatization are a necessary component of state and local authority policies.
- It is also important to reinforce the operation of Social Entrepreneurship Groups of mental patients, which have proven to be helpful for the rehabilitation of the latter.
- An independent special institution for the control of the operation of mental health units should be established. The existing Special Committee on the Protection of Rights of People with Mental Disorders should perform regular and unannounced visits.
- Ratifications of CRPD and OPCAT are essential for obtaining institutional guarantees for the rights of mentally ill people.

More specifically, as regards incapacitated

***persons, the NCHR recommends**:*

- The amendment of Article 69 of Penal Code, in conjunction with Article 310 of Penal Procedure Code, so that in case of incapacitated persons committing misdemeanors or felonies, the judicial council will not exempt them from prosecution while ordering their placement, as is the case today, but will refer such persons to the competent court "with discharge reservation". Only this court should be mandated to order custody, after exempting incapacitated persons from the relevant penalty based on audience proceedings.

- The amendment of Articles 69 and 70 of Penal Code which set the "public safety", a vague and ambiguous term, as the only criterion for custody entrance and continuation. Legislation must subject custody to therapeutic principles and set explicitly (as done by Articles 95-99 of Law 2071/1992, regarding preventive involuntary placement) the existence of a particular disorder of incapacitated persons as the key condition of custody entrance and continuance. This particular disorder should be of a kind and/or extent of rendering them dangerous to society, in accordance with the basic principles set by relevant bodies and UN agencies, the fundamental provisions of the Constitution and the ECHR.

- Since the application of Articles 69 and 70 of Penal Code can lead in practice to long-term incarceration (even for the rest of the patient's life), the law should provide for custody and treatment maximum time limits, as well as the possibility to extend that limit, if that is necessary for their treatment, based on a court order.

- The court decision ordering custody (or continuance of custody) of incapacitated persons into treatment units should be subjected by law to appeal judicial review, available legal remedy to people under custody or treatment and their legal representatives, in accordance with the principles of CoE and the World Health Organization. In any case, and according to ECHR jurisprudence, the burden of proof on the need for custody continuation or incarceration shall be borne by the authorities and not the appellant. Moreover, the appeal judicial review must take place within an extremely short time, as is required by Article 5 par.4 ECHR.

- The incapacitated person should have explicitly the right to personal appearance at all stages of the process, not only in order to ensure individual and social rights provided under -inter alia- Articles 2§1, 5§1, 3 and 5, 21§3 and 25 § 1 of the Greek Constitution, but also to enable authorities investigating the matter to obtain a personal opinion of his/her mental and emotional situation. For these reasons, law should also provide for the obligation of the court to examine the incapacitated person in the place of his/her detention, if transfer in court has been, for any reason, proven impossible.

- Finally, a legal obligation of the court to ask on its own motion for the medical advice of two psychiatrists before ordering the continuance of his/her custody, is highly important (by analogy of Article 96 § 2 of Law 2071/1992). These psychiatric reports should constitute evidence justifying the custody court order.

- As regards this issue, the NCHR recommends the elaboration of a special hospitalization framework, which will form part of alternative correctional treatment, ensuring high quality treatment services.

Regarding involuntary placement:

- The NCHR recommends the establishment of a Special Prosecutor for involuntary placement cases -following the model of Minors Prosecutor-, so as to respect provisions of Law 2071 for the protection of the mentally ill person.

- In addition, the NCHR recommends the immediate implementation of division of mental health services into sectors.

- In order to deal with acute cases, staff –especially nursing staff- should undergo special training programs on counseling and crisis intervention.

- Police officers invited to deal with mentally ill people in acute phase within the framework of involuntary placement procedure, should be trained on "Crisis Intervention" programmes. The NCHR reiterates its proposal for a revision of the police training curriculum on human rights.

- Finally, the NCHR recommends the creation of an independent administrative body, which will be competent to examine at first grade the legality of involuntary placement, before recourse to justice.

Regarding judicial protection:

- The NCHR recommends the introduction of a flexible system that would be put into force through rapid procedures for the acute phases and would be inactive during the rest of the time.

- All services provided by the present legal framework should operate properly so as to allow the implementation of the judicial protection measures for the mentally ill persons.

Regarding the right to access medical and administrative files of the mentally ill person:

- All competent services should recognize and enforce legal provisions on the rights of the mentally ill person to access his/her own medical records Medical confidentiality is by definition meant vis-à-vis third persons, with an aim to protect the patient.

4. The Execution of the European Court of Human Rights Judgments by Greece

I. Introduction

The execution of the European Court of Human Rights judgments (hereafter ECtHR) is extremely important both in the context of the national legal order and the Council of Europe system. The execution of judgments –via individual measures, but mostly via general measures, when necessary- entails: a) the compliance of the Greek legal order with the requirements of the European Convention for Human Rights (hereafter ECHR), b) the prevention of new violations, and c) the more effective function of the ECtHR through the reduction of cases that it needs to adjudicate upon.

The NCHR has always attributed particular significance to the execution of judgments. Aiming at assisting the Administration in the execution of judgments through the taking of general measures has communicated recommendations and proposals:

a) focusing exclusively on the issue of the execution of judgments (see for example its "Recommendations regarding Freedom of Religion with Special Emphasis on Compliance of Greece with ECtHR's Judgments);

b) drafting reports on problematic issues, which have been raised also by ECtHR's judgments (See for example, NCHR's Report on Detention Conditions in Police Stations and Detention Facilities for Aliens or on the Compliance of the Administration with Domestic Judicial Decisions); and,

c) submitting comments on Bills taking measures which may be integrated in the context of execution of judgments, such as the Bill by the Ministry of Citizen Protection for the Establishment of a Bureau for Addressing Incidents of Arbitrariness, or the Bill by the Ministry of Justice on the Acceleration of proceedings in administrative courts.

II. The new procedure on the supervision of the execution of judgments

In May 2010, the Committee of Ministers, at its 120th Session, instructed the Deputies "to step up their efforts to make execution supervision more effective and transparent".

During the discussion, the Deputies emphasized the importance of adapting supervision to present-day realities, taking into account the principle of subsidiarity, the impact of the entry into force of Protocol No. 14, and the ever-increasing number of complex cases (in particular pilot judgments and other judgments raising significant systemic or structural problems that may give rise to numerous clone or repetitive cases). A broad consensus emerged on the need to reconsider the supervision process by placing greater emphasis on the fundamental principle that execution is primarily the responsibility of States.

The next few months the Deputies processed the proposals presented to them by the Secretariat of the Department for the Execution of Judgments for the reform of the supervision system, which were approved on 02.12.2010 and it was decided that the new system will enter into force on 01.01.2011.

The new system is based on the principle of continuous supervision and will operate on a twin-track approach: standard or enhanced procedure. Under the new system, all cases will be examined under the standard procedure unless, because of its specific nature, a case warrants consideration under the enhanced procedure. The types of cases that should be followed under the enhanced procedure are the following: a) judgments requiring urgent individual measures, b) pilot judgments, c) judgments raising structural and/or complex problems as identified by the Court or by the Committee of Ministers, and d) interstate cases. In addition, any case may be examined under the enhanced procedure upon the request of a member State or the Secretariat.

When a case is examined under the standard procedure, member States are expected to present an action plan or an action report as soon as possible and in any event not later than six months after a judgment becomes final. An action plan presents the measures the State intends to take to implement a judgment. An action report presents the measures taken by the respondent State to implement a judgment and explaining why no measures or no further measures are necessary. The Secretariat will follow the progress in the implementation of the measures. If the State and the Secretariat agree on the measures adopted/implemented, the Secretariat will propose that the Committee adopts a final resolution closing the examination of the case. If there is a disagreement on the contents or the implementation of the action plan or the action report, or when the State does not present an action plan or report, the case may be transferred to the enhanced procedure upon Decision of the Committee of Ministers.

The supervision of a case under the enhanced procedure entails a more intensive and pro-active cooperation of the Secretarial with the member State by means of: assistance in the preparation and/or implementation of action plans; expertise assistance as regards the type of measures envisaged; bilateral/multilateral cooperation programmes (e.g. seminars, round-tables) in case of complex and substantive issues. It needs to be noted, that such co-operation activities which aim at the facilitation of the execution process fall under the exclusive competence of the member State with the support of the Secretariat.

Thus, the enhanced procedure should not be perceived as a kind of sanction but rather as an opportunity for a closer cooperation and consultation with the Secretariat for addressing more effectively structural problems and within boarder time limits compared to those of the standard procedure.

A case under the enhanced procedure may be transferred to the standard procedure by a decision of the Committee of Ministers, in particular when the Committee is satisfied with the action plan presented and/or its implementation; when obstacles to the execution no longer exist; when required individual measures have been taken.

It is noted that judgments which became final prior to 01.01.2011 will be categorized by September 2011 after consultation between the Secretariat and Greece.

III. The Greek cases which have not been executed

Today the execution of 383 judgments versus Greece is pending. 7 cases have already been placed under the enhanced procedure, 5 under the standard procedure, whereas for the rest their categorization is pending. It needs to be noted that the non-execution does not concern individual measures (e.g. payment of compensation), but general measures which are required.

The main issues the judgments, whose

execution is pending, raise are the following: unreasonable duration of trials and/or lack of effective remedy (272 judgments), no access to court (19), non-execution of domestic judgments (16), violation of property rights (14), police brutality (10), detention conditions (10), problems in expropriation procedures (10).

It needs to be noted that Greece ranks 7th (out of 47 Council of Europe member States) concerning the non execution of ECtHR judgments.

The significant number of judgments which have not been executed yet and the structural problems that raise many of them, mostly the unreasonable time of trials, which must be top priority for the Administration, demonstrates the need for general measures in order to prevent future violations and new 'convictions'.

IV. Recommendations

On the basis of the aforementioned the NCHR recommends:

1) The full cooperation of the Administration with the Secretariat of the Department for the Execution of Judgments;

2) The establishment of a new coordination organ for the execution of judgments with the mandate of policy-making and planning the measures that need to be taken;

3) The establishment in each Ministry involved in the execution of judgments of focal points (one person as focal point at each Ministry) who will be in charge of the execution of judgments questions for better coordination.

4) The full cooperation of the involved Ministries, in particular through their focal points, with the coordination organ for the drafting of action plans or reports and throughout the execution process until the closure of a case.

5) The submission as soon as possible, and in any event within 6 months, of action plans or reports for the cases placed under the standard procedure.

6) The full use of cooperation and consultation possibilities with the Secretariat of the Department for the Execution of Judgments in the context of enhanced procedure.

Lastly, the NCHR would like to note its availability and willingness to assist the Administration in the planning of general measures required.

5. Findings of the *in situ* visit undertaken by the National Commission of Human Rights and the Greek Ombudsman in detention facilities for aliens in the Evros Region*

I. Introduction

From 18 to 20 March 2011 the National Commission of Human Rights (hereinafter NCHR) and the Greek Ombudsman (hereinafter the Ombudsman) visited the Prefectures of Evros and Rodopi in order to investigate the conditions in the detention facilities for aliens, the implementation of the relevant legislation for asylum and the management of migration and refugee flows at entry points.

The joint team was headed by Mr. K. Papaioannou, President of the NCHR and Mr. B. Karidis, Deputy Ombudsman for Human Rights. The members of the team visited the following detention places: Fylakion Detention Center for migrants, Neo Himonio Border Guard Station, Metaxades Border Guard Station, Soufli Border Guard Station, Tychero Border Guard Station, Ferres Border Guard Station, Venna Detention Centre for aliens. On top of those visits the team met with the Police Chief of Orestiada, G. Salamagka, and the Deputy Police Officer of Alexandroupoli, N. Menexidi.

In addition, a meeting was held on 19.03.2011 with representatives of local bodies, police officials and organizations that are active in the region. The meeting was attended by the Governor of the Hospital of Alexandroupolis Mr. Raptopoulos, the rector of the Democritus University of Thrace Mr. Remelis, the President of the Municipal Council, Mr. Anglias, the Deputy Police Officer of Alexandroupoli K. Menexidis, the President of the Association of Police Officers of Rodopi Mr. Tzatzanas, the President of the Association of Police Officers Evros Mr. Hatzianagnostou, Mr. Spyratos and and Ms Kourafa from the Doctors without Borders, and finally, Ms. Velivasaki from the Greek Council for Refugees. The participants discussed, inter alia, the possibility of setting up a cooperation network with relevant agencies.

The present report comprises the identification of problems as well as a number of proposals to address them, and general observations on the current situation regarding the management of migration and refugee flows at entry points.

II. International Legal Framework and supranational controls

It should be noted that the processing and detention conditions as well as the procedure for international protection are regulated by both the national legal framework and the international law, as well as EU law binding for Greece (see indicatively ECHR, ICCPR, CAT, European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, TEU and Charter of Fundamental Rights of the European Union). Greece's noncompliance and/or the poor implementation of the existing legal framework have been heavily criticized both by organizations for the protection of human rights, and by jurisdictional organs of international organizations.

It should be noted that criticism for poor detention conditions has increased in recent years, as presented in the CPT reports, and those of the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Fundamental

* The following text was adopted unanimously at the plenary session of the NCHR on June 30th, 2011.

Rights Agency of the European Union (FRA).

On March 15th 2011 the CPT issued a Public Statement on Greece under Article 10, paragraph 2 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The issuance of a public statement is the ultimate means the CPT may use to criticize a particular country, and it has been used so far only five times (1992 and 1996 regarding Turkey, 2001, 2003 and 2007 regarding Russia on the situation in Chechnya). The CPT stressed that "*the continuous lack of action to improve the situation in accordance with the Commission's recommendations on detention of illegal immigrants [...] does not give the committee any choice but to resort to extraordinary measure of issuing this public statement."*

The Minister of Justice, Transparency and Human Rights responded with a letter of complaint addressed to the President of CPT. He stressed that the issuance of public statements is related to cases where the nucleus of human rights (torture, physical and psychological abuse, forced disappearances, kidnappings, etc.) is flagrantly offended. There has been no such serious complaints about Greece. The letter also underlines Greece's responsibility in controlling illegal immigration and the subsequent burden on the Greek prison system, while describing in detail the recent initiatives and measures adopted in correctional facilities.

Despite the fact that we understand the spirit of a part of the objections raised by the Minister of Justice, the public statement and its consequences are an issue the country has still to address.

Furthermore, recent decisions of the European Court of Human Rights (ECtHR) show that not only the conditions of detention *per se* but also the legality of detention was at the root of the country's conviction for violation of articles 3 and 5 ECHR. We indicatively note the judgments *S.D.*, *A.A.*, *Tabesh*, *M.S.S.*, *Rahimi* and *R.U. v. Greece*. We also note that there are more pending cases before the ECtHR.

Finally, regarding the asylum procedure and its implementation, particularly at entry points, we refer to the recent ECtHR decision *M.S.S v. Belgium and Greece*, in which, on top of the shortcomings in terms of detention conditions, Greece is considered as an unsafe country to return asylum seekers under the "Dublin II" Agreement, due to non-compliance with the safeguards for efficient examination of asylum claims and the insurance of appropriate reception conditions.

III. General Findings

The purpose of the autopsy, as already mentioned, was to identify the problems concerning the management of migration and refugee flows at entry points, the conditions in detention facilities, and the identification and registration process of vulnerable groups.

The overall finding is that the situation in the Evros region has recently reached the level of a genuine humanitarian crisis due to the considerable increase in the number of incoming aliens (300 persons per day in average during the recent months). An additional finding is that the most important issues of violation of fundamental rights are mainly due to deficiencies in infrastructure, inadequate staffing of the relevant authorities, and the adoption of inefficient practices that have contributed to the deterioration of the problems. The main problems identified in detention facilities/centers may be summarized as follows:

A) Asylum Procedure

Significant deficiencies are observed at the Greek frontier in terms of indentifying and registering incoming populations on the basis of their status as beneficiaries of international protection, vulnerable groups etc. It should also be noted that in spite of the installation of a FRONTEX team in the area, which assists the Police in the registration of incoming aliens and in conducting interviews, it seems that so far it is the Police that deals with the arrivals *en masse* without differentiating between groups with special characteristics. Therefore, serious issues are arising, both regarding the treatment of these people in accordance with the country's international and national obligations and, secondly, in ensuring full knowledge, on the part of the State, of the population present in the country.

It should also be noted that the visiting team received complaints about incorrect attribution of citizenship to aliens with no travel documents or other valid identification by FRONTEX. Furthermore, when FRONTEX registers minors, they do not indicate whether they are unaccompanied or not, information which is required in order to initiate the process of appointing a commissioner. Although the responsibility for the registration of foreigners lies with the Police, in practice the Police accept FRONTEX's registration without its own verification of the data, a practice which proves problematic.

Regarding access to the asylum procedure, there is still a serious problem in terms of proper information of the arrested aliens on their rights and the possibility of seeking asylum, due to the lack of adequate number of interpreters.

It is worth noting that despite the entry into force of P.C 114/2010, which has introduced significant improvements in the asylum process, there are still few requests for international protection registered at entry points. According to figures issued by the competent Police Headquarters of Orestiada since the implementation of this P.C (note: from 11.22.2010 to 30.03.2011), only 46 requests had been registered.

Apart from the problems in identifying beneficiaries and access to asylum procedures, problems are also encountered in the overall procedures. Specifically, inadequate staffing of departments responsible for examining asylum requests, problems on the legal or other assistance to vulnerable groups, including people who have suffered psychological or physical injuries and the delay in processing requests and issuing the relevant decision at first instance are the most important issues that were identified during the autopsy. According to data from the PD of Orestiada, reported above, on the applications submitted since the implementation of PD 114/2010, 15 decisions have already been issued at first instance, all negative; only 4 appeals have been received.

It should also be noted that at the time of the visit, problems of access to detention facilities and communication with detainees were reported by groups providing legal assistance to migrants and/or asylum seekers.

B) Administrative deportation and detention

According to information from the Police at the time of our visit, administrative deportation and detention for migrants entering the country illegally is still the common practice. It is worth noting that in previous autopsies

conducted at the entry points of the country (see. on 13.6.2007, 18.7.2007 and 12.6.2007 autopsy reports for Samos and Lesvos islands and the Evros River,) the Greek Ombudsman had highlighted the problems arising from the indiscriminate imposition of administrative deportation on all arrested migrants. The administrative detention of those arrested in most cases lasts for up to the maximum time (i.e. six months); the detained aliens are then released with a document requesting their 'voluntary' departure from the country within a specified period (usually 30 days).

It should also be noted the common phenomenon of detention of minors for long periods (e.g. at Fylakion, minors were detained already for 5 months), due to lack of appropriate facilities for minors. It should also be mentioned that the same centres are used to detain criminals (aliens with suspended execution of sentence and pending judicial deportation), as there is no room in the correctional facilities of the region. These aliens remain in the aliens' detention centers or in the departments of the border guard until their transfer to a prison is endorsed.

The adequacy of detention facilities appears to be a decisive factor for the duration of the detention at entry points. Specifically, it results that because of the limited capacity of the detention facilities, the detention time varies depending on the pressure and size of the flow of alien newcomers in the region. The practice seems to be that in case there is no adequate space in the detention places, those aliens whom it is impossible to deport, are usually released after a relatively short time, with a memo requesting them to leave the country within a specified period.

The issue of ***detention of asylum seekers*** is a separate one. It is observed that, despite the launch of PD 114/2010, by which the detention of asylum seekers ***is permitted only in exceptional circumstances and under the condition that alternative measures cannot be taken for specific reasons***, and despite the judgments of the ECHR on the illegality of the detention of asylum seekers in Greece, Police continue to issue decisions of administrative deportation, before the request for asylum is made; besides, the detention of aliens seeking asylum continues after submission and during examination of the requests, for up to six months.

This practice seems to be used as a deterrent for asylum requests from the potential beneficiaries of international protection at entry points.

C) Conditions in detention facilities/ centers

Regarding the detention conditions, the overall finding was that the detention facilities have inadequate infrastructure and are unfit even for short-term detention. Therefore, the overcrowding in places of detention (according to information from the Police Directors during summer period, in some detention places, the number of prisoners amounted to three times the capacity of the place) in conjunction with the particularly long-term detention (in many cases six months long), obviously constitute unfavorable conditions of detention for these people.

In many detention places (such as Tychero, Soufli) prisoners have to sleep on the floor. In addition there are no separate facilities for men, women and children (e.g., Feres). It was also observed that most places do not meet the minimum requirements, such as appropriate lighting and ventilation, minimum

standards of hygiene and cleanliness, etc. The lack of appropriate in number sanitary facilities results in situations degrading of the human dignity of the detainees. In all detention facilities basic items related to the maintenance and personal hygiene were missing or inadequate (e.g. toiletries, blankets, food, cleaniong etc.). The problems have increased since the new legislation for the administrative division of Greece (through Law 3852/2010) was introduced, causing further confusion as to the division of tasks and responsibilities between Regions, Divisions etc.

Detainees had no adequate access to open air activities. In the quasi totality of the facilities visited, access to open air is restricted, with obvious consequences on the psysical and psychological well-being of the detainees, as well as on their relations with the guards. The authorities invoked security reasons for this situation; furthermore, the disciplinary action and criminal liability of police officers in case of escape of administrative detainees, is an additional reason why detainees' movements are restricted to the inner space.

Regarding the provision of medical care, in some centers, such as Tychero and Fylakion, there is makeshift clinics operating; we were informed that in all centers there is some form of medical care as well as psychological support. However, the services offered are inadequate when considering the large number of prisoners whom they are supposed to cater.

An equally important issue that should be highlighted is the understaffing of the detention centers. The police are obliged to respond to various obligations which lie far beyond their formal set of duties. They are responsible both for carrying out administrative procedures and for the management of daily and social needs of prisoners. The great pressure on police officers because of long shifts under bad conditions and limited ability to communicate with the prisoners due to the lack of interpreters, may lead to incidents of police violence against prisoners. The CPT has repeatedly received such complaints during its visits to detention centers for aliens. Special training and care should be provided to the police serving in detention centers.

IV. Meetings with competent bodies

Following the invitation of the Greek Ombudsman a meeting was held, at the Ministry of Citizen Protection, on May 25, 2011, in order to discuss the serious issues related to detention conditions of illegal migrants in these centres and the overall management of migration and refugee flows at entry points.

The common assessment was that the situation is crucial and, beyond any legislative initiatives, urgent action is required. The issue of the reactions of local communities against the creation and operation of Reception Centres in their area (e.g. Etoloakarnania) was raised. The Director of the Aliens' Division at the Ministry of Citizen Protection, Mr E. Katriadakis announced some measures (either already taken or to be taken) regarding the operation of detention centres and Centres of Border Guard in the Evros region, following the recommendations made by NCHR and the Greek Ombudsman. These actions include:

- Measures for the separation of men, women and children. In the Center of Feres only women with children are detained while unaccompanied minors are transferred to Amygdaleza.
- Funding for the cleaning of detention centers through the European External Bor-

ders Fund.

- Establishment of infirmaries.
- Solutions to address the lack of access to open air by detained aliens. For example, in Soufli a special area behind the building is created, which meets the need for preventing the escape of detainees. The existing institutional framework, under which police officers are liable to disciplinary action and criminal liability for the escape of detained aliens, should be revisited.
- Actions for the immediate replacement of mattresses and blankets.
- Permission to NGO representatives to enter detention places and inform aliens for their rights (see action of NGOs in projects financed by the EU).
- Distribution of UNHCR's brochures while phone numbers of UNHCR, the Ombudsman and NGOs are available in detention places.
- Recruitment of psychologists, sociologists, and interpreters from the Ministry of Citizen Protection and their dispatch at entry points for providing psychosocial support services.

Finally, it was reported that redeployment of police staff from other areas is planned, so as to address the mental and physical fatigue of the police serving in aliens' detention facilities.

The assessment of the Director was that these measures can be implemented within two months, i.e. by the end of July 2011. At a later stage we were informed on the recently introduced legislative framework for establishing Asylum Service of First Reception.

Regarding the asylum procedure: in the Athens Aliens' Divisions (Petrou Ralli), the interviews are conducted under the PD 114/2010 by ten case-workers in the first instance; two Committees for the examination of appeals (second instance) after the entry into of the new Decree are set up, and three Committees are also set up for pending applications. Moreover, effort is made to divide pending asylum applications into active and inactive, so that the whole procedure is alleviated. It was also mentioned that additional support is provided by the new European Asylum Support Office (EASO), which sent four experts to the Athens Aliens' Division (P. Ralli), in order to assist the asylum procedure and provide staff training.

In another meeting held on 06.06.2011, an update was given on the funding of actions by the Ministry of Citizen Protection and the Ministry of Health with European funds, in the context of the emergency measures, including legal aid programs and monitoring in the prefectures of Evros and Rodopi; the UN High Commissioner for Refugees was also involved, and five units with medical and nursing staff as well as two mobile units of KEELPNO were dispatched at entry points in order to provide medical care.

V. Recommendations for emergency measures

Despite the fact that these actions and commitments at entry points are an important step to address the existing problems, it seems that they were not enough to bring about significant changes. The huge number of incoming aliens is hardly manageable for a country like Greece.

While the overall recommendation is that the management of these problems should be negotiated at the EU level so that the burden is shared, at present there is a dire need for immediate action to be taken.

Regarding the management of mixed

flows at entry points, there is delay in both planning and implementation of action, particularly at the central government level. The issues to be addressed are not, cannot and should not be perceived as those of local authorities alone. At the same time, the situation is alarming in large cities and particularly in the center of Athens, and at exit points, including the ports of Patras and Igoumenitsa. In the current economic conjuncture and social context, the need for appropriate solutions made at the central government level is critically urgent.

VI. Proposals

- The commitments announced by the competent authorities in the 25.5.2011 meeting with the Ombudsman (see Section IV hereof) should be immediately implemented.
- There is an urgent need to plan actions that effectively address the situation at entry points by the central government in cooperation with local bodies and civil society. Monitoring the implementation of these actions is equally necessary.
- EU funding for emergency measures and procedures to address current needs (such as improvement of living conditions, provision of adequate services, identification of beneficiaries for international protection and vulnerable groups, etc.) should be identified.
- Adequate reception and detention facilities are needed for persons who require special care (e.g. asylum seekers, unaccompanied minors, victims of trafficking, etc.)
- Immediate implementation of procedures of registration and identification of beneficiaries of international protection is required.
- Ensuring access to asylum procedures and improvement of same (e.g. a legislative framework for hiring interpreters, qualified staff, etc.)
- Implementation of the proposed alternative measures for asylum seekers, unaccompanied minors and other vulnerable groups; it is obvious that detention alone has failed to serve as a deterrent to illegal immigration, and it has caused a series of convictions of Greece by the ECHR.
- Building networks of cooperation between the competent institutions of central government and local government and representatives of civil society for consultation and conflict resolution.
- Recruitment of appropriately trained and sufficient Police staff, provision of health services and legal assistance in cooperation with local bodies and organizations which are active in this field.
- Full and effective operation of the voluntary repatriation procedures, which will ensure the safe return to countries of origin for those who declare the intention to return.
- Need to redesign the overall administration of mixed flows at entry points.

In conclusion, the NCHR and the Greek Ombudsman underline that it is no longer possible to continue the old practices. The recent legislative initiatives and especially the Law 3907/2011, are reflecting the considerable efforts of Greece to streamline the administration system of mixed flows. This takes measures related to appropriate staffing and infrastructure, as well as systematic monitoring by the central government.

The NCHR and the Greek Ombudsman shall be at the disposal of the competent authorities and declare their availability for further cooperation so as to seek appropriate solutions.

6. Comments on the Draft Initial Report of Greece concerning the Implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

I. Introduction

The National Commission for Human Rights has repeatedly dealt with issues falling under the scope of the UN Convention on the Rights of the Child addressing recommendations to the competent Ministries. It has also commented on the Draft 3rd Periodic Report on the implementation of the UN Convention on the Rights of the Child and the Draft Initial Report on the Optional Protocol to the Convention on the involvement of children in armed conflict.

The Ministry of Foreign Affairs sent to the NCHR the Draft Report requesting its comments in accordance with article 1, par. 6 (e) of its founding Law 2667/1998. The NCHR submits the following comments which may contribute to the improvement of the Report.

II. General Comments

The Draft Report under consideration is the first Report that Greece submits before the UN Committee on the Rights of the Child (hereafter the Committee) regarding the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (hereafter the Protocol). According to article 12 par 1 of the Protocol the initial Report must be submitted within two years following the entry into force of the Protocol for a State Party.

The Protocol entered into force for Greece on 22.03.2008. Therefore, the initial report should have been submitted by 22.03.2010. There is a delay of more than one year. However, this delay does not absolve the State Party from the obligation to cover also the time period until the submission of the Report, which is not the case.

The Draft Report is quite analytical and there has been a considerable effort to be drafted in accordance with the Revised Guidelines regarding Initial Reports of the Committee. However, it does not comply with all General Guidelines. For example it does not contain a full description of the process of preparation of the Report, and in particular it does not refer to any contributions made by NGOs and competent (independent or not) authorities, such as the Ombudsman for the Child or the Labour Inspection Body. Furthermore, there is no evaluation of the contribution of the measures taken to the implementation of the Protocol, as required by the Guidelines.

The NCHR considers necessary to repeat that the analysis of the existing legislation and infrastructure for the protection of each rights does not suffice. It needs to be combined with a clear description of the problems in the field in order for reality to be depicted accurately and to render easier the seeking for solutions regarding omissions of the regulatory framework and its implementation.

Moreover, the NCHR needs to observe that the data provided do not respond fully to the information required by the Committee both in substance (e.g. ascertained number of children who work forcefully, data disaggregated by age, sex, nationality) and in time. According to par. 2 the Draft Report covers the time period until December 2010. However, some of the information covers only 2009 (e.g. minor trafficking victims (par. 5), employment permits

for minors (par. 18), fines by the Labour Inspection Body for illegal employment of minors (par. 24)). Data should be updated –up until the time of submission- and enriched. Where there are no data, this should be made clear and the reasons for the absence of such data (e.g. no relevant complaints or inexistence of complaints mechanism) should also be provided. It is noted that the Committee in its 2002 Concluding Observations recommended that Greece strengthens its efforts to develop data collection systems and indicators consistent with the Convention and covering all children up to the ages of 18 years, with an emphasis on those who are particularly vulnerable.

III. Special comments

Par. 4-5: The titles "General Guidelines" and "Data" are not compatible with the content that follows or with the Guidelines. In particular, the Chapter tilted "Data" refers to the legislation on minors' employment and the relevant inspection mechanisms. On the contrary, the Chapter of the Guidelines titled "Data" refers to the kind of data that each State Party should include in its Report i.e. regarding all activities prohibited by the Protocol and not solely forced labour. Thus, the data provided should either a) be presented all in one chapter, or b) distributed in the different chapters of the Report according to the specific thematic presented each time. That way the structure of the Report will respond better to the Guidelines, and will enable the reader to have a clearer picture of the situation at hand.

Par. 10-19: The analysis of the legislation on minors' employment should be moved to another chapter. It also needs to be noted that some provisions of Law 1837/1989 transposing Directive 94/33/EC on the protection of young people at work do not fully comply with the Directive. For example while the Directive (article 10) requires a minimum rest period of 14 consecutive hours, the Law provides for only 12 hours (par. 13 of the Draft Report).

Law 3863/2010 "New social security system and relevant provisions, regulation of labour relations" (OG A 115), which modifies the framework of minors' employment needs also to be mentioned. In particular, according to article 74 par. 9 of the Law, minors employees 15-18 years of age are exempted from the minimum protection of the National General Collective Labour Agreement regarding minimum wage and employment terms. On the basis of the said provision minors 15-18 years of age may be employed on contract of apprenticeship with 70% of minimum wage, with low social security and with full exemption from the biggest part of labour law which protected them until recently. This provision will have an impact on the correct implementation of the ILO Convention concerning Minimum Age for Admission to Employment (no. 138). The NCHR notes that the above issue is included in the communication of the Greek General Confederation of Labour (GSEE) addressed to the Committee of Experts of the ILO with regard to the legislative measures implemented or to be implemented by the end of 2010 by the Greek Government in the framework of the mechanism to support the Greek economy.

Besides, the NCHR has already stressed that the presence of numerous unaccompanied minors during the past few years in Greece, who are extremely vulnerable to exploitation, requires the establishment of an institution which will be in charge of child care and will ensure that law is strictly applied for those minors above 15 years of age who wish and are able to work.

Par. 20-25: It's worth to be underlined that the drafters of the Report sincerely note that the ascertained breaches of the law regarding minors' employment do not reflect fully the size of the problem. It would be useful at this point if the Report referred to the insufficient staffing and lack of infrastructure of the Labour Inspection Body, which as the NCHR has on several occasions noted hinder its effective supervision of the compliance with labour law.

Par. 35-37: In order for the answer to the question on the bodies with the primary responsibility for the implementation of the Protocol to be more complete, the Anti-Trafficking Units of the Greek Police should be mentioned, as well as their activities and the results of their operations.

Par. 56: Apart from NGOs' activities on combating human trafficking sponsored by the Ministry of Foreign Affairs, the general contribution of NGOs in combating children trafficking, child prostitution and child pornography should be mentioned, in accordance with par. 13 (h) of the Guidelines.

It is quite surprising that the Draft Report does not mention at all the Ombudsman for the Child, neither the NCHR, institutions which may contribute to the implementation of the Protocol via their recommendations and activities (see for example the Ombudsman's recommendations on interstate adoptions).

Par. 61: Par. 61 refers to the categories of children who are placed under care. However, the Guidelines request information on the methods used by Greece to locate particularly vulnerable children and any relevant measures taken for their protection. However, it is striking that there is no mention to street children and unaccompanied minors, two particularly vulnerable groups, given also the relevant recommendation of the Committee in its 2002 concluding observations on street children.

Par. 67-73: The extensive analysis on the functioning of the schools –which concerns all children and solely those belonging to vulnerable groups- does not meet the requirements of the Guidelines.

Par. 74: Firstly, the title used "migration policy" does not correspond to the content of the paragraph which refers to the legislative framework on trafficking victims' protection. Moreover, the draft Report refers to the preexisting framework (Law 3386/2005). However, the relevant provisions have been modified by Law 3907/2011 "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 third-country nationals staying illegally, and other provisions" (OG A 7) and 3875/2010 "Ratification and implementation of the United Nations Convention against Organised Transnational Crime and its Protocols, and relevant provisions" (OG A 158). Therefore, the necessary changes need to be made.

Moreover, it is quite limited the mention of the issue of unaccompanied minors. Given that unaccompanied minors is one of the most vulnerable groups-potential victims of the acts prohibited by the Protocol, the Draft Report should refer to all measures taken for their protection, irrespectively of whether they have been trafficking victims, and to existing problems in the field. Thus, the Accommodation Centres, falling under the competence of the Ministry of Health and Social Solidarity, and their limited capacity which do not suffice to cover the needs, as well as the problematic institution of legal guardianship should be included in the report. In the light also of the

ECtHR's judgment in the *Rahimi* case, these issues may not be left out.

Par. 76-78: NCHR considers inadequate the analysis of issues concerning Roma children, which is limited to the Loaning Program for Housing. Parts of the Integrated Action Plan for the Social Inclusion of Greek Roma –such as the socio-medical centres should be mentioned as well as problems that urgently need to be addressed, such as education, and any potential measures.

Par. 91-96: A serious problem is the advertisement of violent films by TV channels during time zones that children watch television, or during shows that they watch.

Par. 120: It would be useful to provide information on the arrests that have taken place the past few years of rigs on illegal adoptions and babies trafficking, given that such information is requested by the Guidelines (par. 10 (d)).

Par. 134: Further analysis in the provisions of the Code of Criminal Procedure on extradition is required, given the importance attributed to it by the Guidelines (par. 24).

Par. 149: At this point the NCHR would like to remind its observations regarding the constitutionality of article 8 of Law 3625/2007 which provides for the disclosure by the prosecutor of the data concerning prosecution or convictions related to crimes, felonies or offences of intent, in particular against life, sexual liberty, financial exploitation of sexual life, personal freedom, property, rights related to property, violations of the legislation related to drugs, conspiracy against public order as well as offences committed against minors. The NCHR had noted that "Given that the amended provision does not stipulate clearly enough the data to be disclosed, it is probable for the disclosure to lead to information related to the minor. Therefore, the disclosure cannot be considered the most appropriate measure to protect the rights and interests of child victims".

Par. 150: More information is needed regarding the public or private institutions which provide protection, rehabilitation and similar services to minor victims, irrespective of whether they have been removed from their domestic environment, in accordance with the Guidelines (par. 32).

Par. 157-160: The mention of Law 3838/2010 (OG A 49) "Modern Provisions Regarding Greek Citizenship and Political Participation of Aliens of Greek Origin and Migrants Residing Legally in Greece" does not appear to be relevant with the scope of the Protocol nor with the information requested by the Guidelines in par. 36 (any differences between the assistance provided to children who are nationals or presumed to be nationals of the State party and those who are not nationals, or whose nationality is unknown). Moreover, the passage according to which "the new arrangements: [...] encourage such children to remain within the school environment; enable Greek schools to freely educate them, just like any other Greek child, making them recipients of a common socio-political culture;" might be misunderstood by the Committee; because it might be perceived to imply that: a) the acquisition of Greek nationality functions in reality as a prerequisite for the materialisation of the right to education, and b) the acquisition of Greek nationality entails the possibility to group children in a homogeneous manner, which is not necessarily compatible with article 29 par 1 (c) of the CRC according to which: "the education of the child shall be directed to: […] (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in

which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;" Thus, the NCHR takes the view that these paragraphs should be omitted.

Par. 175-180: These paragraphs refer to the Anti-Trafficking Plan of the Greek Police called "ILAEIRA", which began in 2006. It concerns a an organized operation –both at national and international-transnational level- aiming at the suppression and combating of women and child trafficking for the purposes of exploiting sexual life. This information is extremely useful. However, it would be better placed in par. 35-37 of the Report, which refer to the activities of the Police, and in the next chapter regarding international assistance and cooperation.

7. Comments on the Bill "Code on drugs" by the Ministry of Justice, Transparency and Human Rights

I. Introduction

The National Commission for Human Rights (NCHR) welcomes this bill and hopes that the State will take all the appropriate measures in order to ensure the implementation of all its provisions, despite the current conjuncture. This entails both the strengthening of the prevention structures as well as the full operation of the therapeutic structures and programmes.

A) Concepts and figures

The current dominant, yet erroneous, impression regarding the draft law is that it is a bill that 'decriminalizes' the use of drugs. It is thus necessary to clarify the meaning of certain terms used in the bill, which are basic concepts of the social phenomenon of the use of addictive substances.

'Drugs' is a generic term used to describe the prohibited narcotic or psychotropic drugs. Legal and socially accepted addictive substances are considered to be, among others, alcohol but also psychotropic substances, which are widely prescribed today both inside and outside prisons. The use of prohibited substances may be casual, occasional or even regular, however the final outcome of the latter is the dependency. The difference between systematic use and dependency is that, while the systematic user develops a psychological dependency on the substance, this does not lead to the impairment of the person's interests and societal bonds.

The recent scientific knowledge that various mental disorders may coexist with the use of substances in more than 50% of the cases has shown that the relationship between substance use and psychopathology is a complex one. This is what led to the creation of specialized programs and facilities in order to deal with those cases.

For years, the dominant model of institutional response to the drug phenomenon was the criminal control, while the therapeutic interventions regarding the dependency issue are relatively recent. The main goal of the treatment programmes is the rehabilitation of the addicted person by restructuring its personality and dealing with any potential problems caused by the dependency.

It is not easy for the Law to negatively or positively evaluate the drug use at the personal level, but the State is entitled to intervene in a person's life 'only insofar as the maintenance or loss of a person's life threatens or affects the freedom or the life of others or is in conflict with the fundamental values of social coexistence'. The personal use of drugs is not considered as an 'act' by criminal law and therefore does not entitle the legal system to impose a criminal sanction for it. However, recourse to drugs and the birth of the addiction stems not from a completely-defined personal choice, but is rather a combination of various social dysfunctions and exclusions. More often than not, the addict cannot fight his addiction alone, hence the need for support programmes and structures that will set the tone for the person's treatment and social reintegration.

In Greece, as in other countries, the majority of persons arrested and convicted for drug dealing or drug trafficking are buyers/sellers of small quantities, while in the law the false

impression that the user and the dealer are two completely separated categories is largely reproduced as, respectively, the 'victim' and the 'perpetrator'. Nonetheless, in reality these two categories are not easy to separate, especially when the 'traffickers' are concerned.

This aforementioned confusion is reproduced by all the opponents of bills directed towards the milder criminal treatment of the addicted user and his/her therapeutic treatment, as they claim that the 'victim' and the 'perpetrator' are two different categories of persons. However, it can be said that the most stringent repressive laws did not manage to suspend the phenomenon. On the contrary, it even contributed to the expansion of the trafficking phenomenon, while the user's involvement in the criminal mechanism creates the conditions for the continuation of the use.

As stated in the explanatory report of this draft law, the prison population in Greece is largely comprised by persons convicted for violations of the legislation on drugs, as well as other offences related to drug use (pharmacy burglaries, car accidents, thefts, robberies, trafficking etc.), transforming the prisons into a sui generis 'depository' for addicted persons. Nonetheless, it is universally acknowledged that prison confinement naturally leads to tensions, forming a condition where any tendency towards dependency and/or mental illness, if not occurred earlier, is eventually installed there.

In 2009, Greek prosecutors recited 17.535 charges against 16.469 persons for use, production, cultivation and drug trafficking. In the last five years a steady increase of persons accused of offences involving drugs has been documented. It is to be noted that only 1.9% of those attending treatment programmes in 2009 were involved in judicial cases.

B) International and European Legal Framework and International Bodies

In 1972, Greece ratified the 1961 UN Single Convention on Narcotic Drugs and in 1985 it ratified its amending Protocol. The Convention on Psychotropic Substances of 1971 was ratified by Greece in 1976, while the ratification of the 1988 International Convention Against Illicit Trafficking of Narcotic Drugs and Psychotropic Substances took place in 1991. According to Article 3.2 of the latter, the Parties shall designate the drug possession for personal use as a criminal offense. However this term, leaves room for States Parties to the Convention to freely decide what policy they will develop.

Articles 3, 5 and 8 of the European Convention on Human Rights are related to the protection of the addict's rights or his possible subjection to inhuman or degrading treatment, the legality of the procedures followed while in detention or the drug possession tests that violate the privacy of the person that is subjected to control. Moreover, according to case-law of the European Court for Human Rights, the submission of detainees to medical examination by prison authorities against their will can constitute inhuman or degrading treatment (article 3, ECHR) and violation of privacy (article 8 ECHR).

The European Committee for the Prevention of Torture (CPT), after visiting Greek prisons, documented problems with regards to the insertion of prohibited substances in the prisons, as well as the measures taken for this purpose against the prisoners, which constitute degrading treatment.

Greece participates in various bodies that act against drugs, such as the aforementioned, as well as the Horizontal Drugs Group (HDG) and the European Monitoring Center on Drugs and Drug Addiction (EMCDDA). Greece has signed bilateral and regional agreements on police cooperation, in order to address forms of organized crime, including drug trafficking.

C) Greek Legislation on Drugs

In Greece, the penalization of drug use was introduced as early as in 1919, however, it was not until 1954 that the legislator started to perceive the user as an 'ill' person and not as a common criminal, thus imposing on him the penalty of confinement in a special centre instead of a criminal sentence.

The General reform of the drug legislation took place in 1987 (Law no.1729/1987), which created KETHEA (Therapy Center for Dependent Individuals), as the main body for the mental and physical detoxification centre of the dependent users and introduced the distinction among dependent and non-dependent offenders of drug trafficking and drug use. Today, KETHEA offers counseling programmes, as well as support and rehabilitation programmes in more than twelve prisons.

Among the numerous legislative interventions, Law no. 2161/1993 established OKANA (Organization against Drugs) and the 'Code on Drugs', which codified in 2006 all the legislation related to drugs. Additionally, Law no.3727/2008 partly harmonized the Greek legislation with the EU framework-decision 2004/75/JHA. Finally, in 2008, the Ministry of Health and Social Welfare issued a National Action Plan on Drugs 2008-2012. Unfortunately, the Plan has not been implemented yet, as the monitoring offices and committees have never been established.

II. General Comments on bill

The present bill is in general a bold and dispassionate review of the entire system of criminal offences related to drug use and drug trafficking, as well as the treatment of dependent users by the state. Its main pillars are considered to be the following, as it:

- Guarantees the right to treatment of the dependent user and introduces the needed rationalization of penalties (according to the EU framework-decision)
- Makes a careful distinction between cases of minor and more heavy penalties related to drug trafficking
- Attempts to systematize the various entities of planning, coordination and implementation of drug policy.
- Introduces additional evidence that is needed for the diagnosis of the addiction.

The absence of criteria in the current legislation that determine with clarity the difference between drug use and drug trafficking is a deficit that affects not only human rights in Greece but generally jeopardizes the overall effectiveness of the State's actions in dealing with the drugs phenomenon. Furthermore, the reluctance of Greek courts to opt for therapeutic measures instead of criminal ones, can be attributed to the State's failure in properly implementing the law (e.g. inadequate training of judges) as well as the legislation's complexities. The new policy of promoting the creation of small OKANA units in hospitals all over the country as well as of introducing controlled prescription for the support of drug users, for the first time touches upon the implementation of all the internationally known treatment options for the entire population of drug users. Nevertheless, there are doubts about whether this draft law can be successfully implemented,

when the operating costs of all the aforementioned programs are being drastically reduced due to the current fiscal crisis in Greece.

III. Comments on specific articles of the bill

Article 15-Selling of Drugs: Replacement of the term 'ill' with the term 'patient', in line with the term used in the Code of Medical Ethics

Article 20-Drug Trafficking: The absence of a gradual penalty scheme seems problematic. Moreover, the absence of further clarification and specific details of parameters to be taken into account by the judge when imposing the sentence leads to the conclusion that the range of penalties from 5-20 years left to the discretion of the judge may leave room for serious divergences in the interpretation of the law.

Article 21-Privileged Cases: This provision seeks to address the phenomenon of drug traffickers of small quantities in a milder way, taking into consideration the daily consumption needs of the individual user. However it raises the following concern: The term 'small quantity' is not defined in the law, thus creating problems of legal uncertainty. Given that drug trafficking of small quantities takes place in order to cover the basic needs of the individual user, the NCHR believes that it would be helpful to clarify in the legal provision the connection between the need to use drugs and the definition of 'small quantity', thus making the term more precise

Article 29-Supply and possession of drugs for personal use: This provision constitutes a major change compared to the previous legal framework: Drug use and any acts affiliated with the acts of supply and possession exclusively for personal use are no longer considered a criminal offence. With regards to the most debated issue of marijuana cultivation, the present draft considers it as a misdemeanorn to the extent that it is justified only for the personal use of the offender. Moreover, according to article 30 para.4, in case the offender is an addicted user, there is no punishment. The NCHR considers that the proposed provision is a satisfactory middle ground between opposing views.

Article 30-Treatment of dependent drug users: Ameliorative changes are proposed by this provision in order to diagnose a person's dependency. It allows the court to take into account more evidence, other than one single expert's report, which has proven to be problematic in many occasions.

Articles 31-35: The two pillars of the draft's philosophy are : a) the establishment of a user's right to treatment, and b) the potential to impose alternative measures for detoxification spread across the whole range of criminal proceedings and sentencing, from the point in time of the arrest until the point in time of dismissal.

Articles 48-51: These provisions establish a series of entities for the effective implementation of the present bill.

Article 61-Prevention Programmes: the NCHR would like to stress once more the importance of establishing prevention programmes. From all aspects, prevention has proven to be the best solution, most effective and less costly than the imposition of penalties. It is therefore crucial to establish and implement prevention programmes particularly in schools, as well as awareness-raising campaigns.

8. Recommendation on the imperative need to reverse the sharp decline in civil liberties and social rights

The NCHR, in its institutional capacity as an advisory body to the Greek State for the protection of Human Rights:

I. Recalls its prior resolution adopted on 10.06.2010 on "The need for constant respect fundamental rights in the course of the strategy aimed at extricating Greek economy and Greek society from the debt crisis", where it expressed its **deep concern**, that:

"Developments in the national economic environment, further exacerbated by global financial pressures and the reluctance of international creditors to find sustainable, long-term solutions to the debt crisis, severely disrupt social equilibrium at the expense of human rights, and have multiple chain effects on the enjoyment of social rights, while putting civil liberties at risk and vice versa."

II. Observes that:

- the concerns it has previously expressed are dramatically corroborated by socio-economic developments;
- the rapid deterioration of living standards coupled with the dismantling of the Welfare State and the adoption of measures incompatible with social justice are undermining social cohesion and democracy;
- the surrender of public property and transfer of public utilities pose a serious risks to the furtherance of the public interest and the preservation of the public character of the goods and services produced or provided by these entities as well as to the working conditions of their employees.

0III. Expresses even deeper concern at:

- 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;
- the increase in direct taxes unrelated to the taxpayers' ability to pay, as well as in indirect taxes, resulting in people being deprived of vital goods;
- the imposition of taxes with retroactive effect and the burdensome conditions of access to the courts to challenge them;
- the deprivation of essential social goods as a sanction for the non payment of taxes and the transformation of public utilities, such as the Public Power Corporation, into tax collection and tax enforcement organs;
- the avalanche of unpredictable, complicated, conflicting, and constantly modified "austerity measures" of immediate and often retroactive effect, which exacerbate the general sense of insecurity;
- the inadequacy of legal aid for access to Justice of the financially weak;

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.

IV. At the same time, the NCHR recalls that:

- the European Union "*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*"[1] ;
- *civil liberties and social rights* constitute fundamental *values* and the *cornerstone* of the EU (Article 2 TEU);
- the *first aim* of the EU is to promote its *values* and the *well-being* of its peoples (Article 3 (1) TEU);
- the *social objectives* of the EU, which include *full employment, social inclusion, social justice and protection* and *social progress* are inextricably linked to its economic objectives and condition the effectiveness of the latter – *economic cohesion is based on social cohesion* (Article 3 (3) TEU);
- the Charter of Fundamental Rights, which is binding on both 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"***;
- the ILO Committee on the Application of Conventions and Recommendations requested the Greek government to intensify its efforts and proceed to a thorough and frank dialogue with the social partners, to review the austerity measures taken or planned, while reconsidering their impact on the workers and ensuring the living standards of the latter.

V. Whereas 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;***
- ***immediate joint mobilization of all European forces is required if it is to save the values on which the European civilization is founded.***

VI. The NCHR is sounding the alarm and calling 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.***

1. European Court of Justice Cases C-50/96 *Schröder* [2000] ECR-774 and C-270/97 *Sievers* [2000] ECR I-933.

RACIST VIOLENCE

1. Dealing with racist violence: Legislative, Judicial and Police Responses

1. Introduction

The prevalence of violence is an undeniable evidence of the Greek society's departure from the basic principles of respect for human dignity and democracy. The National Commission for Human Rights (NCHR) has taken into consideration various aspects regarding the root causes of this phenomenon before calling upon the government to urgently and effectively deal with the increase of racist violence. The devaluation of signs of racism as well as the non-decisive responses to identified racist practices 'omened' the current acute phenomenon that puts in danger the democratic institutions and the society at large. Racism has emerged and spread in many ways. The institutionalization of racist violence reflects, among other things, violence and arbitrariness associated with police practices representing the state's one and only answer to the complex issue of irregular migrants. Part of the official political discourse adopts a similar approach to the issue, and sometimes even transforms into hate speech. Furthermore, irresponsible approaches to the issue such as recent media representations of crime and social phenomena acted as catalysts in shaping an indifferent collective approach as well as consolidating a collective racist platitude.

A. From the acceptance of racism to racist violence

In its recent observations on the draft law for combating certain forms and manifestations of racism and xenophobia through criminal law, the Commission expressed the view that criminalisation of hate speech should not act as a counterweight to the absence of other sanctions for acts of violence. Only few incidents of racist violence become widely known and prove the increase of violence. It is certain though that many other cases never make it outside the limited environment of some NGOs that provide medical care. The victim often is an undocumented migrant, remaining invisible and nonexistent to the state.

Racist violence and racist speech foster people's categorization in humans and *sub-humans*, annihilating the human dignity of targeted people. If thorough investigation of racist crimes does not take place and perpetrators are not prosecuted, and if racist speech remains uncontrolled and promiscuous, a culture of impunity is developed. Impunity intensifies and perpetuates violence, vulnerable groups remain excluded from society and often results in retaliation.

NCHR is fully aware that these thoughts may seem obsolete in the light of the atrocious murder of the unfortunate Manolis Kantara, and the pogroms against immigrants that followed. Nevertheless, all neutral observers following closely the situation in those areas are not surprised. The grim situation in Athens depicts the state's failure to fulfil its obligation to ensure every person's safety within Greek territory. The humanitarian crisis in Greece's borders (both in Evros, and Igoumenitsa) is reflected to the humanitarian crisis in downtown Athens: the lack of police presence makes both Greeks and third-country nationals potential victims of violence. This situation cannot act as an excuse or a reason for concealing the widespread violence in many parts of the country.

The current situation asks for urgent action. The state should ensure make sure that the right to life is enjoyed by everyone within the Greek borders and should not be violated by any governmental, parastatal or other criminal elements. The state's flagrant omissions make everyday life unbearable for people who live or work in the affected areas. The state bears multi-level responsibility: the culture of violence affects the entire spectrum of private and social life and the development of every human being. It is under these extreme conditions, when the situation leads inevitably to the generation of a xenophobic culture. Since state institutions have not taken a position on the matter, their tolerance to criminal behaviour contributes to the erosion of democracy and the rule of law.

The paralyzation of the state leads to its substitution by organizations or groups whose aims and actions are contrary to the rule of law and undermine democratic values. Citizens' safety and dignity are severely challenged. The pogroms against foreigners, regular or irregular residents, turn against the democratic society. Citizens become potential aggressors and bend their resistance against arbitrariness. Recent practices, resembling to documented fascism techniques, prove the existence of consolidated pockets of fascism. Furthermore, many Greek interviewees ask for help from extremist / neo-Nazi groups in dealing with immigrants because of the well-documented state's absence, statements that require serious consideration. The lack of a fair immigration policy and an efficient asylum system has undoubtedly added weight to the current crisis. If we eventually choose to adopt a comprehensive approach, we should not think of racist violence only as a consequence of the humanitarian crisis linked to migration policy. Racism has certainly become more visible during the crisis, but was born earlier.

Nevertheless, a clear rupture with the official institutions of the state has lately occurred. The widespread distrust of authorities regarding their capacity to act preventively and therapeutically in pathogenic social phenomena creates a privileged field for the spread of social intolerance and racial hatred. The *racism of the crisis* has affected decisively members and groups to a level where they have exhausted their *limits of tolerance* and have taken action or at least, have morally accepted the idea of racist violence. As a result, the issue of migration is only treated as a problem, carrying away the integration process of third-country nationals, the tolerance of society and ultimately the commitment to democratic institutions.

B. A Conceptual approach: violence or crime + racist motivation

There is no common legal definition for racist violence. According to a widely accepted definition, racist violence is defined as a crime against victims, on the grounds of race, national or ethnic origin, religious or cultural background and colour. The victim is not chosen as an individual, but as a person affiliated with a group of people sharing the targeted feature. Racist violence can also be directed towards material goods, because they belong to the targeted group or person. Racist violence is expressed verbally as well (ex. threats, intimidation, verbal abuse).

Within the framework of OSCE and some other legal orders, the chosen term to describe the above is the term "hate crime". This term is considered to facilitate the criminal procedures, as it is more clearly connected

with police and criminal justice. This implies a broader approach to the phenomenon, which includes as motivation for the crime religion, sex, sexual orientation or disability. The crime as such can be any of the crimes provided for by the penal code, such as murder, assault causing serious body injury, robbery, theft, vandalism of property (or worship site).

In contemporary societies, the motivation for violence is often a mixture of bigotry, ignorance, fear for the unknown and the "other" resulting from the social exclusion of various groups (immigrants or nationals, Roma, or children of immigrants who have already acquired the nationality of their state of residence) or nationalist ideologies. While researching incidents of racist violence in various countries, the entirety of the international bodies record and evaluate incidents of attacks on religious sites or sites closely related to groups with vulnerable characteristics. More specifically, football constitutes a special issue of concern, as an activity that favours the development and dissemination of xenophobic and racist ideologies and practices.

Racist violence is often fostered by nationalist ideologies; it is perpetrated by groups of people who perceive it as a *mission*. The mission is to "protect" an area from foreigners in order to ensure the "purity" of the composition of the population. The attacks in these cases are spectacular and follow specific methods, aiming at demonstrating the absolute sovereignty in the region. The case of St. Panteleimon of Attica square is one such example. The incidents at Victoria Square are also an example of racist violence - *response* to the murder of Emmanuel Kantara, giving to groups characterized by racist ideals and actions the opportunity to occupy more space in the public sphere and exhibit their strength. The invasion of extremist groups in the routine of the aforementioned areas is facilitated and widened by the media coverage, expanding also to a national level. A city site associated with an atrocious violent incident, could be easily charged with a huge load of racist hatred. While this is considered to be an extreme case of mass racist violence, it demonstrates the numerical strength of these groups, who operate daily on a small scale, but are nonetheless ready to take advantage of any situation anytime.

C. International legal documents and recommendations of international bodies

A) UN

According to the Article 4 of the 1966 International Convention on the Elimination of All Forms of Racial Discrimination, "[a]ll States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination". Article 5 *b)* provides that States Parties undertake to guarantee the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution. The Durban Review Conference against Racism (2009) reaffirmed the importance of declaring an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination as well as all acts of violence.

In recent recommendations, the Committee on the Elimination of Racial Discrimina-

tion (CERD) called upon the State to effectively combat racial discrimination and effectively prosecute and punish crimes based on racist motives; the Committee urged Greek authorities to include in their next report statistical data on the application of Law 927/1979 (cases, convictions, penalties and remedies).

The Committee against Torture (CAT) recommended Greece to intensify efforts to reduce abuse by police or other public officials, including abuse with racist motivation. CAT noted that the state must develop methods to collect data and monitor incidents of racist violence.

B) Council of Europe

The *European Commission against Racism and Intolerance (ECRI)*, in its latest report on Greece (2009), devotes a special thematic unit on the issue of racist violence. ECRI notes the lack of official data on crimes motivated by racism in Greece and thus the difficulty in analyzing the situation. However, specific incidents against Roma, Albanians, Pakistanis, asylum seekers and migrants, as well as anti-Semitic actions that are made public by the media and civil society, coupled with complaints about the perceived inaction of the police in racist crimes and prejudice against immigrants, are significant elemetns leading ECRI to draw the authorities' attention to No. 11 General Policy "Recommendation on combating racism and racial discrimination in policing".

This text recommends that Member States should establish and operate a system for recording and monitoring racist incidents as well the extent to which these incidents are brought before prosecutors and are eventually qualified as racist offenses. ECRI also recommends that Member States ensure that the police thoroughly investigate racist crimes, including by fully taking the racist motivation of ordinary offences into account and encouraging victims and witnesses of racist incidents to report them. The ECRI was pleased to know that the General Policy Recommendation has been translated into Greek and distributed to all police stations. The authorities have even stated that No. 8 General Policy Recommendation ECRI "Combating racism while countering terrorism" and No. 9 "The fight against anti-Semitism" have also been distributed to police stations.

Complaints grounded on the association of racist motivation with a particular act or omission violating a Convention article is examined in the light of Article 14 (prohibition of discrimination) of the European Convention on Human Rights. The ECourtHR attaches great importance to the effective fight of racist violence. According to the Court, "[r]acial violence is a particular affront to human dignity and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction. It is for this reason that the authorities must use all available means to combat racism and racist violence, thereby reinforcing democracy's vision of a society in which diversity is not perceived as a threat but as a source of enrichment." The ECourtHR stresses that treating racially induced violence on an equal footing with cases that have no racist overtones "would be turning a blind eye to the specific nature of acts that are particularly destructive to fundamental rights."

By strictly scrutinizing such incidents of violence according to aforementioned principles, the ECourtHR held that there was a violation of Article 14 with conjunction with Article 3 in the case *Petropoulou-Tsakiris vs. Greece*.

The Court considered unacceptable the fact that there was no attempt on the part of the investigating authorities to verify whether the policemen's behavior displayed anti-Roma sentiments, but also that the Deputy Director of Police Forces made partial general remarks throughout the administrative investigation in relation to the applicant's Roma origin. In the case *Bekos and Koutropoulos*, the ECourtHR concluded that the Greek authorities did not fulfill their obligation arising from the prohibition of discrimination to take all necessary measures, in order to collect and secure the evidence, to take into consideration all practical means that could contribute to the unveiling of the truth and to deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of a racially induced violence.

C) EU

The Council Framework Decision 2008/913/JHA (28 November 2008) on combating certain forms and expressions of racism and xenophobia through criminal law regulates issues of the criminal approach to racist violence. In 2005, the European Monitoring Centre on Racism and Intolerance issued a comparative report on racist crime and violence in the EU Member States. The study concluded that Greek legislation against racist violence, monitoring mechanisms for incidents of racist violence and criminal justice responses to these incidents are either ineffectual or non-existent.

II. Issues of legislative and judicial responses to racist violence

Legislation may regulate the criminal response to the racist crime, through special criminal provision as an aggravating circumstance, or through a combination of both.

A. A Legislative approach

1. Special criminal law provision

In the case of a specific criminal law provision, the racist motivation is part of the elements of crime. Few states have chosen to adopt provisions, e.g. the UK, punishing more strictly racist (or based on the victim's religious beliefs) assaults that provoke heavy injuries. By introducing a special criminal law provision, racist crime gains more visibility and establishes both the victim's and society's disapproval for the racist crime. This provision facilitates the collection of relevant data, and, consequently, the prevention and fight against hate crime. However, prosecutors seem reluctant to resort to these provisions, as they are aware of the fact that it is very difficult to prove the racial motivation and convict the perpetrator.

2. Racist motivation as an aggravating circumstance - Article 79, par. 3 Penal Code

In most legal orders racist motivation constitutes an aggravating circumstance. Usually, it is taken into account by the court at the imposition of the sentence. Article 79, par. 3 Penal Code states that an offence motivated by ethnic, racial, religious hatred or hatred due to sexual orientation constitutes an aggravating circumstance. In other words, the court must first prove the guilt of the perpetrator for the basic offense and it will then consider whether the threshold of an aggravating circumstance is actually met. The Greek Penal Code introduces a general penalty that may be applied to all criminal offenses. In other legal

orders, the aggravating circumstance of racial motivation is applied only in the case of some offences (specific penalty enhancement). This seems to be a good solution. Nevertheless, if the maximum penalty is inflicted, the racist motivation remains unseen, incapable of bearing a symbolic or deterrent value.

3. Racist motivation: hatred, animosity or discrimination?

The racist motivation can be described in the law as hatred or other similar notions. In those cases it must be proven that the perpetrator acted effectively because of hatred or hostility based on one of the protected characteristics. The subjectivity of the concept of hatred and the court's obligation to prove that the accused felt hatred while committing the offense constitutes a difficult task. The application of provisions that do not require proving the perpetrator's motivation by hatred is less complicated. Consequently,

➢ *the state should review, in cooperation with the investigating authorities and the judges, the difficulties in proving hatred (or animosity) in practice and ensure that all participants involved in the process will receive adequate information and training so as to facilitate the process.*

The difficulties in the implementation of the legislation in Greece have been documented by ECRI in 2009. ECRI recommended to the Greek authorities "that the initial and on-going training provided to judges and prosecutors should better emphasize the legislation against racism generally and, particularly, any new legislation that provides for the racist motivation of a crime to be considered as an aggravating circumstance at the imposition of the sentence".

According to the rules for racist crimes formulated by OSCE, the legislation combating racist violence should have the following characteristics:

1. It should recognize as victims both persons and property.
2. It should be applied symmetrically.
3. The courts should be required to consider evidence of motivation.
4. The courts should be required to state on the record reasons for applying or not applying a penalty enhancement.
5. The state should consider combining specific provisions for racist crimes and provisions that turn the racist motivation into an aggravating circumstance.
6. It should refer to characteristics that are immutable or fundamental to a person's identity.
7. It should recognize social and historical patterns of discrimination.
8. It should include characteristics that are visible or readily known to the offender.
9. It should avoid using vague or undefined terminology.
10. It should avoid any reference to specific emotional states (see hatred).
11. It should protect victims who are associated or affiliated with persons or groups who bear protected characteristics.
12. It should include cases where the offender acted unaware of the victims' identity.
13. It should recognize that offenders sometimes act with multiple motives.

It is clear that comprehensiveness and clarity of the law is fundamental in combating racist violence. However, the effectiveness of the legislation must be judged in the light of the access to justice of victims in practice.

B. Justice and racist crime

The attitude of judges can either encourage victims and their lawyers or, on the contrary, prevent them from reporting the incident. The condemnation of racist crime will be weak and without impact on society, if it is not accompanied by reassured effective access to justice for victims of racist crimes as well as technical training of judges.

1. Judges' education and awareness

In societies with blurred vision of racist crime, the participants in the judiciary process may be reluctant to examine the racial aspect of the crime. They often have the tendency to choose a classical approach. Although sentences imposed under Law 927/1979 are increased and the interpretation of the principle of equal treatment is broadened, there is a certain awkwardness associated with the fact that the provisions combating racism and racist violence are relatively recent.

The message to be sent to victims should be that judges are vigilant and that they protect victims according to the law. Furthermore, beyond the individual situation of each victim, the court's analysis of the racist motivation can clarify aspects of the crime that would otherwise remain invisible. Of crucial importance is therefore the judges' education and awareness, so that they develop the reflex to investigate the racial motivation, even if the investigative material is insufficient.

➢ *The NCHR recommends that a special seminar on racist crime is offered at the National School of Judges during the initial formation as well as in the context of the judges' continuing training.*

2. Access to justice

The NCHR has stressed that legal aid provided to victims facilitates their access to justice. At the international level, provisions providing for NGOs locus standi and the legal representation of victims have made human rights violations widely known. Access to justice is often inhibited due to economic weakness. According to a study carried out by the Aristotle University of Thessaloniki, lawyers tend to avoid cases related to racist incidents, as they fear that they will not receive remuneration. The legal aid system's weaknesses have a significant impact on the number of complaints. The State must ensure that victims of racist crimes are provided with legal assistance by experienced lawyers.

➢ *The legal aid system should be reformed in order to facilitate the effective access to justice.*

III. Police and racist violence

Racist violence should be one of the most important concerns. Racist incidents are rarely reported to the police; this is due to police's impunity and the climate of tolerance towards the perpetrators, which contribute to this phenomenon.

A. Impunity

Incidents of violence involving police officers are rarely investigated and are unlikely to reach a fair punishment. To begin with, police as a *perpetrator* is not punished, so victims consider pointless to report any racist incident

involving a police officer. Furthermore, the police as an *unconcerned observer* of attacks by extremist organizations or groups do not fulfil its obligation to protect the victims. After all, the non-investigation of *recurring allegations about the underground links between police and groups responsible for racist incidents* nullifies any effort to denounce the racist crime.

Direct or indirect involvement of the police – by tolerating acts perpetrated by racist groups and by refraining from any in-depth investigation – amounts to the acceptance and approval of those facts by the state. As UN Special Rapporteur on Torture noted following his visit in Greece, « [t]he lack of an effective complaints mechanism, independent investigation and monitoring create an environment of powerlessness for victims of physical abuse.»

In his response to the NCHR about the investigation process of the racial motive, the Minister of Citizens' Protection and the Hellenic Police stated that "according to the administrative assessment performed concerning inadequate behaviour of police against migrants or other persons belonging to vulnerable social groups, no incidents with racial motive have been established". The attitude of Hellenic Police's superior officers is crucial for the conduct of the rest. In periods when superior officers are intolerant to such incidents of violence and when the recommendations issued by international bodies are appropriately disseminated to all relevant services, incidents involving police officers seem to reduce.

B. Obligation to investigate the existence of racial motivation

The investigation of racist motivation should not be left to the discretion of police officers, but should be a clear obligation and part of the basic police training. Police and investigative bodies should include in the standard procedure all steps that help establish the racist motivation.

In 2006 the Chief of the Police issued a circular order: «Tackling of racism, xenophobia, bigotry and intolerance in the police». According to the circular order the racist motivation is investigated in the following cases: a) it is confessed by the alleged perpetrators, b) it is invoked by victims and witnesses, c) there is an evidence according to the Code of Criminal Procedure, d) the alleged perpetrators and victims of a crime identify themselves or belong to different racial, religious and social groups.

Furthermore the circular established an obligation for officers to investigate possible racial motivation in the context of the disciplinary procedure involving unethical behavior of police officers against persons belonging to vulnerable ethnic, religious or social groups or foreigners. In this case, the outcome of the disciplinary inquiries should mention whether any racial motivation has been established.

In accordance with the ECRI *General Policy Recommendation No. 11*, as racist incident should be considered «any incident perceived as racist by the victim or any other person». The criteria set out in the circular as binding are therefore satisfactory. However, in order to strengthen their regulatory nature and perception as compulsory for the police, they should be introduced in the Police Code of Conduct.

In addition, the lack of coordination as well as the unreasonable delay in the investigation of complaints related to violence against persons working with NGOs and communities are unacceptable and negatively expose the police.

➢ *The NCHR recommends to integrate the criteria of investigating a racist motivation of the Circular 7100/4/3 (05/24/2006) in the Police Code of Conduct.*

➢ *The NCHR recommends the introduction of the element concerning the existence of racial motivation.*

➢ *The NCHR recommends the establishment of a specific procedure within the police's internal affairs in order to examine racist incidents.*

C. Obligation to record racist incidents

Police recording of racist incidents, regardless of the prosecutor's decision, has a positive impact. Firstly, the police officer is familiarised with and better understands this type of crimes. The usual police report is not sufficient, as the police officer states the incidents, without being able to avoid any subjectivity. If the officer is aware of his obligation to record the racist incidents in accordance with specific rules, he will get used to treating them according to the rules.

Moreover, it is important for the overall management policy of racist crimes that the state is aware of how many recorded incidents are finally prosecuted as racist crimes. These data can reveal gaps in the regulatory framework and the practice of police officers or prosecutors, and can contribute to the crime rate monitoring.

➢ *The NCHR recommends the compulsory registration of racist incidents by police in a special form, which will include information on persons involved and the nature of the incident.*

➢ *The NCHR recommends that each police station designates a specific person to be responsible for the record files and the communication with all competent bodies.*

D. Victims' and witnesses' support - cooperation with NGOs

Providing victims and witnesses with support could entirely reverse their reluctance to report the incident. It is widely known that police departments are understaffed and that they do not dispose psychological services. However, as a first step the police should envisage the cooperation with NGOs in providing psychological support.

Due to the lack of cooperation with specialists, special training should be offered to police officers in order to be able to cope with the fear and distrust of victims and witnesses.

➢ *The NCHR recommends that police officers cooperate with NGOs in order provide victims and witnesses with psychological support;*

➢ *Special training should be offered to police officers so as to encourage victims and witnesses.*

The police should aim at a permanent and regular cooperation with specific stakeholders such as the UN High Commissioner for Refugees, NGOs that provide primary health care to victims and specialised NGOs, such as anti-discrimination organizations that have regularly deal with vulnerable groups[1] . The police should also develop such alliances with communities of immigrants and refugees that have proved their representativeness and their

1. The issue of racist violence has also preoccupied the UN High Commissioner for Refugees because asylum seekers and recognized refugees are constantly potential victims Bλ. UNCHR, *Combating racism, racial discrimination, xenophobia and related intolerance through a strategic approach*, 2009.

proximity to vulnerable groups.

➢ *The NCHR recommends permanent and regular cooperation with stakeholders, NGOs and communities that are in constant contact with victims.*

E. Police training and establishment of a special unit

The issue of police training has been addressed repeatedly by the NCHR and others bodies. Introducing the concept of racist crime and the methodology of policing in the general education is a step that would undoubtedly help.

➢ *It is recommended to define specific instructions on procedures to be followed by the police in the various stages of the criminal procedure.*

Nevertheless, considering that specialized training is also required, particularly in situations of intense conflict, the NCHR proposes the establishment of a special unit. At first, the unit could take action mostly in areas where social tension is observed[2] . Officers participating in the special unit should be strictly chosen among those officers demonstrating unparalleled professionalism.

➢ *The NCHR recommends the establishment of a special unit against racist violence, in order to take action in the most vulnerable areas.*

➢ *The NCHR recommends that a specific operational plan is prepared in close cooperation with superior police officers in vulnerable areas, who will periodically be accountable to the governmental authorities.*

2. EUMC, *Policing Racist Crime and Violence: A Comparative Analysis*, 2005, σελ. 47.

➢ *The NCHR recommends the establishment of a mediation institution involving residents, NGOs, representatives of municipalities and the police.*

III. Recording racist crimes

A. Official and unofficial recording bodies

The establishment of an effective policy against racist violence is impossible without setting up and maintaining a systematic data collection system. It is ascertained that in countries equipped with inadequate systems racist incidents are under-reported.

The OSCE and the Office for Democratic Institutions and Human Rights, in an effort to intensify the fight against racist crimes, have issued an annual report, in which they publish data submitted by the states. It is remarkable that, in the 2009 report, Greek police had only recorded two such incidents. Moreover, two incidents were prosecuted but no conviction was imposed. The Ministry of Justice is responsible for the data collection. According to the above table, all the cases that were prosecuted as racist have been included.

However, there is great divergence in Greece among the informal systems of registration, such as the recording system of NGOs and press articles. As reported by the NGOs consulting with NCHR, the victims, notably Asian and / or Muslims, do not report the incident to the police. For the year 2010, the NGO PRAKSIS treated more than 206 people.

It is therefore obvious that the recording data deriving from prosecution do not reflect the extent of the problem. The collection of evidence and data is also a field in which the

state should develop cooperation with NGOs and all the relevant institutions that collect reliable data. In this context, it should develop a serious and reliable system of data collection and disaggregation. The Ministry of Justice could take over the management of this system, as a central governmental body. It is highlighted that this recording system will not coincide with the police recording system. Apart from NGOs, the system should connect with hospitals and medical associations in order to include all the incidents presenting elements of racist violence. It goes without saying that doctors and social services of hospitals should be adequately informed.

➢ *The NCHR recommends the establishment of a recording system under the coordination and supervision of the Ministry of Justice. This system will put together data from NGOs, hospitals and other appropriate bodies.*

B. Key elements of the recording system

Data standardization in an all comprehensive system is the first step towards the effective monitoring of racist violence. Fragmentary and not adequately disaggregated data cannot be further exploited. According to the aforementioned EU research on racist violence, in Member States with robust data mechanisms, progressive steps are usually taken in order to address the problem and help the victims.

In Greece, many victims are undocumented third country nationals that do not report racist incidents, with two important consequences: the lack of evidence, as already mentioned, and the inappropriate treatment of all foreigners by the authorities. The low number of complaints and incidents recorded can only be associated with the (un)reliability of the recording system.

➢ *The proposed registration system should include at least the following information, provided that the anonymity of the victim is respected:*

a) National origin, sex, age of victim and perpetrator

b) Religion of the victim and the perpetrator

c) Type of crime

d) Place of crime

e) If the victim has been involved in past incidents of racist violence

f) If the offender has been involved in previous incidents of racist violence

IV. Succinct presentation of NCHR's recommendations

Law and Justice

➢ *The legislation on racist crime should avoid vague notions.*

➢ *Courts should be able to examine evidence related to motivation.*

➢ *Courts should fully justify the application or non application of the aggravating circumstance of Article 79 par.3 P.C of racist motivation.*

➢ *The state should review in cooperation with the investigating authorities and the judges the difficulties in proving hatred (or animosity) in practice and ensure that every participant involved in the process will receive adequate information and training so as to facilitate the process.*

➢ *The NCHR recommends that a special seminar on racist crime is offered at the National School of Judges during the initial formation as well as in the context of the con-*

tinuing training of judges.

- *The legal aid system should be reformed in order to facilitate the effective access to justice.*

Police

- *The NCHR recommends to integrate the criteria for investigating a racist motivation of the Circular 7100/4/3 (05/24/2006) in the Police Code of Deontolgy.*
- *The NCHR recommends to introduce the question concerning the existence of racial motivation.*
- *The NCHR recommends to establish a specific procedure in the frame of police internal affairs in order to examine racist incidents.*
- *The NCHR recommends the compulsory registration of racist incidents by police in a special form, which will include information on persons involved and the nature of the incident.*
- *The NCHR recommends that each police station designates a specific person to be responsible for the record files and the communication with all competent bodies.*
- *The NCHR recommends that police cooperate with NGOs in providing victims and witnesses with psychological support.*
- *Special training should be offered to police officers so as to encourage victims and witnesses to come forward.*
- *The NCHR recommends permanent and regular cooperation with stakeholders, NGOs and communities that are in constant contact with victims.*
- *The NCHR recommends the establishment of a special unit against racist violence, in order to act in the most vulnerable areas.*
- *The NCHR recommends that a specific operational plan is prepared in close cooperation with superior police officers in vulnerable areas, who will periodically be accountable to the governmental authorities.*
- *The NCHR recommends the establishment of a mediation institution involving residents, NGOs, representatives of municipalities and the police.*

Registration of racist crimes

- *The NCHR recommends the establishment of a recording system under the coordination and supervision of the Ministry of Justice. This system will connect data from NGOs, hospitals and other appropriate bodies.*
- *The proposed registration system should include at least the following information, provided that the anonymity of the victim is respected:*

a) National origin, sex, age of victim and perpetrator

b) Religion of the victim and of the perpetrator

c) Type of crime

d) Place of crime

e) If the victim has been involved in past incidents of racist violence

f) If the offender has been involved in past incidents of racist violence

2. Extremist groups, Public Discourse and Racism in Sports

I. Challenges relating to extremist groups

A. Incitement to racial discrimination and recruiting minors

Extremist groups operate under an ideology supporting directly and unpretentiously the superiority of nationals, while justifying and advertising the inferiority of “others”, ultimately denying them access to fundamental rights. These groups declare themselves fiduciaries of national identity. In order to support the monopoly of national identity, they disdain all other approaches that may show different aspects of the de facto heterogeneous reality for more States.

A. Tsoukala highlights the two stages of converting the members of a group into *social enemies*: firstly, intrinsic characteristics are attributed to the minority (such as corruption, trickery, lack of ethics) and, following, these characteristics are correlated with contemporary social problems, either as a cause of the problems or as an aggravating factor. After the consolidation of this correlation the target group is solely presented on the basis of this stereotype that “…emphasizes the image of a permanent threat to the welfare of the rest of the community”. Therefore, in this manufactured reality, the victim of racist violence is in fact a “justified” victim.

Another form of expressing this racist approach is reflected in the thought that aliens are “different”; they do not fit in with our habits and should go home. An element of the “moral panic” which contributes to the modern manifestation of extreme xenophobic sentiments is the “widespread belief that the Muslims cannot and do not want to smoothly integrate into the Greek society.” V. Karidis notes that for the collective social conscience, after successive episodes that make up a threatening picture of immigrants “these immigrants” do not have a place in our country and the only solution is suppressing and over-policing”.

Furthermore, the arguments that the natives “do not need anything from aliens” and do not “owe them anything” are being used so as for the request of their removal to be regarded as a “fair” one of a society not being responsible for economic inequality.

The main objective of this tactic is for the general dissatisfaction to be attributed to the aliens, for the effort to be “removed” by any means to seem justified or at least a natural reaction against injustice.

An important aspect of extremist groups’ activity is the recruitment method. It is reported that these groups are active in schools and sports arenas or stadiums, where they approach minors. Besides minors’ vulnerability, these groups exploit the need of some children being born from immigrant parents to prove they are full members of Greek society, possessing Greek identity. Thus, participation of minors with alien parents in extremist groups can be observed, resulting to their turning to savagery against other aliens.

The general issue of tackling racist violence within the school and in the light of schools’ mergers requires special analysis. However, the Greek NCHR, for the purposes of the present paper, suggests some prevention measures aiming at strengthening teachers’ vigilance towards the phenomenon and

"armoring" children with experiences of tolerance so as for the approach by extremist ideologies to be hindered. The usage of internet from these groups in order for propaganda and racist views to spread out is also of particular concern.

B. **Public Bullying and Systematization of Violence against victims and human rights' defenders**

Racist violence is not confined to attacks against individuals. It is part of a series of practices aiming at bullying aliens and systematically controlling specific areas by extremist groups. At the same time those who do not accept the extremist practices are also intimidated. In other words, the practices of fear create a supremacy over the state apparatus.

Studying such practices, the UN Special Rapporteur expresses deep concern about the creation and growth of extremist groups of "vigilance" or "self-defense guards", which attack people without ever being prosecuted or convicted. As reported by the Special Rapperteur, these groups are supported and funded by radical political parties that gain political benefits from their coverage by the media and manage to maintain contact with the local population while increasing their influence.

The "raids" in homes and shops in certain areas along with the patrols from violent groups in streets with high concentration of immigrants have resulted in creating an "impassable" for aliens. People belonging to these target groups try to map "low risk" streets and areas, while warning the one the other in order to avoid a place patrolled by members of extremist groups. Testimonies of victims already recorded by the Network of Recording Incidents of Racist Biolence, show a practice of *patrolling cyclists*, ending up in beating unfortunate aliens, mainly of different color.

Moreover, in many cases, members of extremist groups attack or intimidate the victims' advocates, while supporting the perpetrators of racist crimes. In the case of advocacy by the Hellenic League for Human Rights in Igoumenitsa, members of a group went to the building of the court with 2 buses, blockaded the area and attacked witnesses of the case. During the trial pursuant to the slogans chanted by the submarine forces during the military parade on March 25, 2010 in Athens city centre, the lawyers of the organizations supporting human rights were threatened. Moreover, texts with threatening titles were circulated online (such as "Death now to those who dared to try submarine forces") while those who have been trained on Special Forces were called to "go for a night and slay the following traitors", following a list of the names of the Lawyers taking part in the process.

The already reported public bullying by extremist groups against human rights' defenders has a twofold result: it further hinders the criminal procedure in the field of combating racist violence and, ultimately, falls outside any legal review.

The NCHR notes that State has a special obligation to protect human rights' defenders from both the risks deriving from the organs of the state and from non state actors, according to the *Declaration on the Rights and Responsibility of Individuals, Groups and Organs for the Promotion and Protection of Internationally Recognized Human Rights and Fundamental Freedoms.* The protection of physical integrity of human rights' defenders falls within this obligation, along with the fight against impunity of non-state actors. The UN Special Rapporteur on the situation of human rights' advocates recommends the states to take additional measures so as to ensure the protection of human rights' defenders, who are at greater risk of violence since they are considered to challenge rules, tradition and prejudices.

Following the adoption of the Relevant Declaration by the Committee of Ministers, the Parliamentary Assembly of the Council of Europe has expressed its concern about the situation of those fighting against impunity. It believes that the attacks and violations of the rights of human rights' defenders within the States of the Council of Europe are unacceptable and should be strongly condemned.

Therefore, NCHR reminds the State of its obligation **to facilitate** the work of those peacefully advocating for human rights and vulnerable groups and **to take preventive measures**. In any case, human rights' advocates should not be deterred by their right to access justice and relevant authorities.

Apart from the obvious and direct implications for those targeted by extremist groups, the State should also take into account the serious consequences of the enlargement of marginalization, the consolidation of fear and the enhancement of the vicious circle of violence.

A. Extremist groups and freedoms of association, assembly and expression

1. International and European instruments

Imposing restrictions on the activities of extremist groups puts an obligation upon the State to locate a fair balance between its obligation to fight racism and xenophobia and its obligation to safeguard the rights and freedoms of expression, assembly and association for all. International instruments for the protection of human rights reserve strict scrutiny for the cases of limiting these freedoms, since these rights constitute some of the essential foundations of a democratic, pluralistic society and can play a crucial role in the fight against racism, racial discrimination, xenophobia and related intolerance.

International and European instruments for the protection of Human Rights provide the circumstances in which restriction may be permitted. Relevant to the right of expression are the articles 19 par 3 and 20 of ICCPR and 10 ECHR. As far as freedom of assembly is concerned Articles 21 and 22 ICCPR and 11 ECHR provide the background, whereas article 4 of the International Convention on the Elimination of all sorts of Racial Discrimination is also relevant.

Pursuant to these provisions, the incitement to violence by disseminating ideas on superiority or promoting discrimination is a significant element. This conclusion is also supported by the paper of the Second UN Conference in 2009 (Durban Review Conference), urging governments to punish violent, racist and xenophobic activities by groups based on neo-Nazi, neo-fascist or other violent national ideologies.

2. The interpretation of the provisions by the relevant bodies

According to the UN Human Rights Committee, limitations may be permitted by law in the specific instances of Art 20 of ICCPR (ie when the invocation of national, racial or religious hatred may incite discrimination, hostility or violence). However, restrictions should comply with the stringent requirements that can be found in Art 19 to which Art 20 is *lex*

specialis. In other words, freedom of expression is incompatible with the general prohibition of expressing a view against certain religions, unless if the prohibition falls within the scope of Art 20.

The historical context in which the above mentioned provisions were adopted has changed ever since; rule of law has developed and these provisions have been very carefully applied by international monitoring bodies. Laws falling under the scope of these provisions have been adopted in countries with a deficit of democracy in order for groups to be punished and silenced.

Thus, ECtHR has applied Art 17 (prohibition of rights' abuse) with great moderation when it came to freedom of expression. The exercise of this freedom has been characterized unfair in cases the holder of the right was aiming at the overthrow of social peace. When it comes to freedom of association, ECtHR examines the association's charter and its public presence. In the case of National and Patriotic Union of Polish Victims of Bolshevism and Zionism (having incorporated anti-Semitic views in its charter), the Court held the Union constituted an abuse of freedom of association since it could be able to revive anti-Semitism.

The UN Committee Against Racial Discrimination held that under Art 4 (prohibition of propaganda) states are under the obligation to criminalize a) the transmission of ideas of racial superiority or hatred, b) incitement to racial discrimination, c) acts of violence against any race or group of people of different color or ethnic origin and d) the assistance to activities of such nature. The Commission advises states to swiftly act against those groups and activities and not to hesitate to ban them

The Commission of the Council of Europe against Racism and Intolerance (ECRI) suggests penalization for the following acts when committed intentionally: a) prompting to violence, hatred or discrimination, b) public insults and defamation, or c) threats against an individual or an entire group on the basis of race, color, language, religion, nationality, national or ethnic origin, d) public expression of racist intentions, ideology claiming the superiority of one group of people or underestimating or discrediting another group on the only base of race, color, language, religion, nationality, national or ethnic origin, e) public denial, degradation, justification or advocacy of racist intentions, genocide, crimes against humanity or war crimes, f) public dissemination or public distribution or production or storages aiming at public dissemination or distribution of written, pictorial or other material associated with the points (a),(b),(c),(d) and (e),) the establishment or the undertaking of the leadership of a team inciting racism, providing support to such a team, participating in activities aiming at committing the offenses referred to in the above points. It is noted that the dissolution of an organization inciting racism may only be decided by Court.

Similarly, the UN Special Rapporteur suggests freezing of these groups' assets and (as a last resort) their dissolution. It can be observed that dissolution of these groups is not prohibited by specialized international bodies. On the contrary an *ad hoc* judicial decision may demand the dissolution of such a group.

In Art 187 of Greek Penal Code the crime of organizing or taking part in structured and continuous groups of three or more people "seeking" to commit series of crimes, including homicide and serious physical harm is formulized. So a victim may seek the prosecution of the perpetrator pursuant to Art 187.

The NCHR on its part notes that only

a few restrictions of the above mentioned freedoms may be accepted in a democratic society, without public debate and pluralism being harmed. However, if cases of well organized propaganda and regularization of racist violence remain unpunished, their perpetrators will repeat their criminal actions, weakening the rule of law.

The NCHR, taking into account the recommendation of international and regional bodies and the particularities of Greek society, recommends:

- Vigilance from the State with regard to groups disseminating views of racial hatred;
- Police education and training about extremist groups;
- Collecting evidence for the application of Art 187 to be enabled in cases of extremist organizations;
- Creating a special police force with the tack to monitor and address extremist groups;
- Developing cooperation with NGOs and experts studying the action and development of such groups;
- Protecting the rights of human rights' defenders and ensure access to justice;
- Raising awareness at local level about the negative effects of such ideologies;
- Creating prevention programs in schools and linking the measures against violence within schools. Examples: a) enriching educational material with sections on combating racism and violence, b) experiential learning on respect of difference, c) creation of prevention mechanisms within the school council with the participation of both teachers and children;
- Vocational training programs for young people in areas where extremist groups develop their action;
- Supporting cultural and scientific events designed to combat racism mainly by explaining the methods and consequences of the actions of extremist groups;
- Strongly, clearly and explicitly condemning extremist groups and their practices by political leaders.

III. Racist ideologies and democracy - political public discourse

According to UN Special Rapporteur, the increasing influence of extremist ideologies remains an important challenge. Notwithstanding World Conference in Durban in 2001, where Members condemned political groups based on racism and xenophobia as incompatible with democracy, representatives of such ideologies have entered national parliaments. Moreover, the popularity of some of these movements have increased through denunciating immigrants and asylum seekers and presenting them as sources of national problems. At the same time, extremist groups have employed a method of strategic "retreat": in order for their position to be secured, a more cautious rhetoric is employed, "compatible" with human rights, in order for complaints to be avoided.

Major responsibility lies with the political parties maintaining ambivalent attitude towards these groups and not hesitating creating alliances under some conditions. Political parties involve in populist approaches to the problems of unemployment, security and immigration. So, rather than arguing against the oversimplified political positions of extremist political groups and enlightening the public on facts, political groups end up sliding in populist practices against democracy itself.

Statements by State's representatives

targeting groups as being responsible for complex problems end up legitimizing racist ideas' advocates. In a recent case, the responsible Minister attributed responsibilities to drug addicts and possible victims of human trafficking that the State should have protected and treated. He targeted in an arbitrary generalized way an extremely vulnerable social group, Moreover, the State has publicized sensitive medical data and photographs of prostitutes without their prior consent. Some of the women were not aware of being HIV positive prior to the publication of their photographs. This act does not confine with the legal framework for the protection of personal data. Moreover, it does raise serious concerns about the compatibility of Art 48 of the Law 4075/2012 (arrangements limiting infectious diseases' spread) with the provisions dealing with the protection of the right to liberty and security (custodial and compulsory examination without the consent of the person in question). It revives, also, traditional sexist practices, presenting women as threats, putting at risk "innocent family men". These practices indirectly result in legitimizing a new (ethnic or cultural) nationalism, considering multiculturalism a threat to national identity and values.

ECRI condemned the use of racist, anti-Semitic and xenophobic elements in political discourse, proclaiming it morally unacceptable. The Commission expressed concern about the role of political parties in the process of legalizing and accepting racist speech. The Commission calls upon European political parties to sign and implement the Charter of European Political Parties for a non racist society, suggesting responsible attitude towards racist problems.

The above analysis shows that the incorporation and effects of racist movements in the political scene is undisputable. Hence, the fight against racism and racist violence cannot be restricted to taking legislative initiatives. Political parties should take active part in the devaluation of racist speech, adopt codes of conduct and resist in the creation of alliances with extremist political parties.

Moreover, NCHR clarifies that *public speech of the representatives of faiths and religions* falls within public discourse. Some priests intervene in ways that are incompatible with their positive duty to refrain from any act of incitement to discrimination, racial hatred, intolerance and violence. The State should take into consideration ECtHR's decisions and address the issue clearly by equally applying the law.

NCHR recommends parties and authorities to:

- Clearly disdain and criticize racist public discourse by anyone, including religions representatives;
- Develop policies on the basis of facts against populist challenges from extremist political actors;
- Engage in dialogue and relationship of trust with vulnerable groups;
- Adopt self-regulatory measures for parties participating in legislative elections and Parliament;
- Restraint of the public broadcast of racist speech and condemning it in any case.

IV. Racist violence in sports, especially in football

International organs combating racism have been lately facing the problem of the dissemination of racist ideologies in sports and, especially, in football. The UN Special Rapporteur notes that the noble ideals of sportsmanship and mutual respect have eroded due to the nationalist dimension of competition along with sports' excessive commercialization.

Extremist groups operate inside sport sites. Foreign players are targeted and systematically mocked on the basis of their skin color or/and ethnic origin. Racist pleasantries end up being a common code of communication. Tolerance of violence may conceal criminal acts. UEFA announced that no tolerance will be shown and that racist behavior by players in games of the first week of European Football Championship is being investigated. The material from the games, which may help in identifying the perpetrators, is available to UEFA's competent Committee.

The acts of these organizations are intensified in response to games between national team of the State and that of the State of origin of immigrants, such as Albania. The climate of hostility and the elevation of a football game to a "national pride issue" ended up in the killing of an Albanian football fan in Zakynthos, in 2004. This incident proves to be the tip of a iceberg of practices of racist violence. After a recent victory of National Team in European Championship and during the celebrations, a froup attacked foreigners with homemade weapons, resulting in injuries. Hence, violence is associated with the feeling of national superiority and "blindly" relieved to vulnerable victims.

Racist incidents in sports have been ignored and depreciated as shown by the lack of relevant records. The issue had been addressed as an extension of the overall phenomenon of violence in sports and attributed to the fans, not to the community.

Extremist groups reach new members in sport arenas, taking advantage of their age, along with marginalization and strengthening of inequalities.

In the light of 2004 Olympic Games, paragraph c was added to Art 41F of 2725/1999, according to which imprisonment up to a year and a monetary fine shall be imposed to whoever offends the national identity of any person, any country's national anthem, Olympic symbols or Olympic games, acting individually or as a Member of a team, if there is no other provision dealing with the act.

Also Law 4049/2012 was adopted, to combat *violence in sports arenas, doping, pre-organised games and other provisions.* Art 4 introduces the criminal treatment of organized violence on the occasion of sport events, adding the relevant crimes to par 1 of art 187 Penal Code. According to the explanatory memorandum this treatment has been necessitated by the actual size of the phenomenon.

Violence in sports is now being addressed, however, racist violence is not explicitly distinguished. However the judge should take into account the racist motivations.

The adoption of the provisions is not sufficient if not accompanied with State's condemnation of the racist element. ECRI recommends the legislation to be strengthened in practice by providing exhaustive guidance for the identification of racist incidents, including but not limited to insults and hymns, banners and symbols, flags, leaflets and images with racing messages. A mechanism of vigilance should also be included. Moreover, rules should be adopted defining the obligations of all stakeholders and people (referees, coaches, arena managers, law enforcement and private security personnel).

Moreover, sport teams should jointly declare that they condemn and combat racism. Football teams should adopt self regulatory measures and anti-racist behavior.

NCHR summarizes – not exhaustive – proposals to tackle racist violence in sports are-

nas, especially coming from extremist groups

- Identifying the problem by government, sports federations and professional associations;
- Examining the potential of making racist motive an aggravating circumstance of a crime (79 par 3 Penal Code);
- Adding monitoring racist violence in stadiums to the responsibilities of the Permanent Commission against Violence;
- Creating a platform for Cooperation between the Permanent Commission and sports federations and associations so as for the activities of extremist groups to be monitored;
- Providing clear instructions for the identification of racist incidents;
- Clearly summarizing the obligation of all the involved professionals;
- Adopting a declaration for combating racism by sporting federations and adopting self-regulatory measures for the problem to be internally solved;
- Cooperating with police in cases of crimes with racist motives.

3. RECORDING NETWORK OF INCIDENTS OF RACIST VIOLENCE PRESENTATION OF THE RESULTS OF THE PILOT PHASE 1.10.2011-31.12.2011

With the initiative of the Greek National Commission for Human Rights (GNCHR) and the Office of the High Commissioner for Refugees in Greece (UNCHR), the **Racist Violence Recording Network** was created with the participation of 18 non-governmental organizations and other actors: Aitima, Antigone, Medecins du Monde, Amnesty International, the Hellenic League for Human Rights, the Greek Agreements' Observatory of Helsinki, the Greek Council for Refugees, the Greek Forum of Migrants, the Greek Forum of Refugees, the Day's Centre 'Babel', the Defense Move of the Rights of Refugees and Migrants (Patras), the METAdrasi, the Universal Programme for Refugees, the Group of Lawyers for the Rights of Refugees and Migrants, the Legal Group for the Defense of the Rights of Refugees and Migrants (Thessaloniki), the Migrants' Forum in Creta, the i-RED Institute for Rights, Equality and Diversity and PRAKSIS, as well as the Greek Ombudsman as an observer. The participating actors have signed a cooperation agreement **aiming to compensate the vacuum created by the absence of a formal and effective system for recording incidents and trends of racism and racist violence in Greece,** according to the international and European obligations of the state. The Recording Network is open to any actor having the required participation characteristics, meaning providing medical, social and legal services and / or comes to direct contact with victims of racist violence.

The systematic recording of racist violence acts started with a pilot phase on 1 October and a common **Recording Form of Racist Incident** in order to provide as clear and comprehensive indications of the quantitative and qualitative trends in racist violence in Greece as possible. Within three months of the pilot phase, incidents were recorded mainly within the geographical area where the participant organisations are active, namely in the areas of downtown Athens (near Omonia Square, in Attica Square, in Agios Panteleimon) and in certain areas of Patras. Therefore, due to the severe geographical limitations and the recording method based on the victim's **voluntary testimony**, the results represent a small to bare minimum sample of the real situation. The participant organisations noted that even in cases where the victim, often with fresh signs of violence is addressing their services for some help, still avoids filing a complaint. The reasons of this reluctance can be found on fear, lack of confidence in the system and sometimes the passive familiarity with racist behavior.

In brief, during the period 1.10.2011-31.12.2011 **63 incidents of racist violence** were registered. In **51** of them **more than one perpetrators** were involved.

Data regarding the perpetrators: 18 perpetrators seem to operate as members of extremist groups and **26** as **individual citizens**. Most **perpetrators** are **men** (61 versus 2 women). Note however that in group incidents women are involved as well.

Details regarding the victims: mostly **men**, a ratio of 56 to 7 women (in cases with more than one victims the recording was based on one victim's testimony). The victims mainly come from Afghanistan (25), Sub-Saharan Africa (21), Bangladesh (4) and Pakistan (2).

From the victims' total**, 27 are undocumented, 23 are asylum seekers, 5 are legal residents 5, 1 is a recognized refugee and**

1 has the subsidiary protection status (in 6 cases the victim's status is unknown).

Information regarding the racist act: mostly personal injury (30) and severe injury (12) (10 needed medical care). There were, finally, cases of property destruction (destruction of grocery delivery vehicle, flower shop arson).

Additionally, what follows is a trend of **group violence involving minors**. In those cases what is documented is the **basic organization in the public space** (squares, etc.) and the **use of mainly improvised weapons**, however potential lethal. Moreover, what is documented is the "patrol" practice by motorcyclists dressed in black with **helmets or covered faces**, attacking on the move and often at bus stops. The teams also use **large dogs** for intimidation. The attacks against women have evidence of sexual threat to their dignity explicitly linked to their color.

A special category is formed by the 18 incidents where the **police is linked to racist violence** (10 in Athens and 8 in Patras). These are incidents where police officers exercising their functions and in routine patrols resort to unlawful acts and practices of violence. There were also cases where people were brought to the police stations, were detained and ill-treated for some hours, and had their legal documents destroyed. In one case, a police officer destroyed medicines that the alien was provided with in a NGO clinic.

The **Racist Violence Recording Network** concludes that the results of the pilot phase are extremely alarming and that the anxiety is increasing due to the fact that it is not even the tip of the iceberg. The short-lived pilot phase, the limited resources of the Network, the need to strengthen cooperation with immigrant communities and the frequent occurrence of incidents in other public areas from where participant actors are based reveal that racist violence is spreading with terrifying speed and threatens the already affected social cohesion. It is noted with the utmost emphasis that under the circumstances of the present economic recession, damage of the social rupture, social rapid marginalization of population groups, the phenomenon threatens to take other dimensions.

The **Recording Network of Incidents of Racist Violence** recalls that impunity is fueling crime, perpetuates the vicious cycle of violence and stirs up social strife. For these reasons, it proposes to the State:

→the creation of a **single special racist crime recording system**, which will be managed by the Ministry of Justice. This system will link data from NGOs, hospitals and other appropriate bodies.

→ the **constant collaboration** with the Recording Network of Incidents of Racist Violence, NGOs and migrant communities, which are in direct contact with the victims, in order to find appropriate solutions and design specific measures against racist violence.

→ to **establish specific guidelines on the police's procedures investigating racist crime**, to fight police's tolerance of such behavior and to ensure that perpetrators are referred to justice, according to the rules.

The organizations and institutions involved in the Network are aware that the serious problems of degradation and increased delinquency, characterizing a range of areas where large numbers of marginalized migrants and refugees are concentrated, constitute a fertile ground for the development of social tensions, racist behavior, and even tolerance of racially motivated acts by a portion of the population. Therefore, we note that the above suggestions in order to effectively deal with acts of racist violence, have to be accompanied by measures and policies aiming to improve the feeling of security in neighborhoods, countering human trafficking, drug dealing, prostitution and crime, upgrading these areas and relieving the entire population, reducing the ghettos formed by the poor / homeless migrants and refugees and promoting their social inclusion, wherever possible.

4. Workshop for NGOs on preventing and responding to hate crimes and focus group discussion

In the framework of the same initiative regarding the racist violence and in the context of the NCHR's competence to develop education and information initiatives, the Commission, jointly with the UN High Commissioner for Refugees in Greece and the Office for Democratic Institutions and Human Rights of Organization for Security and Cooperation in Europe (OSCE), organized a special training course for NGOs and organizations that provide medical, social and legal aid to the victims of racist violence and participate in the network.

The Workshop for NGOs, dealing with the prevention and treatment of hate crimes took place at the offices of NCHR. During the seminar declarations of intolerance and their impact along with the concept of hate crimes in relation to other concepts were examined, while working groups were created so as to present case studies. In addition, the role of civil society in dealing with hate crimes was extensively discussed, particularly regarding the development of specific actions in the following areas:

a) Awareness of hate crimes' impact
b) Lobbying for better legislation
c) Cooperation with police authorities and institutions
d) Cooperation with society
e) Assisting victims

Along with presenting the legislative framework in Greece, participants were also informed about the possibilities of monitoring, controlling and making hate crimes public.

A necessary preliminary stage of the seminar was the realization of a focused discussion between two instructors from OSCE and a group of about twenty students of Arsakeio (High School) on issues of racism, discrimination and racist violence. During the discussion, students were informed about the actions of NCHR and OSCE and the impact of racism in school's environment and interpersonal relations. The input from the discussion empowered the seminar on NGOs since the stereotypes and problems that emerged were used for the case studies of the seminar. The aim was to adapt the general concepts to the particularities of Greek society. The students' experience also helped to open up important aspects of school life that teachers found of major importance and untraceable.

NCHR's ACTIVITIES AT THE DOMESTIC, EUROPEAN AND INTERNATIONAL LEVEL

1. Domestic Level

A) Interventions to State Authorities

The NCHR, during 2011, addressed the following letters to State authorities and officials by which it raised its concerns and expressed its views regarding human rights related issues:

a) Letter to the President of the Law Drafting Committee for the reform of the Code of Criminal Procedure regarding criminal record of juvenile offenders (10.01).

b) Letter to the Minister of Citizen Protection regarding the function of the Asylum Appeals Committees (11.02).

c) Letter to Secretary General of Public Order (Ministry of Citizen Protection) regarding the investigation by the Police of racist motives of alleged offenders or incidents (16.02).

d) Letter to the Minister of Citizen Protection regarding the Law Drafting Committee on Asylum (04.03).

e) Letter to the Prime Minister and several Ministers regarding the reform of the legislative framework of issue and renewal of residence permits (28.03.2011).

f) Letter to the Minister of Citizen Protection regarding the function of the Asylum Appeals Committees (05.04).

g) Letter to the Minister of Citizen Protection, Minister of National Defense and Public Prosecutor of Areios Pagos regarding the racist slogans voiced by men of the Special Forces during the military parade of 25th of March 2010 (01.07).

h) Letter to the Minister of Justice, Transparency and Human Rights concerning the final version of the Bill "Combating certain forms and expressions of racism and xenophobia by means of criminal law" (14.11).

B) Contribution to administrative procedures

a) Asylum Appeals Committees: According to article 26 of Presidential Decree 114/2010 (OG A 195) on the "Establishment of a single procedure for granting the status of refugee or of beneficiary of subsidiary protection to aliens or to stateless persons in conformity with Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status", the Minister of Citizen Protection establishes three-member Appeals Committees with deciding power. The third member of the said Committees – a jurist specialized in refugee or human rights law – is chosen by the Minister from an experts list drafted by the NCHR. The NCHR, upon the request of the Ministry, drafted a list on 30.08.2011.

b) Naturalization Committees: According to Law 3838/2010 "Modern Provisions Regarding Greek Citizenship and Political Participation of Aliens of Greek Origin and Migrants Residing Legally in Greece" (OG A 49) amending the Greek Citizenship Code, one of the members of the Naturalization Committee functioning in each Decentralized Administration, which renders an opinion regarding the fulfillment by the applicant of the substantive requirements of the Law, is proposed by the NCHR. Upon the request of the Decentralized Administrations, the NCHR proposed members to the Naturalization Committees.

c) Committees on Migration: Article 42 of Law 3907/2011 amended article 89 of Law 3386/2005 providing for the establishment within the Ministry of Interior of three Committees on Migration, which render an opinion regarding the existence on the part of third-country nationals of particularly strong links with the

country's social life, upon which the Minister of Interior decides as to whether to grand residence permit for exceptional grounds. The third member of the said Committees is a representative of civil society proposed by the NCHR.

d) A representative of the NCHR is member to the Evaluation Committee of proposals submitted within the framework of the Annual Program of the European Integration Fund. The said Committee is established by the Secretariat General of Population and Social Cohesion (Ministry of Interior).

C) Meetings with State authorities and officials and other stakeholders

The NCHR's Bureau and/or staff had their following meetings upon request: a) with the Special Permanent Parliamentary Commission on Institutions and Transparency, b) with the Greek Office of UNHCR and NGO's dealing with refugees issues, c) with the Greek Ombudsman and State Authorities involved in the management of migration flows and asylum procedure at the entry points, d) with the Secretary General of Transparency and Human Rights of the Ministry of Justice, Mr. I. Ioannidis, e) with the Greek Ombudsman and the Greek Society of Psychiatry.

Moreover, the NCHR held a meeting with migrants' associations which are members of the Greek Migrants Forum.

D) Conferences and seminars

Members and/or staff of the NCHR took part as panellists in the following seminars-conferences: a) "Political Violence and Fanaticism", b) "Migrants' integration: From labour rights to citizenship rights", c) "Addressing the problems of People Living with HIV/AIDS", d) "Conscientious Objectors in Greece: Problems and Prospects", e) "Far-right, political extremism and violence", f) "Journalism without discrimination", g) "Refugees' situation in Greece", h) "Female Migration: Aspects, problems and integration prospects in Greece", i) "Refugee Law, Jurisprudence, Legislation", j) "Human Rights and Local Policies: The role of Local Administration in defending fundamental freedoms", k) "1981-2011: EU's role in gender equality in Greece", l) "Combating discrimination in Greece: Related policies and civil society's role".

2. European and International Level

A) Interaction with International Monitoring **Bodies**

In 2011, the NCHR was also active both in the international and European plane: a) it presented an oral statement, via K. Rose ICC representative in Geneva, during the presentation of the Report of the Special Rapporteur on torture, and other cruel, inhuman or degrading treatment or punishment, Mr. M. Nowak, regarding his Mission in Greece; b) it communicated to the European Committee of Social Rights its comments on the 21st Report of Greece; c) it presented an oral statement, via K. Rose ICC representative in Geneva, during the Universal Periodic Review of Greece; d) in view of the examination of the 5th and 6th Periodic Reports of Greece by the UN Committee against Torture (CAT), it communicated to the latter its previous decisions-reports on detention conditions in correctional facilities, in police stations and detention facilities for aliens, and its findings from the *in situ* visit in the Evros region; e) it communicated its "Recommendation on the imperative need to

reverse the sharp decline in civil liberties and social rights" to several european and international organisations and bodies such as: The European Commission (President and Commissioners), the European Parliament (the President and Vice-Presidents), the Parliamentary Committees of the E.P., the President of the European Council, the President of the Eurogroup, the Director and Executive Board of the Fundamental Rights Agency of the European Union, the European Economic and Social Committee, the United Nations High Commissioner for Human Rights, the Office of the United Nations High Commissioner for Human Rights, all National Human Rights Institutions, the International and European Coordinating Committees of National Human Rights Institutions, the Human Rights Commissioner of the Council of Europe, the President of the Parliamentary Assembly of the Council of Europe, the Executive Secretary of the European Social Charter of the CoE, the European Committee of Social Rights of the CoE, the Board of the International Labour Office and the ILO High Mission Members for Greece, the European Trade Union Confederation and also the International Trade Union Confederation.

B) Participation in international, European and other fora

In the framework of the United Nations, the NCHR took part in the 24th Session of the International Coordinating Committee of National Human Rights Institutions (Geneva, 17-20.05).

In the framework of the Council of Europe, the NCHR participated in the: Thematic workshop "The role of National Human Rights Structures in the protection and promotion of the rights of children in care" (Tallinn, 06-07.04); Consultation meeting on the Council of Europe's activities in the field of migration (Athens, 05-06.05); Thematic workshop "The role of National Human Rights Structures in protecting and promoting the rights of people with disabilities" (Kiev, 24-25.05); Meeting of the Committee on Migration, Refugees and Population of the Parliamentary Assembly of the Council of Europe (Corfu, 01-02.06); Round Table with the National Human Rights Structures of Council of Europe member States to discuss possibilities for enhanced cooperation in the context of the Interlaken Action Plan to support the European Convention on Human Rights system (Madrid, 21-22.09).

In the framework of the European Union, the NCHR took part in the: 4th Annual FRA-NHRI Meeting (Vienna, 05.04); Fundamental Rights Conference: Dignity and rights of irregular migrants (Warsaw, 21-22.11).

In the framework of the Organisation for Security and Cooperation on Europe, NCHR participated in the Conference for National Human Rights Institutions in the OSCE area (Vilnius, 13-14.07).

In the framework of its cooperation with other national human rights institutions, and in particular in the framework of the Arab-European Dialogue for National HR Institutions, it took part in the 3rd Meeting of the Working Group on Women's Rights (Doha, 09-11.02.2011), and in the 1st Meeting of the NHRIs' Sixth Arab-European Human Rights Dialogue on "Torture and Rule of Law" (Berlin, 11-13.05-2011).

C) Meetings with representatives of international and European organizations, Governmental officials and NGOs

The NCHR's Bureau and/or staff had the following meetings upon request: a) with

Mr. I. Dimitrakopoulos, Head of FRA's Equality and Citizens' Rights Department, b) with representatives of the Embassies of Norway, Sweden, Denmark and United Kingdom, c) with Mr. D. Endres, Director of the UNHCR Bureau for Europe and Mr. L. Jolles, UNHCR Regional Representative for South Europe, d) with the Dutch Minister of Migration and Asylum, Mr. G. Leers, e) with representatives of the Euro-Mediterranean Human Rights Network, f) with representatives of Human Rights Watch.