

HELLENIC REPUBLIC
GREEK NATIONAL COMMISSION FOR HUMAN RIGHTS

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Comments on the Report to be Submitted by Greece to the Human Rights Committee

Introduction

The Report under examination is the first report to be submitted by Greece to the Human Rights Committee regarding the implementation of the International Covenant on Civil and Political Rights in Greece from 1997 until 2003 in terms of laws, jurisprudence and administrative practices. The NCHR would like to congratulate the Ministry of Foreign Affairs for the drafting of the Report presenting all legal and social reforms taking place in Greece from 1997 until today in order for the provisions of the ICCPR to be incorporated in domestic legal order.

General Comments

The NCHR notes that there should be more references to the Core Document, given that all major information for Greek legal order have been analysed therein.

It is also necessary for the Report in many parts to provide information regarding the actual situation of human rights in Greece, given that the NCHR has several times emphasized the distance between the legal framework and the practice. The presentation of the legal framework alone gives a picture that does not always correspond to the reality.

Article 1: Right of self determination

Regarding the right of self determination, the NCHR made extensive comments on: the principle of the rule of law and the principle of social state provided for by the Greek Constitution; local administration's competence, function and transparency.

Articles 2 and 26: Domestic implementation and prohibition of discrimination

The NCHR focused on the jurisprudence of the Conseil d'Etat on the interpretation of the principle of equality; the hiring of third countries' nationals in the public sector; the jurisprudence of the Highest Courts regarding affirmative action for ensuring substantive equality and expanding implementation of the principle of equality. Regarding equal treatment of aliens, the NCHR focused on: issues of employment permits and rights of aliens and problems of *de facto* refugees. The NCHR also repeated its positions regarding the bill incorporating into domestic legal order the Directives 2000/43/EC and 2000/78/EC. As far as the Roma are concerned, the NCHR re-iterated the conclusions of its own extensive report on the situation of Roma, which had focused on their housing, health, education, employment and problems related to their inscription to municipal and other official registrars. The NCHR also submitted observations regarding the efficiency and effectiveness of the Labour Inspection Unit; the compliance with and execution of judicial decisions by the Administration;

Article 3 Equality between men and women

The NCHR focused on the revision of the Greek Constitution and the new provision introducing substantive equality and affirmative action and the relevant jurisprudence preceding the revision. The NCHR stressed the importance of two new laws introducing positive quotas for women's participation in Councils (disciplinary, administrative etc) of Public

services and in ballots for the election of local administration officials. It also referred to pension rights of men and women and trafficking in women.

Article 7: Prohibition of torture and cruel, inhuman or degrading treatment or punishment

The NCHR expressed its concern regarding the negative reports by international organs and NGOs on police brutality; It stressed the need for special measures regarding the mentally disabled, aliens, Roma in detention and the importance of the Optional Protocol to CAT which has still to be ratified by Greece.

Article 9: Right to liberty and security of persons

The NCHR referred to its previous recommendations regarding the accused of diminished capacity and the procedural aspects of their detention (security provisions) in therapeutic facilities.

Article 10: Conditions of detention

The NCHR underlined that Greek authorities need to fully comply with the recommendations of international and European organs regarding conditions of detention in Greece; they also stressed the need for timely submission of periodic reports and full cooperation with CAT and CPT. It reiterated the need for continuous training of personnel in detention facilities and requested once more to be given free access to detention facilities. Furthermore, it commented upon reception and detention of asylum seekers and their access to asylum procedures; the overpopulation in prisons; and drug addicts in prisons.

Article 13: Administrative or judicial deportation

The NCHR stressed the need for special detention facilities for aliens under administrative deportation; the need to prioritise the examination of applications for refugee status of those being detained; the

need for aliens to be informed of their rights while detained; asylum seekers should be detained only in exceptional circumstances; the need for new reception centres for asylum seekers; and concerns regarding the Readmission Protocol between Greece and Turkey.

Article 14: Equality before the courts and the right to a fair and public hearing by an independent court established by law

The NCHR referred to the developments in the area of interim protection (provisional measures) and equality of parties to a dispute and the use of article 14 of the ICCPR by Greek Courts in some very important cases regarding execution against a third state, the obligation of *restitutio ad integrum* of the Administration when it violates the principle of legality. The NCHR expressed its concerns regarding two new laws for the acceleration of civil and criminal justice considering that they ‘shrink’ judicial protection in violation of article 14 and repeated its observations regarding the bill on legal aid and the bill on juvenile offenders.

Article 18: Freedom of thought, conscience, religion and belief

The NCHR noted that no other constitution or law of western European country prohibits proselytism like the Greek Constitution. It repeated its recommendation on the abrogation of the provisions of proselytism and the establishment of a new framework adapted to contemporary needs in order for the freedom of thought and conscience to be substantially protected. As far as worship places are concerned, the NCHR repeated its previous recommendations for reforming the authorization procedure for the establishment of a place of worship, based also on the jurisprudence of the ECtHR. Moreover, it re-iterated its views regarding conscientious objectors; the inclusion of religious affiliation in identity cards; and the cremation of the deceased. The NCHR also noted that the effective incorporation of Directives 2000/43/EC and 2000/78/EC requires the revision of the legislation regarding equal treatment

irrespective of religious or other beliefs, such as hiring teachers of different religions and the teaching of the subject of religious affairs.

Article 23: Protection of the family, the right to marriage and equality of the spouses

The NCHR repeated its position regarding marriages of muslims by proxy.

Article 27: Rights of persons belonging to minorities

Whereas the protection of the general rights of persons belonging to minorities is ensured on the basis of the principle of equality before the law, the protection of their rights under article 27 requires special measures for the protection of the particularity of the group as such.

Although, there is still no commonly accepted definition of the term ‘minority’, certain criteria are considered as benchmarks for the identification and recognition of a minority group, such as the numerically inferior position of that group, its non-dominant status, the fact that its members have the citizenship of the State in whose territory they live, their ethnic, religious and/or linguistic differentiations from the rest of the population, and the fact that they express solidarity and seek to preserve their traditions, religion and/or language. The fact that one group has been recognized as a minority by international conventions is a presumption of recognition, without the need for all the above conditions to be met.

Nowadays, it is still valid that «minorities exist on real grounds rather than on legal ones», while the contemporary perception regarding minorities takes the so-called subjective approach; according to that, *inter alia*, it is crucial for a group to be qualified as a minority that they express the will to exist as such at the collective level.

Finally, it should be noted that while Greece has signed the European Framework Convention of the Council of Europe for the Protection of National Minorities, it has not so far ratified it. Besides,

Greece has neither signed nor acceded to the European Charter for Regional and Minority Languages.

The draft report refers expressly only to the Muslim minority in Thrace. The NCHR notes that the Greek legal system has long recognized a *de jure* special status for the Jewish communities of Greece. They are recognized as legal persons of public law, they enjoy certain economic privileges, their assets are protected and they have the right to establish schools.

In addition, as indicated in reports of international governmental and non-governmental organizations, Greece is populated by ethnic groups such as Roma, religious communities such as Catholics, Protestants, Armenians, Jehovah's Witnesses. Apart from Greek and Turkish languages, there are a few other spoken languages, such as pomak dialects (spoken by Pomaks who are part of the Muslim minority in Thrace), slavo-macedonian (spoken by a small fraction of the population of Greek Macedonia), romani, vlach and 'arvanitika'. It is however important to note that linguistic minorities and minority languages are not necessarily one and the same.

Some of these groups place emphasis on the religious element, without seeking to diversify themselves on an ethnic basis. Others emphasize the cultural element without invoking any other features. Finally, for some groups, language is an element of minority identity. Those groups also pursue the recognition of their ethnic origin.

The NCHR understands that these issues remain open and do not appear to have been fully resolved either internationally or nationally. This view, however, does not confirm the categorical statement of the draft report according to which there are no other groups in Greece which may be considered as minorities, in accordance with international standards.

The National Commission holds the view that discrepancies between the wishes and demands of certain groups and the official policy of the Greek State need to be mitigated through a sincere and constructive

dialogue and always in the light of international treaties for the protection of human rights and minorities.

Athens, 4 February 2004