

HELLENIC REPUBLIC

GREEK NATIONAL COMMISSION FOR HUMAN RIGHTS

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The right to Water*

GNCHR Recommendations for its effective protection¹

I. Introduction

The Greek National Commission for Human Rights (GNCHR), in its institutional capacity as an advisory body to the State on human rights issues, pursuant to Article 1 (6) (b) of Act 2667/1998, its founding statute, considers it of crucial importance to present to the State *recommendations regarding the effective protection of the right to water*.

The GNCHR² decided to deal with this fundamental right after weighing, on the one hand, the progress made towards the guaranteeing of this right at the European and international level, and on the other hand, the dangers posed to its enjoyment by growing pressure for the privatization of its providers.

The urgency of such a project stems from the need to consolidate the status of water as a “public good” and not as a commercial commodity, as well as to treat water as a natural commodity in shortage.

To this end, the GNCHR decided to formulate its recommendations in order to delineate both the content and the legal guarantees of the right to water. In this way, the **dynamic** character of the right to water will emerge and the GNCHR's choice to propose its protection in an equally dynamic manner will be justified.

* The present text was adopted unanimously by the GNCHR plenary session on 20.3.2014. Rapporteurs: E. Varhalama, 2nd Vice President GNCHR and A. Tsampi, Legal Officer GNCHR.

¹ The GNCHR would like to highlight that any reference to the right to water also covers the accompanying right to sanitation.

² The GNCHR has previously dealt with the right to water in the context of its comments on the draft report of Greece concerning the implementation of the International Covenant on Economic, Social and Cultural Rights, http://www.nchr.gr/images/pdf/apofaseis/politistika_dikaiomata/Paratiriseis_ekthesiYPEX_ICESC_R.pdf, pp. 29-30.

II. Delineation of the right to water

A. *The content of the right to water*

Delineating the content³ of the right to water reveals a right that is of a composite nature. It has thus been argued that **there is not one right to water, but more than one rights to water**⁴. Indicatively, these “rights” would include the right to water for life and survival; the right to safe drinking water; the right to water for sanitation; the right to water for an adequate living standard; the right to water in the context of the right to food and nutrition; the right to water and sanitation in the context of the right to housing; the right to water for the production of food; the right to water within the right to development; the right to water within a natural resources framework; the right to water as a constituent of environmental rights.

For this reason, even when the right to water does not seem protected *per se*, protection is derived through other rights so as to constitute an **intrinsic element thereof**. Such other rights would include the right to life and dignity, the right to an adequate living standard, the right to adequate housing⁵ and nutrition⁶, the right to human dignity and privacy, the right to health, and environmental rights.

And, of course, as an autonomous right to water; based on the **definition** provided in General Comment No. 15 of the UN Committee on Economic, Social and Cultural Rights, it is perceived as *the right of every person to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses*⁷.

B. *Establishing the right to water*

1. *International Level*

The right to water is explicitly mentioned neither in the 1948 Universal Declaration of Human Rights, nor in the International Covenants on Economic, Social and Cultural Rights (ICESCR) or Civil and Political Rights (ICCPR). Nonetheless, even before it was framed as a general right in itself, a right to water

³ See *inter alia* TZATZAKI (M.-V.), *Water in Public International Law*, Nomiki Vivliothiki, 2012.

⁴ FAVREAU (B.), «Le droit de l'homme à l'eau», *Annuaire international des droits de l'homme*, Vol. I/2006, p. 260.

⁵ In General Comment no. 4 on Article 11 (1) of ICESCR, the Committee on Economic, Social and Cultural Rights highlights that the right to adequate housing requires the access to “safe drinking water” as well as “sanitation”: CESCR, *General comment 4. (General Comments), The right to adequate housing (Art.11 (1))*, 13.12.1991, para. 8 (b).

⁶ Jean Ziegler, as the UN Special Rapporteur on the right to food highlighted that the right to food does not only include the right to solid food but also liquids, such as drinking water: Economic and Social Council, *The right to food, Report by the Special Rapporteur on the right to food, Mr. Jean Ziegler, submitted in accordance with Commission on Human Rights resolution 2000/10*, E/CN.4/2001/53, 7.2.2001, para. 32.

⁷ Para. 2.

is explicitly established in texts offering a *special scope of protection*. Such texts include:

- The **International Convention on the Rights of the Child** (1989), wherein Article 24 (2) (c) provides that, in order to fully realize *the child's right to health*, the State Parties shall take appropriate measures to “combat disease and malnutrition [...] through, *inter alia*, [...] the provision of adequate nutritious food and clean drinking water, taking into consideration the dangers and risks of environmental pollution”.
- The **International Convention on the Elimination of all Forms of Discrimination against Women** (1979), enshrines the right of women “to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and *water supply*, transport and communications” (Article 14 (2) (h)).
- In turn, Article 28 of the **International Convention on the Rights of Persons with Disabilities** (2006) imposes an obligation on states to ensure *access to drinking water* for persons with disabilities and their families.
- A special provision for the supply of an adequate quantity and quality of drinking water is contained in the innovative **International Labour Organisation Maritime Labour Convention (MLC 2006)**⁸, known as the “Seafarers’ Labour Rights Charter” (Regulation 3.2 – Food and Catering).

Moreover, in its provisions relating to “Indigenous and Tribal Peoples in Independent Countries”, the **International Labour Convention No. 169 (1989)** provides for the adoption of special measures for safeguarding the *environment of the peoples concerned* (Article 4 (1) *in fine*). In the context of **international humanitarian law**, the third Geneva Convention on the treatment of prisoners of war (1949) refers to the obligation to provide drinking water, in sufficient quality and quantity according to every person’s needs (Articles 20 and 26). Moreover, the Additional Protocol on international armed conflict prohibits the destruction of objects indispensable for the survival of the civilian population including, *inter alia*, water installations and supplies.

Some charters and protocols of a purely regional ambit are also worth mentioning, including:

- The **African Charter on the Rights and Welfare of the Child** (1990), Article 14 (2) (c) of which requires State Parties to take measures to “*ensure the provision of adequate nutrition and safe drinking water*” in the context of the child’s right to health.

⁸ The *MLC* was ratified by Law 4078/2012.

- The **Additional Protocol to the American Convention on Human Rights**, in the sphere of economic, social and cultural rights, provides in Article 11 (1), that “[e]veryone shall have the right to live in a healthy environment and to have *access to basic public services*”.

- The **London Protocol on water and health** (1999), contained within the 1992 Convention on the protection and use of transboundary watercourses and international lakes, was the first general text to approach *water and health in combination*, whilst making special reference to *equitable access* to water, adequate in terms both of quantity and of quality, for *all members of the population*, especially those who suffer a disadvantage or social exclusion (Article 5 (1)).

Progress towards the general international establishment of an autonomous right to water began in 1977, with many stops along the way⁹. In 1977, the UN General Assembly recognised the *universal right of access to drinking water*, asserting that all peoples, whatever their stage of development and their social and economic conditions, enjoy a right of access to drinking water in quantities and of a quality equal to their basic needs (**Mar del Plata Action Plan** of the UN Water Conference).

In 2000, the **UN Millennium Declaration** included among the Millennium Development Goals the goal “to halve, by 2015, the proportion of the population without sustainable access to safe drinking water”¹⁰.

In 2002, the UN Committee on Economic, Social and Cultural Rights included the right to water in its general comments on the International Covenant on Economic, Social and Cultural Rights, officially recognizing *access to sufficient and safe water as a fundamental human right* by means of **General Comment No. 15**. In fact, the right to water was characterized as a prerequisite for the realization of other rights¹¹. In 2008, the UN Human Rights Council decided, by dint of Resolution 7/22, to appoint Catarina de Albuquerque an **Independent Expert** on

⁹ See also Sixth World Water Forum, Marseille 2012 – Fifth World Water Forum, Istanbul 2009 – Fourth World Water Forum, Mexico 2006 – Third World Water Forum, Kyoto 2003 – International Decade for Action Programme “Water for Life 2005-2015” – International Summit on Sustainable Development, Johannesburg 2002 – International Conference on Freshwater, Bonn 2001 – Second World Water Forum, the Hague 2000 – First World Water Forum, Marrakesh 1997 – Fourth World Conference on Women, Beijing 1995 – World Summit for Social Development, Denmark 1995 – International Conference on Water and Environment, Dublin 1992 – World Summit for Children, New York 1990 – Global Consultation on safe water and sanitation, 1990.

¹⁰ United Nations General Assembly, [United Nations Millennium Declaration, Resolution A/res/55/2](#), Goal 19.

¹¹ CESCR, *General Comment No. 15 (2002), The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, E/C.12/2002/11, 20.1.2003, para. 1.

human rights obligations pertaining to access to safe drinking water and sanitation¹².

Finally, on July 28, 2010, the **UN General Assembly** recognised the human right to water and sanitation in its milestone Resolution 64/292, in which the importance of both for the implementation of all human rights is stressed. This was followed in September 2010 by Resolution A/HRC/RES/18/1 by the **Human Rights Council**, which marked a watershed in the protection of the right to water, describing it, as it did, as a part of current international law and binding upon States¹³.

2. European Level

Council of Europe

Explicit reference to the right to water is made in neither the European Convention of Human Rights (ECHR) nor the European Social Charter. However, it is linked to an array of rights protected by the aforementioned texts. This is also clear through the manner in which both are applied by the European Court of Human Rights (ECtHR) and the European Committee for Social Rights¹⁴.

Furthermore, it should be mentioned that the Council of Europe broke new ground in 1968 by adopting the **European Water Charter** and declaring that water constitutes a “common heritage”; it did not, however, refer to an *autonomous right to water*. This Charter was replaced in 2001 by the **European Charter on Water Resources**, which explicitly provides for *the right of every person to a sufficient quantity of water for his or her basic needs*¹⁵.

¹² The Human Rights Council, appointed Catarina de Albuquerque as a Special Rapporteur with its Resolution 16/2 on 18 March 2011 and it extended her mandate for three more years. The mandate was extended for three more years in October 2013 with the Resolution 24/18.

¹³ See also the recent Resolution A/HRC/24/L.31, 23 September 2013, in which the Human Rights Council refers explicitly for the first time to the regulatory content of the right.

¹⁴ STEICHEN (P.), « Le droit à l'eau dans la jurisprudence de la Cour européenne des droits de l'homme », in Académie de l'Eau, *Le droit à l'eau potable et à l'assainissement, sa mise en œuvre en Europe*, France 2011, p. 69 and onwards. file:///C:/Users/USER/Downloads/LIVRE_TOTAL_novembre_2011_pagine.pdf (last accessed on 10.3.2014). See ECtHR, *Mamère v. France*, 7.11.2006, (on the importance of public dialogue on water), ECtHR, *Taskin and others v. Turkey*, 10.11.2004 and ECtHR, *Tatar v. Romania*, 27.1.2009 (on the protection of water resources), ECtHR, *Butan and Dagomir v. Romania*, 14.2.2008 and ECtHR, *Zander v. Sweden*, 25.11.1993 (on the recognition of an individual right of access to water) and *inter alia*: ECtHR, *M.S.S. v. Belgium and Greece*, 21.1.2011, ECtHR, *E.G. Radu v. Romania*, 13.10.2009, ECtHR, *Viorel Burzo v. Romania*, 30.6.2009, (especially on the right of access to drinking water and sanitation during detention). As for the Decisions of the European Committee on Social Rights, these mainly refer to living conditions of Roma in light of Article 31 (1) of the European Social Charter.

¹⁵ *Recommendation Rec(2001)14 Of the Committee of Ministers to member states on the European Charter on Water Resources* (Adopted by the Committee of Ministers on 17 October 2001, at the 769th meeting of the Ministers' Deputies), para. 5.

Finally, in 2011, the **Parliamentary Assembly of the Council of Europe** adopted Resolution 1809/2011 on “Water: a source of conflict”, recommending that the authorities of both Members of the Council of Europe and non-Member States *recognise the access to water as a fundamental human right* in accordance with the aforementioned standards set by the UN General Assembly and the resolutions of the Human Rights Council¹⁶.

European Union

The right to water is not explicitly recognised in EU law. The European Union has, nevertheless, adopted a series of texts on the *protection and management of water*.

Through **Directive 2000/60/EC**¹⁷ of the European Parliament and Council (October 23, 2000) “On establishing a framework for Community action in the field of water policy”, the European Union (EU) establishes a framework for the protection of inland surface waters, groundwaters, transitional waters and coastal waters. It also contains a provision for the prevention and control of pollution, the promotion of sustainable water use, protection of the environment, the improvement of the aquatic environment and the mitigation of the effects of floods and droughts. On the other hand, its main aim is to ensure the “good status” of all community waters, from both an ecological and a chemical point of view, by 2015.

The Preamble to the Directive states *inter alia* that: (1) **Water in not a commercial commodity** like any other but, rather, a **heritage** which must be protected, defended and treated as such¹⁸, (2) The supply of water is a **service of general interest**, as defined in the Commission communication on services of general interest in Europe¹⁹ and (3) **Good water quality** will contribute to securing the supply of drinking water for the population²⁰.

Furthermore, **Directive 2006/118/EC**²¹ of the European Parliament and Council (December 12, 2006) “On the protection of groundwater against pollution and deterioration” provides special measures for the prevention and control of groundwater pollution.

The Preamble to the Directive states *inter alia* that: (1) Groundwater is a **valuable natural resource**, and as such it should be protected from deterioration and chemical pollution. This is particularly important in the case of

¹⁶ Parliamentary Assembly, Resolution 1809 (2011) [1](#), *Water: a source of conflict*, 15.4.2011 (18th Sitting), para. 14.1.

¹⁷ Directive 2000/60/EC was introduced by Law 3199/2003 (OG A'280/ 9.12.2003) on the “Protection and Management of Water”.

¹⁸ *Preamble*, no. 1.

¹⁹ *Idem*, no. 15.

²⁰ *Idem*, no. 24.

²¹ The compliance to this Directive was achieved through Common Ministerial Act 39626/2208/E130/2009 on the “Indication of measures for the protection of groundwater from pollution and deterioration” (OG 2075B/25.9.2009).

groundwater-dependent ecosystems and when groundwater is included in the water supply for human consumption²²; (2) Groundwater is the most sensitive and the largest body of freshwater in the European Union and, significantly, a **key source of drinking water supplies in many regions**²³; (3) detrimental concentrations of harmful pollutants in groundwater must be avoided, prevented or reduced in order to protect the environment as a whole, and human health in particular²⁴.

Moreover, Council **Directive 98/83/EC**²⁵ (November 3rd, 1998) on the quality of water intended for human consumption aims to protect public health by laying down sanitation and purity requirements for drinking water within the EU.

While the right to water is not enshrined in the **Charter of fundamental rights of the European Union**, it is linked to a series of rights protected thereby. Indeed, as well as being included among the rights protected by the ECHR, the right to water is indirectly covered by rights pertaining to the *protection of health*, *access to services of general economic interest*, the *protection of the environment and consumer protection*.

An EU citizen initiative called “*Water: a human right*” is endeavouring to establish an explicit and autonomous universal right to water within the EU legislative framework²⁶. The initiative is proceeding along three axes: (1) ensuring *access* to water and sanitation throughout Europe; (2) fighting to forestall efforts aimed at *liberalizing* the water market and to retain water's status as a *public good* not subject to internal market rules; and (3) increasing efforts to achieve *universal access* to water outside the EU. The Treaties (Treaty on EU, Article 11 and Treaty on the Functioning of the EU, Article 24 (1)) require the competent European organs to respond to an initiative of this sort, which aims to request that the European Commission proposes specific legislation within its competence by March 20, 2014, which is to say within three months of its presentation.

The European Parliament has already expressed the opinion, on 15 January 2014 in view of the adoption of a Directive relating to the award of concession contracts²⁷, that contracts relating to water concessions should be beyond the ambit of the Directive, given that they are often subject to specific and complex

²² *Preamble*, no. 1.

²³ *Idem*, no. 2.

²⁴ *Idem*, no. 5.

²⁵ The compliance to this Directive was achieved through Common Ministerial Act Y2/2600/2001 “Quality of Water intended for human consumption” (OG 892B/11-7-2001), as amended and in force through Common Ministerial Act ΔΥΤ2/Γ.Π. ec. 38295/22.3.07 (OG 630/B/26.4.2007).

²⁶ Water campaign, *Water and Sanitation are a human right*, www.right2water.eu/el (last accessed on 10.3.2014).

²⁷ European Parliament, Position of the European Parliament Position of the European Parliament adopted at first reading on 15 January 2014 with a view to the adoption of Directive 2014/.../EU on the award of concession contracts, P7_TC1-COD(2011)0437, para. 40 and Article 12.

regulations which require special consideration given the importance of water as a public good of fundamental value to every citizen of the EU.

For this reason, the European Parliament has expressly stated its objection to the liberalization of the water services sector²⁸. Similarly, Commissioners Potočnik and Barnier, having acknowledged the importance of water, recently affirmed in a joint statement that EU Law does not require Member States to privatize water services. They also stressed that the European Commission acknowledges water as a public good of vital importance to citizens.²⁹

3. National level

The right to water *per se* is not constitutionally enshrined in Greece, nor is it explicitly provided for by legislative texts. However, the right to water is adjoined to a series of other rights which are explicitly recognized in the Greek Constitution as well as in international texts which are binding upon Greece. These include the right to *life* (Article 5 (2)) and to *health* (Article 5 (5) and Article 21 (3)), the right to *adequate housing* (Article 21 (4)), the right to have one's *human dignity* respected, the obligation to protect the *environment* and the principle of *sustainable development*, as these are constitutionally enshrined (in Article 2 (1) and Article 24 (1) respectively).

The right to water is related to the status of waters and the framework within which they are managed and protected under the Greek legal order. In addition, pursuant to Article 967 of the Civil Code, waters which flow freely and constantly are considered “**objects of common use**”. Similarly, Article 2 of Joint Ministerial Decision (hereafter JMD), No.Y2/2600/2001 on the “Quality of water intended for human consumption” in compliance with Directive 98/83/EC (see above) as amended by JMD DYG2/G.P. 38295/22.3.07, provides that “water intended for human consumption” should not be included under the definition for food, should be **provided to every citizen in Greece by the state as a “public good”**, should not be regulated by market regulations, and should be governed by the laws pertaining to public sanitation.”³⁰

In addition, Article 10 of Law 3199/2003 “For the protection and the management of waters”, which relates to **general rules for the use of waters** in compliance

²⁸ European Parliament, Resolution, 13 January 2004 on the Green Paper on services of general interest, [A5-0484/2003], it is noted that: The European Parliament emphasizes the compatibility of the competition rules with the obligations deriving from the field of public services and finally objects to the liberalization of the water services. The European Parliament points that the services in the field of water and waste management must not be subject to Sectoral EU Directives but highlights that the Union must maintain its competence regarding the standards for the protection of the quality and the environment in these fields.

²⁹ European Commission, *Joint Statement by Commissioners Potočnik and Barnier on privatisation of water services*, MEMO/13/131, 22.2.2013.

³⁰ See *inter alia* TZATZAKI (M.-B.), *Water in Public International Law*, *op. cit.*, p. 155-156.

with Directive 2000/60 EC³¹, states *inter alia* that (1) the supply of water for human consumption and sanitation takes priority, both quantitatively and qualitatively, over every other use of water; (2) every use must seek to be consistent with the sustainable and balanced satisfaction of development needs and with securing the long-term protection of waters, the adequacy of reserves and the preservation of their quality, especially by reducing and preventing their pollution; (3) demands for water should be satisfied on the basis of the limits and capacity of the water reserves, taking into account both the water required for the preservation of ecosystems and the need for balance between the pumping and recirculation of underground waters³².

III. The framework ensuring effective protection for the right to water

By pointing out the importance of the right to water, the GNCHR is recalling the State's obligation to respect, protect and effectively implement it. Using the normative content of the right, as derived from General Comment No.15³³, as a guide, the GNCHR issues its recommendations based on the internationally formulated framework for its protection.

A. Adequate water

The GNCHR stresses the need for **water to be treated as a natural, social and cultural good, not as an economic commodity**, and in a manner that guarantees the adequacy of water for both present and future generations. Insufficient attention is regularly paid to the fact that water, as a natural good, is already subject to shortages, and that there is therefore a crucial and urgent need for coordinated efforts to secure it. Drawing attention to the recent observations of the UN Special Rapporteur on the right to safe water and sanitation, the GNCHR stresses that water use must be governed by *the principle of sustainable development, even in times of financial crisis*³⁴.

In this regard, the importance of balancing environmental protection and the right to water is stressed in cases where there is a conflict between the two, and especially when designing water supply infrastructure. Even when dealing with the most pressing water supply problems, the state is expected to minimize the environmental impact of water supply projects by opting for those measures that

³¹ The Presidential Decree 51/2007 for the "Determination of measures and procedures for the complete protection and management of waters in compliance with the Directive 200/60 EC" was issued for the implementation of Law 3199/2003.

³² An important step for the awareness of the necessity of a rational and scheduled water use constituted the Law 1739/1987 "For the management of water resources".

³³ CESCR, General Comment 4 (General Comments), *The right to adequate housing* (Art.11 (1)), 13.12.1991, *supra* sub.8.

³⁴ Report of the Special Rapporteur on the human right of safe drinking water and sanitation, Catarina de Albuquerque, *Sustainability and non-retrogression in the realization of the rights to water and sanitation*, A/HRC/24/44, 11.7.2013

effectively cover the water supply needs of the population, but also affect the environment as little as possible.

The GNCHR also highlights that, since **the insufficiency of water as a natural good is already a reality**, the adoption of measures preventing water overconsumption and encouraging its rational use must be intensified.

B. Available water

Every person must have at their disposal an adequate quantity of water for his/her daily needs according to the standards set by the World Health Organization. Furthermore, the GNCHR, points out that the State must take into consideration crucial individual water needs along with *inter alia* the individuals' state of health, climate and working conditions. With this in mind, the GNCHR applauds innovative decisions, such as No 923/2008 from the Thebes Court of First Instance (Procedure of interim measures) which, by indirectly recognizing the right to water, has temporarily obliged the Municipality, as the competent authority, to provide with safe water the 6,000 inhabitants/consumers of Dilesi until the new water supply network is brought into service in the area, this to be achieved using water tanks the Municipality was forced to install in Dilesi in sufficient numbers to provide the consumers with **1,200 cubic meters of water per day** (200 litres per day each).

The GNCHR stresses that the availability of water must be safeguarded for the population's total needs, **including irrigation**. For this purpose, the State must ensure that the institutions responsible for this task, as well as of the actors it supervises, provide a constant, regular and complete service.

On the other hand, taking into consideration the fact that water is a natural good of which there is a shortage, the State is also under an obligation to supervise the *private use of water* in such a way that it can guarantee that water is available for the entire population.

C. Safe water

The GNCHR points out that the right to water includes access to safe and high quality water for drinking, personal and domestic use, stressing **the indivisible nature of water quality intended for every use**. This aspect of the right to water reveals its close affinity to the right to health, as well as the right to a healthy environment³⁵. Taking into account the recent decision of the Social Rights Committee of the Council of Europe which condemns Greece³⁶, the GNCHR

³⁵ See Law 1650/1986 "For the protection of the environment" that aims to the protection of surface and underground waters considered as natural resources and as ecosystems.

³⁶ ECSR, *International Federation for Human Rights (FIDH) vs Greece*, No 72/2011, 23.11.2013. The Committee recognized the violation of Article 11 (1) and (3) of the European Social Charter due to the fact that the Greek authorities did not take the necessary measures to prevent the harmful

expresses its deep concerns about the ongoing pollution of the waters of the Asopos River over the last 40 years³⁷. Recognizing that this specific water pollution case is not unique in Greece, the GNCHR stresses the general need to prevent primarily, but also to punish water pollution incidents, irrespective of their source.

As far as the appropriate conservation of water infrastructure is concerned, the recent Issue Paper of the Commissioner of the Council of Europe on the protection of human rights in times of financial crisis, expresses concern over the decreasing attention being paid to the conservation of water infrastructure as a result of austerity measures, and emphasizes the risks this may pose for both water access and quality³⁸.

In this context, there is an urgent need to adopt a legislative amendment in relation to the *imposing of a special limit* on hexavalent chromium in drinking water³⁹, introducing stricter measures than those provided for in JMD Y2/2600/2001.

It is equally necessary to ensure that *individuals contribute* to dealing with the consequences of pollution for which they are responsible through application of the “polluter pays” principle. The right to financial freedom must be exercised in such a way that it goes beyond simply not clashing with urgent matters of public interest, such as the protection of the environment and public health, and contributes substantially to their achievement⁴⁰.

D. Accessible water

The right to water includes the access for every person within the jurisdiction of the Greek State. Access to water refers both to physical accessibility and financial accessibility to the commodity for all in an equal and non-discriminatory manner.

Physical accessibility

Water should be located close enough to safeguard the physical security of every individual in their home, their workplace and in educational institutions.

Focusing on those categories of individual that confront the most serious problems vis-à-vis physical access to water, the GNCHR points out the following:

With regard to persons with disabilities

consequences for health and decease and did not provide consultative and educational support for the protection of health, according to Article 11 (2).

³⁷ See also GNCHR, *Observations on the Plan Report of Greece about the implementation of the International Covenant of Economic, Social and Cultural Rights*, *op. cit.*, p. 30.

³⁸ Commissioner for Human Rights, *Protection of Human Rights in times of financial crisis*, Issue Paper of the Commissioner of Council of Europe for Human rights, CommDH/IssuePaper(2014)2, 22.1.2014, p. 17.

³⁹ Greek Ombudsman, *Protection of Public Health and Adoption of measures for the management of pollution in the wider area of Asopos river*, 6.12.2011.

⁴⁰ See also Council of State (Commission on stays of execution) No 662/2012.

The GNCHR has expressed its deep concern about the condition of infrastructure relevant to persons with disabilities, from both a right-to-health⁴¹ and right-to-education viewpoint⁴². The GNCHR calls upon the State to take care of the appropriate equipment, which includes *inter alia* easily accessible water supplies for both healthcare and educational facilities serving persons with disabilities.

With regard to the elderly

The importance of water access for the elderly is usually under-estimated. In light of the recent Recommendation of the Committee of Ministers of the Council of Europe, the GNCHR stresses the need to provide adequate measures of support to enable older persons to have housing adopted to their current and future needs⁴³ in a way that facilitates their access to water. Besides, having adopted Principles for Older Persons, the UN General Assembly refers expressly to their access to adequate water in the context of safeguarding the independence of the elderly⁴⁴.

With regard to the population of smaller islands

The water supply of smaller islands poses a constant challenge for the State, which does not always produce a satisfactory response. Moreover, the already severe problem of inadequate water supply to smaller islands is further exacerbated during the summer due to the weather conditions on one hand, and the additional needs that emerge from tourism on the other. The GNCHR calls upon the State to secure consistently adequate and safe water for smaller islands and every other remote area in the country, including border areas, thereby preventing the creation of pockets of population within Greece where access to water is very difficult or even impossible.

Affordability

The GNCHR points out that water must be affordable, so as not to limit an individual's ability to procure other staples or/and to enjoy other rights. As a consequence, under certain circumstances, the necessary quantities of water shall even be provided *for free*.

In light of *the financial crisis and austerity measures*, the affordability of water gains crucial importance. This matter cannot be detached from the **status of the water supply and sanitation services and the *ante portas* privatization thereof**.

⁴¹ GNCHR, "Recommendations of the NCHR for the protection of childhood, Health and Providence", publication pending.

⁴² GNCHR, "Recommendations regarding the implementation of Law 3699/2008, "Special Treatment and Education of persons with disabilities or with special educational needs"", *Annual Report 2009*, p. 39.

⁴³ *Recommendation CM/Rec (2014)2 of the Committee of Ministers to Member States on the Promotion of the Human Rights of older persons*, 19.2.2014, para. 23.

⁴⁴ United Nations General Assembly, [Implementation of the International Plan of Action on Ageing and related activities, A/RES/46/91, 16.12.1991, para. 1.](#)

Given the impoverishment of the Greek population⁴⁵ as a result of the austerity measures imposed over the last 4 years, the GNCHR chooses to address the issue of water privatization primarily with reference to water affordability. However, **the GNCHR wishes to stress that any privatization of water supply services impacts negatively *in totum* on every aspect of the right to water**, which for reasons of cohesion it chooses to refer to together at this point.

In this context, the GNCHR is concerned, especially during the financial crisis, about acts (on the domestic and European level) which signal the **withdrawal of the State from publicly controlling and guaranteeing the provision of water as a public social good**⁴⁶. This withdrawal is made clear, especially, by the privatization of water supply companies (EYDAP, EYATH), and power supply companies (DEI), in so far as these entities are related to irrigation projects and the utilization of water resources, but also by the abolition of actors on whose actions the irrigation of large rural areas depended.

As the GNCHR has already highlighted, “*the surrender of public property and transfer of public utilities pose a serious risk 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*”⁴⁷. Similarly, the recent report of the UN Independent Expert on the effects of foreign debt on the full enjoyment of rights in general and social rights in particular, expresses concern about the privatization of enterprises providing essential public services, and primarily water and sanitation⁴⁸.

Indeed, the scheduled privatization of water and sanitation providers serves to establish the perception of water as a commercial commodity, therefore annulling its nature as a public natural good. Furthermore, in the light of analogous experiences worldwide⁴⁹, it clearly also jeopardizes (1) *Water sufficiency*: Reckless water consumption with the aim of making a profit, coupled with poor conservation of networks and the subsequent leaks, deviate from the principle of sustainable development, exacerbating the global problem of insufficient water

⁴⁵ ILO, Observation (CEACR) – adopted 2012, published 102nd ILC session (2013), http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3088061, (last accessed on 10.3.2014).

⁴⁶ PARARAS (P.), “Water cannot be privatized”, *Kathimerini*, 27.9.2013, <http://www.cecl2.gr/attachments/article/217/teuxos%2028.pdf>.

⁴⁷ GNCHR, “GNCHR Recommendation: Imperative need to reverse the procedure of shrinking personal and civil rights”, *Annual Report 2011*, p. 119.

⁴⁸ *Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights*, Cephias Lumina, Mission to Greece (22-27 April 2013), A/HRC/25/50/Add.1, 7/3/2014, para. 31.

⁴⁹ See *Report of the Independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation*, Catarina De Albuquerque, A/HRC/15/31, 29.6.2010. Also see an analysis on international experience INE/GSEE *Annual Report 2012*, p. 153.

supply⁵⁰. (2) *Water quality*: Poor conservation of networks and the negligence shown with regard to monitoring the quality of water supplied, contribute to deterioration in the quality both of drinking water and the water required to cover other personal and family needs. The undivided nature of water quality intended for every use, a necessity for the enjoyment of the right to water, is also at risk. (3) *Access to water*: Increases in the price of services provided is seriously jeopardizing the water access of a large portion of the population, especially in the wake of austerity measures and the subsequent dismantling of the Welfare State which have already led to a radical and dramatic deterioration in the people's standard of living, with a large portion of the population having been rendered destitute⁵¹. The recent Issue Paper of the Human Rights Commissioner of the Council of Europe on safeguarding human rights in times of economic crisis explicitly states that: “[p]lans to privatise public water utilities have been part and parcel of several austerity packages which may threaten the affordability of water [...]”⁵². (4) *Equal and non-discriminatory access to water*: Given that a private enterprise operates with the aim of making a profit, the safeguarding of access to water for less privileged population groups does not constitute a priority. (5) *Public participation in water-related matters*: Referring also to Greece, the UN Special Rapporteur on the right to water notes in her latest report that “[o]nce the decision to privatize has been made, and especially in the context of economic crisis, the process of selling the assets often does not include sufficient opportunities for meaningful public participation”⁵³ and (6) *The effective accountability of water suppliers for all the aforementioned points*: This point is emphasized by both the Human Rights Commissioner of the Council of Europe⁵⁴ and the UN Special Rapporteur on the right to water⁵⁵.

Equal and non-discriminatory access to water

⁵⁰ Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, *Sustainability and non-retrogression in the realization of the rights to water and sanitation*, op.cit., para. 44.

⁵¹ See GNCHR, “The GNCHR Recommendation and decisions of international bodies on the conformity of austerity measures to international human rights standards”, 27.6.2013

“GNCHR Recommendation: On the imperative need to reverse the sharp decline in civil liberties and social rights”, op.cit., p. 119 and “Decision on the need for constant respect of human rights during the implementation of the fiscal and social exit strategy from the debt crisis”, *Annual Report 2010*, p. 103.

⁵² Commissioner for Human Rights, *Protection of human rights in times of financial crisis, Issue Paper of the Commissioner of the Council of Europe for Human Rights*, op.cit., p. 17.

⁵³ Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, *Sustainability and non-retrogression in the realization of the rights to water and sanitation*, op.cit., para. 45.

⁵⁴ Commissioner for Human Rights, *Protection of human rights in times of financial crisis, Issue Paper of the Council of Europe Commissioner for the Human Rights*, op.cit., p. 17.

⁵⁵ Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, *Sustainability and non-retrogression in the realization of the rights to water and sanitation*, op.cit., para. 45.

The GNCHR emphasizes that everyone, and especially members of vulnerable groups, must have **equal and non-discriminatory access to adequate and safe water**.

The GNCHR, having stated its position repeatedly with regard to the lack of solutions provided for the housing problems facing the Roma community in Greece⁵⁶, expresses its deep concern over the multiple violations of the right to water. In so doing, it bears in mind both the ECSR judgments⁵⁷ against Greece and recent reports on water-related issues⁵⁸. Many houses do not even have the infrastructure required for water and sanitation, whilst entire settlements have been left without access to water due to water supply problems. Consequently, the Roma are forced to transfer water to the settlement from other locations outside. Therefore, the GNCHR urges the state to take specific measures to ensure access to clean and adequate water for the Roma, while highlighting the value of initiatives taken by the competent local authorities. The GNCHR also points out yet again⁵⁹ that access to an adequate quantity and quality of water is not ensured on an equal and indiscriminate basis at *detention centers* for both Greek and foreign detainees, asylum seekers and refugees. The ECtHR has taken this and other contributing factors into account in judgements that have found Greece to be in violation of Article 3 of the ECHR concerning conditions of detention⁶⁰. Taking into consideration, too, the Recommendation Rec (2006)2 of the Committee of Ministers of the Council of Europe, the GNCHR highlights the need to ensure continuous access to water, the quality of which must be examined by the

⁵⁶ GNCHR, “Observations on the Second Periodic Review of the Hellenic Republic for the International Covenant on Civil and Political Rights (ICCPR)”, http://www.nchr.gr/images/pdf/apofaseis/ellinikes_ektheseis_en_ell_org/OHE/Parathrhseis_EEDA_prosYPEKS_DSAPD.pdf; “Report and recommendations on issues concerning the situation and rights of the Roma population in Greece”, *Annual Report 2008*, p. 50 etc and “The situation of the Roma population in Greece”, *Annual Report 2001*, p. 179 et seq.

⁵⁷ ECSR, *International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Greece*, no. 49/2008, 11. 12. 2009 and ECSR, *European Roma Rights Center v. Greece*, no. 15/2003, 8.12.2004 (violation of the right to adequate housing according to Article 16 of the European Social Charter).

⁵⁸ European Territorial Cooperation Programme: *Actions that protect the right to health and the protection of the Roma population*, Thessaloniki 2012, <http://www.synigoros.gr/resources/toolip/doc/2014/02/04/rom-alert-meleth.pdf> (last accessed 10.3.2014), FRA, *EU-MIDIS European Union Minorities and Discrimination Survey*, Data in Focus Report - The Roma, 2009 and Council of the European Union, *Council Recommendation on effective Roma integration measures in the member states*, 9 and 10 December 2013, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lisa/139979.pdf (last accessed on 10.3.2014), para. 1. 6. (d), p. 7.

⁵⁹ GNCHR, “Detention Conditions in Police Stations and Detention Facilities for Aliens”, *Annual Report 2010*, p. 36 and “Decision regarding detainees rights and detention conditions in Greek prisons”, *Annual Report 2007*, p. 71.

⁶⁰ Access to drinking water (ECtHR, *MSS v. Belgium and Greece*, 21.1.2001) and to adequate and hot water (ECtHR, *Peers v. Greece*, 19.4.2001 and ECtHR, *Dougoz v. Greece*, 6.3.2001).

competent authorities⁶¹. It also notes that access to clean and adequate hot water must be ensured in order to cover other personal needs.

E. Water and Public Participation

The GNCHR emphasizes that water is a common good which should be managed in a **democratic** manner that aims to achieve the best possible public participation. Public participation is thus integral to the right to water and can be expressed in many forms including access to information, consultation, development of policies and procedures allowing the taking of joint decisions⁶². Besides, the ECtHR jurisprudence increasingly focuses on precisely these elements⁶³.

In this context, it is crucial that workers' representatives participate in the management of the bodies responsible for the supply of water and sanitation services in the context of worker participation in enterprises of public interest⁶⁴. The need to ensure the public monitoring of these bodies makes constant worker participation in their management crucial.

The GNCHR acknowledges the current Greek legislative framework in this area⁶⁵, which introduces *inter alia* participatory bodies such as the National Water Council and the Regional Water Council (in the 13 Regional Water Districts)⁶⁶.

⁶¹ *Recommendation Rec (2006)2, du Comité des Ministres aux Etats membres sur les Règles pénitentiaires européennes* (adoptée par le Comité des Ministres le 11 janvier 2006, lors de la 952e réunion des Délégués des Ministres), para. 22.5 and 44 (a).

⁶² HARE (M.), LETCHER (R) and JAKEMAN (A.), "Participatory modeling in natural resource management: a comparison of four case studies", *Integrated Assessment* 4(2):62-72, 2003.

⁶³ FLAUSS (J.-F.) "L'apport de la jurisprudence de la Cour européenne des droits de l'homme en matière de démocratie administrative" *Revue Française d'administration publique*, no 137-138, 2011, pp. 49-58.

⁶⁴ See Article 11 (2) (a) Amended Statute of EYDAP A.E. (OG 11085/ Series AE & EPE/9-10-2006).

⁶⁵ Law 3199/2003 (Article 3 (2) and Article 6) integrates the requirement of public participation according to the Water Directive (2000/60/EC) while enforcing the participation of the public by creating consultation procedures. Furthermore, Greece ratified the Convention on access to information, public participation in decision-making and access to justice in environmental matters of the United Nations Economic Commission for Europe (UNECE), which was signed in Aarhus, Denmark on 25 June 1998, Aarhus Convention introduced by Law 3422/12.12.2005 (OG A' 303/13.12.2005). See also, Presidential Decree 51/2007 "Determination of the measures and procedures for the full protection and management of the water in accordance with the provisions of the Directive 2000/60/EC", JMD no. HP11764/653/2006 (OG 327B/17-3-2006) relating to the access of the public to the public authorities in order to be provided with information regarding the environment, which is provided by the Directive 2003/4/EC on public access to environmental information, which had been issued by EU for the implementation of the Convention, JMD 37111/2021/2003 (OG B 139/29.09.2003) on the determination of the way of the information process and the participation of the public during the procedure of approval of the environmental conditions of the projects and activities according to Article 3 (2) Law 3010/2002 and Directive 2003/35/EC of the European Parliament and of the Council. And JMD no. 9269/470/2007 - OG B' 02.03.2007 which integrated the provisions of the Articles 3 (7) and 4 (4) of the Directive 2003/35/EC as regards to the access of the public to legal remedies in order to challenge the acts or omissions relating to their information and participation during the procedure of approval of the environmental conditions.

However, the GNCHR highlights that public participation in the management of water and other issues relating to the right to water is not ensured in practice.

This problem derives from the limited resources made available for this purpose⁶⁷, but mainly from the lack of experience on the part of the Greek public administration and its failure to assimilate participatory models. This introversion manifests itself in the indecisiveness, lack of initiative, refusal to take responsibility or even willingness to cooperate with the public demonstrated by both national and regional administrative bodies.

The GNCHR urges the State to take every measure necessary to ensure public participation in issues relating to the right to water. This presupposes the education not only of public employees but also that of the public itself on related issues.

On the other hand, the mode of participation should differ from area to area in accordance with the specific issues faced. The GNCHR considers the effectiveness of these procedures to hinge on the participation of professional groups from the given regions, given their familiarity with the specifics of extant problems.

Similarly, the GNCHR also welcomes the regulations introduced by Law 3852/2010 on a regional administration level, which include the establishment of Consultation Committees in municipalities and Regional Administrations (Articles 176 and 178). However, it notes that public participation in these bodies is not ensured in practice, due to widespread ignorance of their existence. The local administrations should therefore take measures to remedy this.

Moreover, and as far as the conduct of regional referenda regulated by this law is concerned, the GNCHR stresses that the state should adopt a *clear regulatory framework* to specify how they are to be conducted and thus ensure their legitimacy. Given that a regional referendum is about to take place in Thessaloniki on the public character of the EYATh (Thessaloniki Water Supply and Sewerage SA), this can be considered still more crucial.

The GNCHR observes with great interest these processes which demonstrate the importance of public participation in decisions relating to a very important commodity as crucial as water, and which demonstrate healthy public reflexes in the context, too, of a major international mobilisation aimed at protecting the right to water in Greece.

⁶⁶ The national Council and the 13 regional Councils constitute advisory bodies, in which there is a representation of the bodies, which are interested in participating in national and regional level, such as trade union of employees, NGOs etc. See also Law 1650/1985, Law 2742/1999 and Law 4109/2013 the administrative bodies, which have been established in the protected areas of Greece and whose administrative councils consist of delegates of the central, regional and local authorities, interested local bodies, researchers and NGOs.

⁶⁷ See also Task force on Access to Information: *Overview Of The Convention Implementation*, AC/TF.AI/Inf.2, 7.8.2013, pp. 17-18.

IV. GNCHR Recommendations for the protection of the right to water

Beyond its timeless importance, the right to water becomes especially crucial in times of crisis. The recognition of a right to water in Greece is rendered still more crucial, given that there is a heightened possibility that water supply companies will be privatized despite the social and economic consequences of the financial crisis.

On this note, and as an overall recommendation, *the GNCHR recommends that water's status both as a public good and a universal right be enshrined in the constitution*. Needless to say, this, would not be an end in itself, but rather a means of bolstering efforts aimed at its protection, which is an absolute necessity⁶⁸.

In light of the above, the GNCHR summarises and issues the following recommendations:

GENERAL RECOMMENDATIONS

- Legally recognizing the right to water as a public good. Recognition of the link between the right to water on the one hand and sewerage and irrigation on the other.
- Preserving the public character and oversight of the bodies responsible for water and sewerage; precluding the possibility of their being conceded to private actors.
- Ensuring the right of access to safe drinking water for every inhabitant of the country.
- Ensuring universal access to administrative and judicial procedures whereby members of the public can express their complaints relating to acts or omissions on the part of actors public or private, natural or legal that violate the right to water.
- Monitoring compliance with obligations relating to the right to water, mainly via independent authorities, on the basis of the specified GNCHR recommendations.
- Adopting, implementing and evaluating a National Action Plan for the full implementation of the right to water. It would be very useful to include a specific chapter on water in the National Action Plan for Human Rights.

SPECIFIC RECOMMENDATIONS

A. Adequate water

⁶⁸ Besides, there are quite many national constitutions or legislations which provide for a right to access to water (e.g. Nigeria, Zambia, Uganda, Mexico, Panama) or a right to clean water (e.g. USA - Texas, Illinois etc). See also Economic and Social Council, *Realization of the rights to drinking water and sanitation, Report of the Special Rapporteur, El Hadji Guissé*, E/CN.4/Sub.2/2005/25, para. 2.3.

- Creating a perception of water as a natural, social and cultural good, rather than a commercial commodity.
- Utilizing water in a manner respectful of the principle of sustainable development, even in periods of economic crisis
- Taking measures to prevent the overconsumption of water and to encourage its rational use.
- Establishing a balance between the protection of the environment and the right to water in cases where the two rights appear to be in conflict, mainly during the design of water supply, sewerage and irrigation structures.

B. Available Water

- Guaranteeing everyone access to a quantity of water adequate for their needs, in accordance with the guidelines provided by the World Health Organization.
- Taking into consideration crucial water-related needs such as health and working conditions.

C. Safe Water

- Ensuring access to high quality water for any use, with an emphasis on the undivided character of water quality.
- Taking care to both prevent and suppress water pollution, whatever its source. Conserving water-related infrastructure appropriately.
- Monitoring water quality on a regular basis.
- Providing an alternative water supply in cases of water pollution.
- Informing the general public about the underlying dangers to public health in cases of inappropriate drinking water. Amending the legislation to reduce the amount of hexavalent chromium permitted in drinking water, establishing stricter limits than those provided for in Joint Ministerial Decision Y2/2600/2001.
- Organizing and improving industrial areas; establishing strict quality controls on water intended for industry.
- Drawing up integrated management plans for river basins in a timely fashion. Employing the criminal provisions included in Y2/2600/2001 against competent authorities that fail to take the indicated sanitary measures.
- Ensuring the contribution of individuals to countering the consequences of pollution for which they are responsible, applying the “polluter pays” principle.

D. Accessible Water

- Ensuring access to water for every person within the jurisdiction of the Greek State.

Physical Accessibility

- Ensuring the physical integrity of every individual at home, the workplace and educational institutions, in terms of their access to water.
- Employing appropriate equipment which will include an easily accessible supply of water to both healthcare and educational units catering to the disabled.
- Catering for the current and future needs of the elderly in terms of housing facilities in a manner that also facilitates their access to water.
- Ensuring a continuous supply of sufficient and safe water to all mainland and island areas in Greece, and especially to small islands and isolated, remote areas; preventing the creation of pockets in which access to water is difficult or even impossible.

Affordability

- Ensuring that water remains affordable, and that water prices do not limit an individual's ability to procure other staples or/and enjoy other rights.
- Applying suitable pricing policies and allowing for flexible payment plans (social billing); supplying water for free on a case to case basis whenever this is considered necessary.
- Preventing consumers having their water supply cut off for failure to pay water bills before their financial situation has been examined.

Equal and non-discriminatory access

- Ensuring access to an adequate quantity and quality of water for all without discrimination and on an equal basis, but especially for vulnerable population groups.
- Taking special care to ensure that Roma enjoy access to clean and sufficient water, and encouraging the competent local authorities to undertake initiatives in this regard.
- Providing uninterrupted access to drinking water; monitoring water quality and access to clean and sufficient warm water in detention centres for national as well as foreign inmates, asylum seekers and refugees.

E. Water and Public Participation

- Safeguarding democratic participation in procedures that are relevant to water, access to information, consultation, policy drafting and procedures for the taking of joint decisions.
- Safeguarding the participation of workers' representatives on the boards of bodies that provide water supply and sanitation services.

- Training public servants, employees of public organs as well as civil society in participation issues.
- Adapting participatory procedures to meet the specific issues facing each region.
- Safeguarding the participation in the aforementioned procedures of professional groups from each region, given that they are better acquainted with the specifics of emerging issues therein.
- Raising awareness among civil society on the function of participatory mechanisms.
- Adopting a regulatory framework determining the manner in which referenda are conducted, thereby ensuring their legitimacy.