

GREEK NATIONAL COMMISSION FOR HUMAN RIGHTS

Neofytou Vamva, GR 106 74 Athens, Greece, Tel: +30 210 7233221-2; Fax: +30 210 7233217;
Website: www.nchr.gr, E-mail: infor@nchr.gr



**Report on the need for protection of human rights
with regard to the measures taken in response to the coronavirus
(COVID-19) pandemic
and recommendations to the State**

**Description of the issues discussed in the Plenary Meetings
during the lockdown**

Meetings of 8th, 22th, 29th of April and of 6th May 2020

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The Greek National Commission for Human Rights (GNCHR) is the independent advisory body to the Greek State on matters pertaining to human rights protection. It was established by Law 2667/1998 and is functioning in accordance with the UN Paris Principles. Thirty-two institutions whose activities cover the field of human rights are currently represented in the GNCHR (independent authorities, departments of university-level educational institutions, trade unions, NGOs, political parties and ministries).

**Report on the need for protection of human rights
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The National Commission for Human Rights (hereinafter GNCHR) as the State's independent advisory body for the protection of human rights has held online meetings in plenary on a weekly basis during the pandemic, with the participation of governmental and non-governmental stakeholders involved in the decision-making process, in order to deal with the new challenges in the best possible way, assess the impact of the restrictive policy measures regarding human rights and democratic values, provide the Greek government with appropriate advice on the protection of the core human rights and at the same time in order to inform the public about their rights and the risks of violations due to the pandemics.

It should also be noted that GNCHR also continued to monitor all other human rights issues related to the designing of a proper central policy, such as the refugee issue, the environment, etc.

At the end of this period, the GNCHR would like to make the following reminder:

- **Human rights remain in force in a time of crisis**

The GNCHR stresses that restrictive measures aiming at combating the spread of the pandemic should not undermine respect for human rights and rule of law, nor discriminate, but take into account the special needs of the particularly vulnerable groups. Given that the State has taken emergency measures to deal with the pandemic, imposing restrictions on citizens' rights (such as the right to free movement, personal liberty, access to public health of non-infected citizens, etc.), the GNCHR focused mainly on the impact of those measures on the rights of vulnerable groups, including migrants and refugees, unaccompanied minors, Roma, women and children victims of domestic violence, detainees, persons with disabilities.

- **Measures must be legally-based, proportionate and time-limited**

The GNCHR points out that restrictive measures must have a legal basis, be proportionate and time-limited. Taking into account the uncertain context of the pandemic, decisions should be continually re-evaluated with a rebalancing of the rights, as what is proportional to the beginning of the pandemic may become disproportionate later and thus the measure should be mitigated or abolished. In any case, and provided that the purpose of the measures is legitimate, ie the guarantee of public health, possible restrictions should seek to protect the democratic legal order and safeguard the values of a democratic society.

- **Derogation in Case of Emergency (Article 15 of European Convention on Human Rights – ECHR)**

The GNCHR monitors closely the Greek Government's series of measures in response to the COVID—19 pandemic (Acts of Legislative Content, Joint Ministerial Decisions and Circulars that aim to concretize the above provisions), given that they affect directly the enjoyment of human rights in Greece. So far, the measures are generally considered to be necessary and proportional to the aim of preventing and addressing the spread of the disease.

In light of the above mentioned, the GNCHR appreciates that the Greek State, despite taking restrictive measures affecting individual rights and freedoms and targeting the protection and safeguard of public health, has not declared a state of emergency pursuant to Article 15 of the European Convention on Human Rights (ECHR), which allows the Contracting Parties to derogate in case of emergency and suspend or restrict the exercise of certain treaty rights. It should be noted that to date ten (10) states have officially exercised their right under Article 15 of the ECHR, yet a number of them has withdrawn its declarations of derogation¹.

It is rather clear that the measures enacted at national level constitute far reaching restrictions on the exercise of a number of rights. Moreover, the GNCHR points out that while such measures could lead to a breach of the ECHR and thus to a breach of international obligations, both international and European organizations, i.e. the UN, the Council of Europe and the EU have called on States to adopt measures to confront the coronavirus pandemic in line with the respect for fundamental rights. Nevertheless, if no measures had been taken to prevent the spreading of the disease, the country's international obligations would have been violated. At this point, it should be recalled that rights such as the prohibition of torture, inhuman or degrading treatment and slavery, which are guaranteed under the ECHR, are non-derogable rights to the Convention.

The GNCHR, taking into account that the need for restrictive measures may be obvious at the beginning of a crisis, emphasizes that it remains vigilant in this context as long as the measures are in place, assessing at the same time whether there is no longer a necessity for these measures. Moreover, the GNCHR reassures that the necessity, nature and extent of the

¹<https://www.coe.int/en/web/conventions/full-list/-/conventions/webContent/62111354>

restrictions applied to the rights and freedoms protected, will be systematically evaluated to determine whether they are justified in response to Covid-19. An important part of the evaluation is the possibility, within a reasonable short timeframe, to appeal to the administrative authorities against the restrictive measures as well as to establish a relative control mechanism for objections and complaints in case of incorrect and discriminatory implementation of these measures.

The issues discussed at the GNCHR's Plenary meetings are the following:

- **Restrictive measure must take into account the vulnerability of Roma people**

On the occasion of International Roma Day (April 8), the GNCHR has focused its interest, since the pandemic start, in the specific problems and needs in Roma neighborhoods, mainly due to lack of coordinated action to protect the health of Roma. Undoubtedly, established problems in Roma neighborhoods, such as access to health, water supply, electricity, waste disposal, are/pose additional risks, while in some areas (Xanthi, Larissa) many families have faced serious obstacles related to food supply and hygiene. Civil society organizations have highlighted violations of the right to social protection of the Roma population. To address the increased risk, the government recently allocated 2,255,000 EUR to 98 municipalities to provide medical supplies and equipment to Roma communities. The Greek State to address the situation allocated 2,255,000 EUR to 98 municipalities for the provision of medical supplies and equipment in Roma communities.

The GNCHR taking systematically action to raise awareness as well as provide training with regard to Roma issues, emphasizes the need for these actions to be continued and intensified targeting at the removal of the social exclusion of Roma and calls upon the competent authorities to take into account the special living conditions of the Roma and take the appropriate measures to protect its public health without discrimination and disproportional impact on their rights.

- **Measures cannot have any negative impacts on the human rights of refugees, migrants and unaccompanied minors**

The GNCHR, closely monitoring, since its first years of operation, refugees and migration protection issues, has dealt with this issue in all its Plenary Meetings, while critical remains the situation in Reception and Identification Centers and Accommodation Centers and settlements, where structural problems remain. Overcrowding and a complete lack of sanitation and medical services, combined with limited access to healthcare and basic services, exacerbate the risk of COVID-19 infections. Infection prevention is impossible as social distancing measures cannot be implemented. The protective measures, according to the competent Minister, are stricter than those provided for the general population.

It should be noted that the national Operational Plan ("Agnodiki") for the management in the Reception and Identification Centers and Accommodation Centers, did not follow the international standards for the protection of human rights. Also, following reactions including that of the GNCHR, the decision suspending the submission of asylum applications in our Country until the end of March 2020, has not been extended. Important for preventing the spread of COVID-19 infection in hotspots is the decision of the competent Authorities to transfer a significant number of refugees from the islands to mainland (vulnerable asylum seekers, including approximately 200 elderly persons and 1,730 persons with chronic diseases).

As for unaccompanied minors and despite the GNCHR's concerns about ensuring the full exercise of their rights and their protection due to the complexity of the issue, relocation to other European countries, positively must be assessed: the financing of a sufficient number of places in age-appropriate reception and hosting facilities for unaccompanied across the country and the regulation of age-determination procedures.

Finally, it should be underlined that the GNCHR, in the context of the discussion of the last Draft Law of the Ministry for Immigration and Asylum entitled "Improvement of migration legislation, amendments of provisions of Laws 4636/2019, 4375/2016, 4251/2014 and other provisions", and despite the fact that it did not receive a timely notification of the specific provisions of the Draft Law from the competent State bodies², the GNCHR, fully aware of its role, has issued its Observations in order to prevent any failures and to ensure the compatibility of the new regulations with the State's international and European obligations, which were further submitted to the competent Ministry. The GNCHR presented her positions on the Draft Law before the relevant National Delegation during the meeting of the Standing Committee on Public Administration, Public Order and Justice of the Parliament on 6.5.2020.

The GNCHR reiterates that there is an urgent need, especially under the threat of the current pandemic, for the best possible management of migration and refugee flows with respect for human life and dignity and calls upon the competent State authorities to set as priority the following measures: (i) the immediate transfer of all vulnerable persons from the islands to safe and suitable accommodation on the mainland, (ii) the ensuring of minimum living standards in Reception and Identification Centers and Accommodation Centers, (iii) the strengthening of the Reception and Identification Centers and the Accommodation Centers with interpreters, intercultural mediators, Guardians for unaccompanied minors, social workers and support for the proper operation of facilities and (iv) the maintenance of special procedural guarantees when considering applications of vulnerable asylum seekers. The GNCHR remains aware of the above challenges and states that it will continue to assist to the management of the refugee and migration flows in the Country.

² For the full text of comments (in Greek) see: GNCHR, Observations on Draft Law of Ministry for Migration and Asylum "Improvement of migration legislation, amendments of provisions of Laws 4636/2019, 4375/2016, 4251/2014 and other provisions, April 2020. Relevant to the amended provisions of the Draft Law are also the GNCHR's Observations in L. 4636/2019 (in Greek) and the GNCHR's Recommendations on Refugee Protection (in English)

- **The measures must ensure the right to work and social security and insurance**

The GNCHR, in its institutional role as the National Human Rights Institution and taking under serious consideration the impact of the measures in response to the pandemic on labor and social security and insurance rights of the workers in public and private sector, has tackled in its meetings the risks related to these rights especially in terms of remuneration and employment conditions.

The GNCHR, referring once again to the consequences of the austerity measures in Greece on individual and collective labor rights as well as on social security rights, due to the recent economic crisis, reiterates the need to assess these consequences both on an autonomous basis as well as in the context of the measures addressing the pandemic, with a view to restoring the content of these rights and securing smooth access without discrimination.

The GNCHR refers back to the fundamental constitutional principles of proportionality and social solidarity, in order to achieve and maintain a fair balance between conflicting rights. Particularly with regard to individual and collective labor rights, the GNCHR also points out, that provided the codification of labor law is completed in an appropriate institutional mode, it would be important, prior to carrying out this process, to evaluate first the consequences of the imposed restrictive measures on these rights and proceed to restore legal certainty and protection with regard to the relevant institutional framework, so that uncertainty and possible irreversible consequences in the exercise of fundamental constitutionally guaranteed labor rights may not gain ground. Finally, special emphasis should be put on the following critical issues, such as: a) the State has not yet paid due attention to the proper institutional and practical implementation of the framework for preventing and combating forced labor, b) the restrictions on access to employment and social security in the case of applicants of international protection exacerbate labor delinquency and abusive behavior towards these persons, c) vulnerable groups, such as the elderly or persons with disabilities which, due to the accelerated shift of public and private services to digital technology and the cessation of social security benefits combined with the physical presence, are threatened by further deterioration of their living standards and consequently their economic and social exclusion.

- **The measures should protect the right to health of detainees**

The GNCHR finding extremely worrying the situation in prisons, mainly due to the overcrowding under the current circumstances, has examined in detail this issue during its Plenary meetings as well as possible national plan to address the health crisis among prisoners. The GNCHR expresses its disappointment with regard to the responses that it has received by the State concerning the situation in the penitentiary facilities of the country and raises serious reservations about the effectiveness of the measures so far and the management of detainees' infections. Organizations and detention monitoring bodies have already called for

measures such as decongestion of prisons, the release of some detainees and quarantine measures for infected detainees

Lately the GNCHR, due to the hunger strike of a prisoner in protest over the non-decongestion of prisons during the pandemic, has issued a public statement calling upon the State to respect the human rights standards and the rule of law and to take immediate measures to protect the right of life of the prisoner, to ensure its access to higher education, to decongest the prisons and to response to Covid-19 with a plan of action. Indeed, following further reactions of many civil society organisations, the authorities have withdrawn their decision to transfer the prisoner to another prison, where he could have no access to education.

Subsequently, the GNCHR returned with two additional statements on the same matter, as the detainee's access to the educational process continued to be hampered, resulting in an extension of its hunger strike and an immediate threat to his life. After reactions from many organizations and civil society bodies, the detainee's access to education was restored.

The GNCHR, taking into account the health warnings by the World Health Organization and the epidemiologists about the high mortality risks of the population in prisons, as the transmission and spread of Covid-19 in closed centers multiplies compared to the community, calls upon the competent State authorities to respect the rule of law and human rights standards and take immediate measures to improve detention conditions (minimum sanitation conditions, medical care, personal protective equipment, etc.) and decongestion of penitentiary facilities.

At the same time, the GNCHR reminds that the guarantee of the right to education deriving from the Constitution and the international Conventions ratified by Greece, ensure smooth living conditions in detention centers and constitutes an essential measure to reintegrate into society after the sentence has been served.

- **Measures should be taken for those at risk of domestic violence**

The GNCHR focuses, among others, on the issues of prevention and combating of violence against women as well as domestic violence, pointing out that domestic violence against women is not a private matter but a violation of human rights. In this respect, the GNCHR recognizes the efforts of the State's authorities to continuously provide information and to run awareness raising campaigns to that end, however it remains vigilant monitoring the effects of the recommended social distance.

The GNCHR, particularly aware of the increase of domestic violence during the lockdown, reiterates the need for prevention and systematic provision of psychological, social and legal support and accommodation to women, including migrants and refugees, women with disabilities and LGBTQI+ who are under threat. Awareness raising and information campaigns should be carried out on a systematic basis also after the end of the health crisis.

- **Exploitation of national natural resources should not threaten the protection of the environment, which is combined with the protection of public health**

The GNCHR concerned about the measures introduced during the pandemic by the new environmental Law of the Ministry of Environment and Energy on: *"Modernization of environmental legislation, transposition into national legislation of the Directives 2018/844 and 2019/692 of the Council of Europe and the European Parliament and other provisions"*, and taking into account the reactions of major environmental organizations (WWF, Greenpeace), issued its Observations on the Draft Law. In addition to the fact that the final text of the Draft Law submitted to Parliament contained almost twice the provisions of the text of the consultation, the new Law includes problematic provisions such as the lack of sufficient guarantees regarding the exploitation of national natural resources, complex and non-transparent environmental licensing, ambiguities in and lack of social participation in the management of protected areas, facilitation of hydrocarbon exploration within Natura 2000 areas and national parks.

With regard to the above, the GNCHR firstly emphasizes the need and importance of ensuring good legislation based on legal certainty, simplification of procedures, accountability and transparency. Furthermore, the GNCHR recognizing the significance of protecting the environment as a human right reflected in both international and national law and jurisprudence, calls upon the competent State authorities, especially in the current global context, to respect the maintenance, protection and restoration of the Country's natural environment.

- **Judicial independence and operation must be protected**

In view of the suspension of the Court proceedings due to the outbreak of COVID-19, the GNCHR has examined the issue of the reoperation of the courts, the exceptions provided with regard to the presence of the parties concerned in specific cases and the digitalization of proceedings in the field of Justice, which is expected to be launched soon.

Pertaining to the institutional role of justice in safeguarding respect for the rule of law, the GNCHR emphasizes the need for effective measures to facilitate and ensure the safe operation of the courts in the context of de-escalating the restrictions imposed due to the pandemic and calls upon the competent authorities to ensure the immediate reoperation of the judicial system and the protection of the right to a fair trial, of human value and dignity.

- **The special needs of persons with disabilities must be protected**

In the framework of its mandate, the GNCHR is closely involved in the promotion of the rights of persons with disabilities and/or special educational needs and has issued a series of recommendations for protection against discrimination on the ground of disability. Based on the indisputable fact that the right to education - of all children - as enshrined in national, European and international law on the protection of human rights, is fundamental and crucial

for the full implementation of individual and political freedoms and economic and social rights, the GNCHR points out that it is imperative to include the dimension of disability in all measures taken in the field of education to prevent the spread of the pandemic.

Therefore and in the context of de-escalating from the COVID-19-imposed measures, the GNCHR urges for stronger State's commitment to fully realizing the right to education of children with disabilities and/or special educational needs and the equal treatment in practice and stands once again ready and willing to contribute to that end in cooperation with the competent bodies involved in the promotion and protection of the fundamental rights of these children.

Taking into account the aforementioned issues as well as that fundamental rights must always prevail:

The GNCHR is committed, within its mandate, to using its experience in this first phase of the pandemic and to continuing to record the challenges posed by the current crisis and during its next phases and to inform the public by any appropriate means.

The GNCHR expresses its satisfaction for the extremely positive impact of the measures aimed at reducing the spread of the pandemic, as the death rate from Covid-19 in Greece remains among the lowest in Europe in proportion to the population, as well as certainly, its gratitude for the health workers of the Country, who, despite the insufficiencies in the national health system, stood selflessly on the front line of this unprecedented battle.

At the same time, the GNCHR points out to the competent State authorities that as long as challenges remain, drastic measures should be taken and implemented to protect public health with full respect for the fundamental values of democracy, the rule of law and the human rights based on the principles of solidarity and proportionality in order to avoid disproportionate impact on people belonging to vulnerable groups.