

HELLENIC REPUBLIC

GREEK NATIONAL COMMISSION FOR HUMAN RIGHTS

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Racist Violence

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

1. Introduction

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

A. From the acceptance of racism to racist violence

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

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

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

victims of violence. This situation cannot act as an excuse or a reason for concealing the widespread violence in many parts of the country.

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

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

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

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

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

Within the framework of OSCE and some other legal orders, the chosen term to describe the above is the term "hate crime". This term is considered to facilitate the criminal procedures, as it is more clearly connected with police and criminal justice. This implies a broader approach to the phenomenon, which includes as motivation for the crime religion, sex, sexual orientation or disability. The crime as such can be any of the crimes provided for by the penal code, such as murder, assault

causing serious body injury, robbery, theft, vandalism of property (or worship site).

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

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

C. International legal documents and recommendations of international bodies

A) UN

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

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

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

B) Council of Europe

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

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

Complaints grounded on the association of racist motivation with a particular act or omission violating a Convention article is examined in the light of Article 14 (prohibition of discrimination) of the European Convention on Human Rights. The ECtHR attaches great importance to the effective fight of racist violence. According to the Court, "[r]acial violence is a particular affront to human dignity and, in view of its perilous consequences, requires from the authorities special vigilance and

a vigorous reaction. It is for this reason that the authorities must use all available means to combat racism and racist violence, thereby reinforcing democracy's vision of a society in which diversity is not perceived as a threat but as a source of enrichment.” The ECourtHR stresses that treating racially induced violence on an equal footing with cases that have no racist overtones “would be turning a blind eye to the specific nature of acts that are particularly destructive to fundamental rights.”

By strictly scrutinizing such incidents of violence according to aforementioned principles, the ECourtHR held that there was a violation of Article 14 with conjunction with Article 3 in the case *Petropoulou-Tsakiris vs. Greece*. The Court considered unacceptable the fact that there was no attempt on the part of the investigating authorities to verify whether the policemen’s behavior displayed anti-Roma sentiments, but also that the Deputy Director of Police Forces made partial general remarks throughout the administrative investigation in relation to the applicant’s Roma origin. In the case *Bekos and Koutropoulos*, the ECourtHR concluded that the Greek authorities did not fulfill their obligation arising from the prohibition of discrimination to take all necessary measures, in order to collect and secure the evidence, to take into consideration all practical means that could contribute to the unveiling of the truth and to deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of a racially induced violence.

C) EU

The Council Framework Decision 2008/913/JHA (28 November 2008) on combating certain forms and expressions of racism and xenophobia through criminal law regulates issues of the criminal approach to racist violence. In 2005, the European Monitoring Centre on Racism and Intolerance issued a comparative report on racist crime and

violence in the EU Member States. The study concluded that Greek legislation against racist violence, monitoring mechanisms for incidents of racist violence and criminal justice responses to these incidents are either ineffectual or non-existent.

II. Issues of legislative and judicial responses to racist violence

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

A. A Legislative approach

1. Special criminal law provision

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

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

In most legal orders racist motivation constitutes an aggravating circumstance. Usually, it is taken into account by the court at the imposition of the sentence. Article 79, par. 3 Penal Code states that an offence motivated by ethnic, racial, religious hatred or hatred due to sexual orientation constitutes an aggravating circumstance. In other words, the court must first prove the guilt of the perpetrator for the basic offense and it will then consider whether the threshold of an aggravating circumstance is actually met. The Greek Penal Code introduces a general penalty that may be applied to all criminal offenses. In other legal orders, the aggravating circumstance of racial motivation is applied only in the case of some offences (specific penalty enhancement). This seems to be a good solution. Nevertheless, if the maximum penalty is inflicted, the racist motivation remains unseen, incapable of bearing a symbolic or deterrent value.

3. Racist motivation: hatred, animosity or discrimination?

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

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

The difficulties in the implementation of the legislation in Greece have been documented by ECRI in 2009. ECRI recommended to the Greek

authorities “that the initial and on-going training provided to judges and prosecutors should better emphasize the legislation against racism generally and, particularly, any new legislation that provides for the racist motivation of a crime to be considered as an aggravating circumstance at the imposition of the sentence”.

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

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

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

B. Justice and racist crime

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

1. Judges' education and awareness

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

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

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

2. Access to justice

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

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

III. Police and racist violence

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

A. Impunity

Incidents of violence involving police officers are rarely investigated and are unlikely to reach a fair punishment. To begin with, police as a *perpetrator* is not punished, so victims consider pointless to report any racist incident involving a police officer. Furthermore, the police as an *unconcerned observer* of attacks by extremist organizations or groups do not fulfil its obligation to protect the victims. After all, the non-investigation of *recurring allegations about the underground links between police and groups responsible for racist incidents* nullifies any effort to denounce the racist crime.

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

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

B. Obligation to investigate the existence of racial motivation

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

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

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

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

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

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

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

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

C. Obligation to record racist incidents

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

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

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

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

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

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

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

- *The NCHR recommends that police officers cooperate with NGOs in order provide victims and witnesses with psychological support;*
- *Special training should be offered to police officers so as to encourage victims and witnesses.*

The police should aim at a permanent and regular cooperation with specific stakeholders such as the UN High Commissioner for Refugees, NGOs that provide primary health care to victims and specialised NGOs, such as anti-discrimination organizations that have regularly deal with vulnerable groups¹². The police should also develop such alliances with communities of immigrants and refugees that have proved their representativeness and their proximity to vulnerable groups.

³⁴ The issue of racist violence has also preoccupied the UN High Commissioner for Refugees because asylum seekers and recognized refugees are constantly potential victims BA. UNCHR, *Combating racism, racial discrimination, xenophobia and related intolerance through a strategic approach*, 2009.

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

E. Police training and establishment of a special unit

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

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

Nevertheless, considering that specialized training is also required, particularly in situations of intense conflict, the NCHR proposes the establishment of a special unit. At first, the unit could take action mostly in areas where social tension is observed³. Officers participating in the special unit should be strictly chosen among those officers demonstrating unparalleled professionalism.

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

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

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

³ EUMC, *Policing Racist Crime and Violence: A Comparative Analysis*, 2005, σελ. 47.

III. Recording racist crimes

A. Official and unofficial recording bodies

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

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

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

It is therefore obvious that the recording data deriving from prosecution do not reflect the extent of the problem. The collection of evidence and data is also a field in which the state should develop cooperation with NGOs and all the relevant institutions that collect reliable data. In this context, it should develop a serious and reliable system of data collection and disaggregation. The Ministry of Justice could take over the management of this system, as a central governmental body.

It is highlighted that this recording system will not coincide with the police recording system. Apart from NGOs, the system should connect with hospitals and medical associations in order to include all the incidents presenting elements of racist violence. It goes without saying that doctors and social services of hospitals should be adequately informed.

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

B. Key elements of the recording system

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

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

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

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

b) *Religion of the victim and the perpetrator*

c) Type of crime

d) Place of crime

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

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

IV. Succinct presentation of NCHR's recommendations

Law and Justice

- *The legislation on racist crime should avoid vague notions.*
- *Courts should be able to examine evidence related to motivation.*
- *Courts should fully justify the application or non application of the aggravating circumstance of Article 79 par.3 P.C of racist motivation.*
- *The state should review in cooperation with the investigating authorities and the judges the difficulties in proving hatred (or animosity) in practice and ensure that every participant involved in the process will receive adequate information and training so as to facilitate the process.*
- *The NCHR recommends that a special seminar on racist crime is offered at the National School of Judges during the initial formation as well as in the context of the continuing training of judges.*
- *The legal aid system should be reformed in order to facilitate the effective access to justice.*

Police

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

Registration of racist crimes

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

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

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

b) Religion of the victim and of the perpetrator

c) Type of crime

d) Place of crime

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

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

2. Extremist groups, Public Discourse and Racism in Sports

I. Challenges relating to extremist groups

A. Incitement to racial discrimination and recruiting minors

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

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

Another form of expressing this racist approach is reflected in the thought that aliens are "different"; they do not fit in with our habits and should go home. An element of the "moral panic" which contributes to the modern manifestation of extreme xenophobic sentiments is the "widespread belief that the Muslims cannot and do not want to smoothly integrate into the Greek society."⁴ V. Karidis notes that for the collective social conscience, after successive episodes that make up a threatening picture of immigrants "these immigrants" do not have a place in our country and the only solution is suppressing and over-policing".

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

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

An important aspect of extremist groups' activity is the recruitment method. It is reported that these groups are active in schools and sports

arenas or stadiums, where they approach minors. Besides minors' vulnerability, these groups exploit the need of some children being born from immigrant parents to prove they are full members of Greek society, possessing Greek identity. Thus, participation of minors with alien parents in extremist groups can be observed, resulting to their turning to savagery against other aliens.

The general issue of tackling racist violence within the school and in the light of schools' mergers requires special analysis. However, the Greek NCHR, for the purposes of the present paper, suggests some prevention measures aiming at strengthening teachers' vigilance towards the phenomenon and "armoring" children with experiences of tolerance so as for the approach by extremist ideologies to be hindered. The usage of internet from these groups in order for propaganda and racist views to spread out is also of particular concern.

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

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

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

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

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

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

The NCHR notes that State has a special obligation to protect human rights’ defenders from both the risks deriving from the organs of the state and from non state actors, according to the *Declaration on the Rights and Responsibility of Individuals, Groups and Organs for the Promotion and Protection of Internationally Recognized Human Rights*

and Fundamental Freedoms. The protection of physical integrity of human rights' defenders falls within this obligation, along with the fight against impunity of non-state actors. The UN Special Rapporteur on the situation of human rights' advocates recommends the states to take additional measures so as to ensure the protection of human rights' defenders, who are at greater risk of violence since they are considered to challenge rules, tradition and prejudices.

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

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

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

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

1. International and European instruments

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

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

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

2. The interpretation of the provisions by the relevant bodies

According to the UN Human Rights Committee, limitations may be permitted by law in the specific instances of Art 20 of ICCPR (ie when the

invocation of national, racial or religious hatred may incite discrimination, hostility or violence). However, restrictions should comply with the stringent requirements that can be found in Art 19 to which Art 20 is *lex specialis*. In other words, freedom of expression is incompatible with the general prohibition of expressing a view against certain religions, unless if the prohibition falls within the scope of Art 20.

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

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

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

The Commission of the Council of Europe against Racism and Intolerance (ECRI) suggests penalization for the following acts when

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

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

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

The NCHR on its part notes that only a few restrictions of the above mentioned freedoms may be accepted in a democratic society, without public debate and pluralism being harmed. However, if cases of well organized propaganda and regularization of racist violence remain

unpunished, their perpetrators will repeat their criminal actions, weakening the rule of law.

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

- Vigilance from the State with regard to groups disseminating views of racial hatred;

- Police education and training about extremist groups;

- Collecting evidence for the application of Art 187 to be enabled in cases of extremist organizations;

- Creating a special police force with the task to monitor and address extremist groups;

- Developing cooperation with NGOs and experts studying the action and development of such groups;

- Protecting the rights of human rights' defenders and ensure access to justice;

- Raising awareness at local level about the negative effects of such ideologies;

- Creating prevention programs in schools and linking the measures against violence within schools. Examples: a) enriching educational material with sections on combating racism and violence, b) experiential learning on respect of difference, c) creation of prevention mechanisms within the school council with the participation of both teachers and children;

- Vocational training programs for young people in areas where extremist groups develop their action;

- Supporting cultural and scientific events designed to combat racism mainly by explaining the methods and consequences of the actions of extremist groups;

- Strongly, clearly and explicitly condemning extremist groups and their practices by political leaders.

III. Racist ideologies and democracy - political public discourse

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

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

Statements by State’ representatives targeting groups as being responsible for complex problems end up legitimizing racist ideas’ advocates. In a recent case, the responsible Minister attributed responsibilities to drug addicts and possible victims of human trafficking that the State should have protected and treated. He targeted in an arbitrary generalized way an extremely vulnerable social group, Moreover, the State has publicized sensitive medical data and photographs of prostitutes without their prior consent. Some of the women were not aware of being HIV positive prior to the publication of their photographs.

This act does not confine with the legal framework for the protection of personal data. Moreover, it does raise serious concerns about the compatibility of Art 48 of the Law 4075/2012 (arrangements limiting infectious diseases' spread) with the provisions dealing with the protection of the right to liberty and security (custodial and compulsory examination without the consent of the person in question). It revives, also, traditional sexist practices, presenting women as threats, putting at risk "innocent family men". These practices indirectly result in legitimizing a new (ethnic or cultural) nationalism, considering multiculturalism a threat to national identity and values.

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

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

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

NCHR recommends parties and authorities to:

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

IV. Racist violence in sports, especially in football

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

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

The acts of these organizations are intensified in response to games between national team of the State and that of the State of origin of immigrants, such as Albania. The climate of hostility and the elevation of a football game to a "national pride issue" ended up in the killing of an

Albanian football fan in Zakynthos, in 2004. This incident proves to be the tip of a iceberg of practices of racist violence. After a recent victory of National Team in European Championship and during the celebrations, a group attacked foreigners with homemade weapons, resulting in injuries. Hence, violence is associated with the feeling of national superiority and “blindly” relieved to vulnerable victims.

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

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

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

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

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

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

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

NCHR summarizes – not exhaustive –proposals to tackle racist violence in sports arenas, especially coming from extremist groups

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

- Cooperating with police in cases of crimes with racist motives.