





**HELLENIC REPUBLIC**  
**NATIONAL COMMISSION FOR HUMAN RIGHTS**

**R e p o r t 2 0 0 4**

**Summary in English**

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## GREEK NATIONAL COMMISSION FOR HUMAN RIGHTS

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## **II. LEGAL FRAMEWORK AND ORGANISATIONAL STRUCTURE OF THE GNCHR**



**a) Law No. 2667/1998 establishing the GNCHR**

**LAW No. 2667/1998<sup>1</sup>  
(as amended by Law 2790/2000, Law 3051/2002 and Law  
3156/2003)**

*Constitution of a National Commission for Human Rights  
and a National Bioethics Commission*

**THE PRESIDENT OF THE HELLENIC REPUBLIC**

We hereby promulgate the following law, which has been voted by Parliament:

**SECTION A  
National Commission for Human Rights**

**Article 1  
Constitution and mission**

1. A National Commission for Human Rights, which shall be subject to the Prime Minister, is hereby constituted.

2. The Commission shall be supported as to its staffing and infrastructure by the General Secretariat of the Council of Ministers, and its budget shall be incorporated into the budget of this service unit.

3. The Commission shall have its own secretariat. The President of the Commission shall be in charge of the secretariat.

4. The Commission shall constitute an advisory organ of the State on matters of the protection of human rights.

5. The Commission shall have as its mission:

(a) The constant monitoring of these issues, the informing of the public, and the advancement of research in this connection;

(b) The exchange of experiences at an international level with similar organs of international organizations, such as the UN, the Council of Europe, the OECD, or of other states;

(c) The formulation of policy proposals on matters concerned with its object.

6. The Commission shall in particular:

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<sup>1</sup> OJHR A' 281, 18.12.1998.

- (a) examine issues in connection with the protection of human rights put before it by the Government or the Conference of Presidents of Parliament or proposed to it by its members or non-governmental organizations;
- (b) submit recommendations and proposals, carry out studies, submit reports and give an opinion on the taking of legislative, administrative and other measures which contribute to the improvement of the protection of human rights;
- (c) develop initiatives on the sensitization of public opinion and the mass media on matters of respect for human rights;
- (d) undertake initiatives for the cultivation of respect for human rights within the framework of the educational system;
- (e) deliver an opinion on reports which the country is to submit to international organizations on related matters;
- (f) maintain constant communication and work together with international organizations, similar organs of other countries, and national or international non-governmental organizations;
- (g) make its positions known publicly by every appropriate means;
- (h) draw up an annual report on the protection of human rights;
- (i) organize a Documentation Centre on human rights;
- (j) examine the adaptation of Greek legislation to the provisions of international law on the protection of human rights and deliver an opinion in this connection to the competent organs of the State.

## **Article 2**

### **Composition of the Commission**

1. The Commission shall be made up of the following members:
  - (a) The President of the Special Parliamentary Committee on Institutions and Transparency;
  - (b) One representative of the General Confederation of Labour of Greece and one representative of the Supreme Administration of Unions of Civil Servants;
  - (c) Four representatives of non-governmental organizations whose activities cover the field of human rights. The Commission may, without prejudice to Article 9, decide upon its expansion by the participation of two further representatives of other non-governmental organizations (on 06.02.2003 NCHR included in its NGO membership the Greek League for Women's Rights and the Panhellenic Federation of Greek Roma Associations);
  - (d) Representatives of the political parties recognized in accordance with the Regulations of Parliament. Each party shall appoint one representative;
  - (e) (deleted by Law 3156/2003);
  - (f) The Greek Ombudsman;
  - (g) One member of the Authority for the Protection of Personal Data, proposed by its President;

(h) One member of National Radio and Television Council, proposed by its President;

(i) One member of the National Bioethics Commission, drawn from the sciences of Biology, Genetics, or Medicine, proposed by its President;

(j) Two persons of recognized authority with special knowledge of matters of the protection of human rights, appointed by the Prime Minister;

(k) One representative of the Ministries of the Interior, Public Administration and Decentralization, of Foreign Affairs, of Justice, of Public Order, of Education and Religious Affairs, of Labour and Social Security, and for the Press and Mass Media, appointed by a decision of the competent minister;

(l) Three professors or associate professors of Public Law or Public International Law. At its first meeting after incorporation, the Commission shall draw lots in which the following departments of the country's university-level educational institutions shall take part: (a) the Department of Law of the University of Athens; (b) the Department of Law of the University of Thessaloniki; (c) the Department of Law of the University of Thrace; (d) the Department of Political Science and Public Administration of the University of Athens; (e) the General Department of Law of the Panteion University; (f) the Department of Political Science of the Panteion University. These departments shall propose one professor or associate professor of Public Law or Public International Law each. The departments of the university-level educational institutions shall be under an obligation to appoint their representative within two months from receipt of the Commission's invitation.

It shall be possible by a decision of the Commission for other departments of the country's university-level educational institutions with a similar subject to be added for subsequent drawings of lots. Six (6) months before the expiry of its term of office, the Commission shall draw lots among the above departments for the next term of office;

(m) One member of the Athens Bar Association.

2. An equal number of alternates, appointed in the same way as its full members, shall be provided for the members of the Commission.

3. The members of the Commission and their alternates shall be appointed by a decision of the Prime Minister for a term of office of three (3) years. The term of the members of the Commission who take part in its first composition expires, irrespective of the date of their appointment, on 15 March 2003 (as amended by Law 3051/2002).

4. The Prime Minister shall convene in writing a session of the members of the Commission, with a view to the election of its President and the 1st and 2nd Vice-President. For the election of the Presidents and the Vice-Presidents, the absolute majority of the members of the Commission present who have a vote shall be required. Members drawn from the categories of sub-paras.

(a), (b), (e), (j) and (l) of paragraph 1 of the present article may be elected as President and Vice-President (as amended by Law 2790/2000).

5. The representatives of the ministries shall take part in the taking of decisions without voting rights.

6. The Commission shall be deemed to have been lawfully incorporated if two of the members of sub-para. (c) and the members of sub-paras (a), (e), (j) and (k) of paragraph 1 of the present article have been appointed (as amended by Law 2790/2000).

7. The members of the new composition of the Commission shall be appointed at the latest two (2) months before the expiry of the term of office of the previous composition.

8. The manner of incorporation of the Commission and any other relevant detail shall be regulated by a decision of the Prime Minister.

### **Article 3**

#### **Commissioning of specialist studies**

1. The General Secretariat for Research and Technology of the Ministry of Development may commission, on the proposal of the Commission, on a contract for services, the compilation of specialist studies for its purposes from academic working parties.

2. The working parties, on the conclusion of the relevant study, shall submit a report to the Commission, which may be made public by a decision on its part.

### **Article 4**

#### **Operation of the Commission**

1. The Commission shall meet regularly every two months and extraordinarily when summoned by the President or on the application of at least five (5) of its members. The members shall be summoned by the President by any appropriate means.

2. The Commission shall have a quorum if: (a) there is present the absolute majority of its members, and (b) among the members present is the President of the Commission or one Vice-President.

3. The Vice-Presidents shall substitute for the President in the order of their rank when the latter is lacking, is impeded, or is absent.

4. The decisions of the Commission shall be taken by a majority of the members present. In the event of a tied vote, the President shall have the casting vote.

5. The Commission shall, at its discretion, invite persons to be heard before it who can assist its work by an account of personal experiences or the expression of views in connection with the protection of human rights.

4. The compensation of the members of the Commission shall be set by a

decision of the Ministers of the Interior, Public Administration and Decentralization, and of Finance, by way of deviation from the provisions in force concerning a fee or compensation by reason of service on councils and commissions of the public sector.

5. The Regulations for the operation of the Commission shall be drawn up by a decision of the Prime Minister. The operation of sub-commissions, the distribution of competences among the sub-commissions and the members, the procedure for the invitation and audience of persons summoned before it, and any other detail shall be regulated by these Regulations. The Regulations may be amended by a decision of the Prime Minister, following an opinion on the part of the Commission.

#### **Article 5** **Annual report**

The Commission shall by the end of January of each year submit its report to the Prime Minister, the President of Parliament, and the leaders of the political parties which are represented in the national and the European Parliament.

#### **Article 6** **Assistance of public services**

1. At the end of each year, the ministries which are represented on the Commission shall lodge a report with their observations on the protection of human rights in the field of their responsibility.

2. In order to fulfill its mission, the Commission may seek from public services and from individuals any information, document or any item relating to the protection of human rights. The President may take cognizance of documents and other items which are characterized as restricted. Public services must assist the work of the Commission.

#### **Article 7** **Research officers**

1. Three (3) posts for specialist academic staff, within the meaning of para. 2 of Article 25 of Law 1943/1991 (OJHR 50 A), on a private law employment contract of a term of three (3) years, are hereby constituted. This contract shall be renewable (as amended by Law 3156/2003).

These posts shall be filled following a public invitation by the Commission for applications. Selection from the candidates shall be in accordance with the provisions of paragraphs 2, 5 and 6 of Article 19 of Law 2190/1994 (OJHR 28 A), as replaced by Article 4 of Law 2527/1997 (OJHR 206 A), by five members of the Commission who have a vote, to be nominated by its President.

2. The legal research officers shall assist the Commission by preparing

proposals on issues assigned to them and shall brief it on the work of international organizations which are active in the field of human rights. In addition, they shall keep a relevant file of texts and academic studies.

3. The remuneration of the legal research officers who are engaged in accordance with paragraph 1 of this article shall be determined by the decision of para. 6 of Article 4 of the present law, by way of deviation from the provisions in force concerning the remuneration of specialist academic personnel.

## **Article 8**

### **Secretariat of the Commission**

1. One (1) post of secretary and three (3) posts for secretarial and technical support of the Commission are hereby constituted.

2. The following shall be regulated by a Presidential Decree issued on the proposal of the Ministers of the Interior, Public Administration and Decentralization, of Foreign Affairs, of Finance, and of Justice:

(a) The distribution of the posts of para. 1 by category, branch and specialization, as well as issues concerning the organization of the secretarial and technical support of the Commission;

(b) The filling of the posts of para. 1, which may be by the making available or secondment of civil servants or employees of public law legal persons, or those employed on a contract of employment of a fixed or indefinite duration with the State, public law legal persons or private law legal persons of any form which are under the direct or indirect control of the State;

(c) any matter concerning the in-service status and the remuneration of this personnel.

3. It shall be permitted for an employee of a ministry or public law legal person of Grade A or B of category ΔΑ, proposed by the President of the Commission, to be seconded as secretary of the Commission, by a decision of the Minister of the Interior, Public Administration and Decentralization and of the minister jointly competent in the particular instance.

4. Until such time as the Presidential Decree of para. 1 is issued, it shall be permitted for the Commission to make use of employees and to use technical support provided by the Ministry of Foreign Affairs and of Justice in accordance with the decisions of the competent ministers.

## **Article 9**

### **Transitional provisions**

In the first composition of the Commission the following non-governmental organizations shall be represented: Amnesty International, the Hellenic League for Human Rights, the Marangopoulos Foundation for Human Rights, and the Greek Council for Refugees.

*[Regulations on the Bioethics Commission follow.]*

**SECTION C**

**Final provision**

**Article 19**

This law shall come into force as from its publication in the Official Journal of the Hellenic Republic.

We hereby mandate the publication of the present law in the Official Journal of the Hellenic Republic and its execution as a law of the State.

Athens, 17 December 1998

**CONSTANTINOS STEPHANOPOULOS**

PRESIDENT OF THE REPUBLIC

**CONSTANTINOS G. SIMITIS**

PRIME MINISTER

THE MINISTERS (...)

*Endorsed and the Great Seal of State affixed*

Athens, 18 December 1998

## **b) Mission and mandate of GNCHR**

The Greek National Commission for Human Rights (GNCHR) was founded by Law 2667/1998 and inaugurated on 10 January 2000, when it was first convened by the Prime Minister, and its President and two Vice-Presidents were elected.

GNCHR is a statutory National Human Rights Institution having a consultative status with the Greek State on issues pertaining to human rights protection. The creation of GNCHR emanated from the need to monitor developments regarding human rights protection on the domestic and international plane, to inform Greek public opinion about human rights-related issues and, above all, to provide guidelines to the Greek State aimed at the establishment of a modern, principled policy of human rights protection. The original source of inspiration for the creation of GNCHR were the *Paris Principles*, adopted by the United Nations and the Council of Europe.

According to Law 2667/1998, by which GNCHR was established, GNCHR has the following substantive competences:

- 1.** The study of human rights issues raised by the government, by the Convention of the Presidents of the Greek Parliament, by GNCHR members or by non-governmental organisations;
- 2.** The submission of recommendations and proposals, elaboration of studies, submission of reports and opinions for legislative, administrative or other measures which may lead to the amelioration of human rights protection in Greece;
- 3.** The development of initiatives for the sensitisation of the public opinion and the mass media on issues related to respect for human rights;
- 4.** The cultivation of respect for human rights in the context of the national educational system;
- 5.** The maintenance of permanent contacts and co-operation with international organizations, similar organs of other States, as well as with national or international non-governmental organizations;
- 6.** The submission of consultative opinions regarding human rights-related reports, which Greece is to submit to international organizations;
- 7.** The publicizing of GNCHR positions in any appropriate manner;
- 8.** The drawing up of an annual report on human rights protection in Greece;
- 9.** The organization of a Human Rights Documentation Centre;
- 10.** The examination of the ways in which Greek legislation may be harmonized with the international law standards on human rights protection, and the subsequent submission of relevant opinions to competent State organs.

### **c) Membership of GNCHR**

**In accordance with Article 2 of Law 2667/1998, as amended in 2002 and 2003, the following are members of GNCHR:**

- 1.** The President of the Special Parliamentary Commission for Institutions and Transparency;
- 2.** A representative of the General Confederation of Greek Workers, and his/her alternate;
- 3.** A representative of the Supreme Administration of Civil Servants' Unions, and his/her alternate;
- 4.** Six representatives (and their alternates) of Non-Governmental Organizations active in the field of human rights protection, that is, Amnesty International Greek Section, the Hellenic League for Human Rights, the Marangopoulos Foundation for Human Rights, the Greek Council for Refugees, the Greek League for Women's Rights and the Panhellenic Federation of Greek Roma Associations;
- 5.** Representatives of the political parties represented in the Greek Parliament. Each political party designates one representative and his/her alternate;
- 6.** The Greek Ombudsman and his/her alternate;
- 7.** One member of the Authority for the Protection of Personal Data and his/her alternate, proposed by the President of the above Authority;
- 8.** One member of the National Radio and Television Council and his/her alternate, proposed by the President of the Council;
- 9.** One member of the National Commission for Bioethics and his/her alternate, proposed by the President of that Commission;
- 10.** Two personalities widely recognized for their expertise in the field of human rights protection, designated by the Prime Minister;
- 11.** One representative (and one alternate) of the: Ministry of Interior, Public Administration and Decentralisation, Ministry of National Education and Religion, Ministry of Labour and Social Security and Ministry of the Press and Mass Media. Each of these persons (who do not have the right to vote) is designated by the competent Minister;
- 12.** Three Professors or Associate Professors (and their alternates) of Public Law or Public International Law, members of the University of Athens, Faculty of Political Science and Administration, of the University of Thessaloniki, Faculty of Law and of the University of Thrace, Faculty of Law;
- 13.** One member of the Athens Bar Association and his/her alternate.

It is worthy to note the originality of the law provisions concerning GNCHR membership and the election of Members, of the President and the two Vice-

Presidents. Each institution participating in GNCHR designates its representatives. All representatives -except for those of seven Ministries who take part in the sessions of the Plenary and the Sub-Commissions without the right to vote- elect the President and the two Vice-Presidents of GNCHR. This particular, liberal system ensures GNCHR's independence and impartiality.

#### **d) The organisational structure of GNCHR**

Since 10 January 2000 (starting date of functioning) the President of GNCHR (Commissioner) has been Emer. Professor Alice Yotopoulos-Marangopoulos. First Vice-President is Mr. Nikos Frangakis and Second Vice-President is Ms Angeliki Chrysohoidou-Argyropoulou (elected on 20 January 2005).

GNCHR has established five Sub-Commissions:

1. The Sub-Commission for Civil and Political Rights (Head, Prof. Nikolaos Klamaris)
2. The Sub-Commission for Social, Economic and Cultural Rights (Head, Mr. Nikos Frangakis)
3. The Sub-Commission for the Application of Human Rights to Aliens (Head, Ms Angeliki Chrysohoidou-Argyropoulou)
4. The Sub-Commission for the Promotion of Human Rights (Head, Ms Georgia Zervou)
5. The Sub-Commission for International Communication and Co-operation (Head, Prof. Haritini Dipla)

According to the Rules of Procedure of GNCHR the Plenary convenes every two months. In practice the Plenary meets every month. According to the above Rules each Sub-Commission holds at least one meeting per month. The Sub-Commissions' work consists of the preparation of reports on issues related to their specific field of action. All these reports are subsequently submitted to the GNCHR (Plenary) for discussion and decision.

The GNCHR currently employs three Legal/Research Officers (Ms Chryssoula Moukiou, Ms Christina Papadopoulou and Mr. Vassilios Georgakopoulos); it also employs an Executive Secretary (Ms Katerina Pantou).

Since 2003 GNCHR has acquired its own premises in Athens (Neofytou Vamva, 6, 10674 Athens) and its website ([www.nchr.gr](http://www.nchr.gr)).

**III. SUMMARY OF THE WORK OF THE GNCHR  
FROM 2000 TO DATE**



### III. SUMMARY OF THE WORK OF THE GNCHR FROM 2000 TO DATE

In the beginning of the first year of its life, 2000, GNCHR collected and studied all major international and European documentation regarding human rights protection issues in Greece, which have been raised in international and European fora, with a view to examining the actual compliance of Greece with international and European human rights standards and law. Accordingly, the major issues of concern have been the following: issues pertaining to the effectiveness of the Greek justice system; freedom of religion; conscientious objection to military service; conditions of detention; non-discrimination on the grounds of race, ethnic origin or sex; protection of minority populations.

In the course of the meetings of the GNCHR Plenary and the Sub-Commissions since 2000 the following issues have been discussed and relevant action was taken, including notification of the GNCHR resolutions and recommendations to all competent Greek authorities (also published in GNCHR Annual Reports):

- **GNCHR proposals on the draft Charter of Fundamental Rights of the European Union (11 July 2000):** GNCHR submitted to the EU Convention and competent Greek authorities proposals regarding the inclusion within the body of the Charter of specific substantive provisions regarding:
  1. The inclusion in the body of the Charter of a substantive notion of effective equality, especially with regard to women;
  2. The abolition and prevention of modern forms of slavery, especially those pertaining to trafficking and sexual exploitation of women and children;
  3. The prevention of human rights violations, especially gender-related, by fundamentalists;
  4. The express abolition of the death penalty in all circumstances;
  5. The strengthening of the legal status and the establishment of implementation measures relating to social and economic rights.
- **The issue of inclusion of religious affiliation in Greek citizens' identity cards (13 July 2000):** GNCHR adopted a resolution according to which the inclusion of religious affiliation in Greek citizens' identity cards is not in accordance with the Greek Constitution (article 5 paras 1 and 2 and article 13), or with current international and European human rights law, as well as European Community law. GNCHR pointed out that the selection of religion as a particular determining identity conflicts with religious freedom and, more specifically, with the right not to declare or to remain silent as to one's religious faith, and gives rise to dangers of possible discrimination by reason of religion, as past experience has proved.
- **Ratification of humanitarian law treaties (28 September 2000):** GNCHR called upon the Greek government to proceed to the ratification of the 1999 Second Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict, as well as of the 2000 Optional Protocol to the

Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (Greece had already signed these Protocols).

- **The 2000 Bill on aliens/immigration (9 November and 30 December 2000):** GNCHR expressed its criticism and submitted recommendations regarding certain provisions and omissions of the above Bill (later Law 2910/2001) which were considered to contravene current international standards of immigration and human rights law, such as: the lack of expert research on which the above Bill should have been based; non justification of visa application decisions by Greek consulates; lack of special protection of long-term immigrants; lack of effective protection of immigrant families; need to prevent human, especially women, trafficking through immigration legislation; access of immigrant children to education; access of detained immigrants to legal counseling. GNCHR stressed that the Greek government should take all appropriate measures for the establishment of specialised research into contemporary conditions of migration and for the establishment of an integrated immigration policy.
- **Cremation of the deceased (7 December 2000):** GNCHR proposed to the competent Greek authorities the modification of the current legislative framework for the protection by Greek law of every person's right, without any distinction whatsoever, to choose between cremation and burial when deceased. Current Greek law exclusively provides for the latter. GNCHR has noted that where the deceased has not expressed any special preference as between cremation and burial, his/her family (in order of priority: spouse, adult children, siblings, as in the case of the donation of organs of the body) should be able to choose.
- **Ratification of the Rome Statute of the International Criminal Court (7 December 2000):** GNCHR called upon the Greek government to proceed to the ratification of the Statute of the International Criminal Court (signed by Greece in 1998, later ratified by Law 3003/2002).
- **Human Rights Education and Promotion (2000-to date):** GNCHR has initiated a programme of human rights education and promotion, giving priority to specific population groups, that is, police force, civil servants, lawyers, journalists and students. In 2001 the Fourth Sub-Commission of GNCHR provided a number of Greek Universities with documentation with a view to establishing special human rights courses in their curricula. In April 2001 the Greek Open University accepted and started work on the proposal of the Fourth Sub-Commission of GNCHR, with a view to creating a new course on human rights. On 6 June 2002 the Fourth Sub-Commission provided the Greek Open University with more back-up information and ideas for the creation of the human rights course.

In June 2001 the Fourth Sub-Commission of GNCHR commissioned the Communication and Mass Media Department of the University of Athens to carry out a special study on Greek TV news bulletins and the promotion and establishment by them of stereotypes and discrimination mechanisms. The study was completed in February 2002 and widely publicized in December 2002,

after a relevant public discussion, which was organized by the Fourth Sub-Commission of GNCHR at the Athens Journalists' Association on 5 December 2002.

Also the Fourth Sub-Commission of GNCHR in 2001 had consultations with the Greek Ministry of Public Order and the National School of Public Administration. The Sub-Commission has urged the above Ministry (special educational material has also been provided to them by the Fourth Sub-Commission) and the National School to promote and strengthen human rights education in their curricula for policemen and public servants respectively.

- **Amendment of the Greek Constitution in 2001 (1 February 2001):** GNCHR submitted to the Greek government and to the parliamentary political parties recommendations regarding the amendment of a series of constitutional provisions on: conscientious objection to military service, abolition of the death penalty in all circumstances (the death penalty in time of peace has been abolished in Greece), protection of personal data, the right of association of civil servants, Greek mass media, the right to property, the protection of the natural and cultural environment, the participation of civil servants in political parties and in national elections, the competences of the Greek Council of State, and the Greek independent administrative authorities.
- **Freedom of religion (1 March 2001):** In light of the recent case law of the European Court of Human Rights, GNCHR proposed the modification, according to the above-mentioned jurisprudence, of the current Greek legal framework regarding: 1. *Prosecution of proselytism*. The Greek state was urged to proceed to abrogating the relevant legislation in force and create a new relevant legal framework grounded in the right to freedom of thought, conscience and religion; 2. *The establishment of places of worship*. GNCHR urged the Greek authorities to abrogate the relevant antiquated legislation and comply with the judgments of the European Court of Human Rights; 3. *The situation of the Muslim minority in western Thrace*. In light of the ECHR case law, GNCHR pointed out that the competence of Muftis in Thrace should be contained in religious affairs only and not transcend to the fields of administration and justice; 4. *Discrimination against conscientious objectors*. GNCHR proposed the modification of Greek legislation with a view to eliminating legal and social discrimination against conscientious objectors to military service.
- **Use of force and of firearms by police forces (4 April 2001):** Upon request of the Minister of Public Order, GNCHR proposed the modification of the current relevant Greek legal framework in line with the relevant principles and norms of the United Nations and the Council of Europe. GNCHR stressed that the Greek legislation and police education and training were inadequate to confront modern forms of violence and criminality. According to GNCHR the new legislation should be squarely grounded in the principle of necessity and proportionality and guided, inter alia, by the 1979 UN Code of Conduct for Law Enforcement Officials and the 1990 UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. GNCHR also stressed the imperative of

intensifying the training courses of all Greek police personnel and of effectively safeguarding the latter's right to life and physical integrity and their families' special social security rights.

- **Bill on organised crime (3 May 2001):** GNCHR submitted to the Ministry of Justice a series of recommendations, based mainly on European human rights principles and the UN Convention against Transnational Organized Crime (Palermo Convention), regarding the draft of the "Law on the amendment of the Greek Criminal Code and the Code of Criminal Procedure for the protection of citizens from indictable acts of criminal groups" (later Law 2928/2001). GNCHR pointed out, inter alia, that mixed jury courts should not be excluded from the adjudication of organized crime cases, the investigative infiltration should be supervised by a judge and underlined the cautiousness with which DNA-related information (evidence) should be handled.
- **Protection of refugees (asylum) in Greece (8 June 2001):** GNCHR submitted to all competent Ministries proposals for a series of legislative and administrative amendments aimed at the modernization and harmonization of the Greek asylum framework with the established and emerging standards of international and European Community law. The main issues of concern were: 1. The free movement of refugees and asylum seekers; 2. Asylum seekers in transit areas of ports and airports; 3. Refugee reception centers; 4. The serious shortage of state trained interpreters and translators; 5. Asylum seekers without documentation, especially in Athens; 6. Review of asylum decisions and lack of judicial appeal on merits; 7. Inadequacy of legal aid to refugees and asylum seekers.
- **Establishment of a comprehensive legal aid system (25 June 2001):** GNCHR proposed to the Ministry of Justice the restructuring and modernization of legal aid schemes in accordance with the legal aid standards established by the Council of Europe, the European Union and the case law on the European Convention on Human Rights. GNCHR expressed its concern at the inadequacy of legal aid as it was structured and applied in Greece and stressed that legal aid should be available to every person who is in need of it, in all jurisdictions and all procedural stages. Particular attention should be paid by the Greek state to vulnerable social groups such as asylum seekers, refugees and alien immigrants potentially discriminated against on the ground of their racial or ethnic origin.
- **Conditions of detention in Greece (5 July 2001):** GNCHR, in view of relevant recent reports of, among others, the European Committee for the Prevention of Torture and the UN Committee against Torture, having regard to recent case law of the European Court of Human Rights and having visited some Greek prisons and police detention centres, submitted to the Ministry of Justice and the Ministry of Public Order a series of proposals aiming at the urgent reformation and modernization of the Greek detention centres and related legislation and practice. In particular GNCHR underlined the need for Greece to effectively comply with the recommendations of the above international and

European organs, the need for creation of new modern detention centers, the separation of minor and adult detainees, the provision of adequate health care services to all detainees and the putting into effect of the new aliens legislation that provides for the creation of new detention centers for aliens under deportation.

- **Alternative civil-social service (5 July 2001):** GNCHR proposed to the Ministry of National Defence amendments for the modernization of the Greek law regarding alternative civil-social service, instead of military service, in accordance with the relevant established principles of the Council of Europe and the case law of the European Court of Human Rights. GNCHR stressed, inter alia, that alternative service should be of a reasonable duration and never have the character of punishment, while the relevant authority should be independent from the military and provide adequate procedural safeguards.
- **Implementation by Greece of ILO Convention No 111 on non-discrimination in employment and occupation (20 August 2001 - a formal request for an opinion was submitted to GNCHR by the Greek Ministry of Labour):** GNCHR submitted its comments to the Ministry of Labour, placing particular emphasis on the important issues, requiring particular attention by the Greek state, of affirmative action in favour of women in Greece (following the new Article 116 para 2 of the Greek Constitution) and of the legal and factual gender equality in the framework of the relevant, evolving European Community law.
- **Resolution on terrorism and human rights after the events of 11.09.2001 (20 September 2001):** GNCHR was one of the first National Institutions that issued such a resolution calling upon states to abide by their international law obligations in the course of their struggle against terrorism that should in no way lead to new ethno-cultural divisions and enmities all over the world and to human rights violations.
- **Protection of social rights of refugees and asylum seekers in Greece (20 September 2001):** GNCHR submitted to the competent Greek Ministries a series of recommendations, based on European and international human rights standards, for the modernization and the strengthening of the current, inadequate system of refugee social protection in Greece. The main issues tackled by GNCHR in its report are: 1. Reception centres for asylum seekers; 2. Employment and vocational training of refugees and asylum seekers; 3. Provision of aid and special allowances; 4. Education; 5. Special protection of unaccompanied minor refugees and asylum seekers.
- **Draft Report of the Greek Foreign Ministry on Racism, Intolerance and Xenophobia to the Committee of Ministers of the Council of Europe (22 October 2001):** Comments of the Second (Social, Economic and Cultural Rights) and Third (Application of Human Rights to Aliens) GNCHR Sub-Commissions were submitted to the Greek Foreign Ministry upon the latter's request. The above Sub-Commissions stressed, inter alia, that the Council of Europe should in no way proceed to the devaluation of the European

Commission against Racism and Intolerance and that Greece should proceed to the ratification of the European Framework Convention for the Protection of National Minorities, as well as Protocol No 12 of ECHR on the prohibition of all forms of discrimination.

- **Second Mediterranean Conference of National Human Rights Institutions (1-3 November 2001):** GNCHR successfully organized and hosted the above Conference from 1-3 November 2001 in Athens, which was attended by 14 National Institutions and was concluded with the adoption of the Athens Declaration (text available at [www.GNCHR.gr](http://www.GNCHR.gr)). The major theme of the Conference was immigration and asylum following the Durban World Conference against racism of September 2001. The Conference was coupled with an open Colloquium on the above topic, organized by GNCHR in Athens.
- **Issues regarding protection of Roma in Greece (29 November 2001):** GNCHR submitted to the competent Greek authorities its report on Roma in Greece containing a long series of measures that Greece should take in order to meet the needs for social and legal protection of this particularly vulnerable social group. The main issues of particular concern to GNCHR have been the following: 1. The de facto social marginalisation of Roma; 2. Housing of Roma; 3. Provision of adequate health services to Roma; 4. Establishment of new education system tailored for the particular characteristics to Roma population; 5. Discrimination and violence against Roma by local indigenous populations and law enforcement personnel.
- **2001 Reports of the Ministers of Justice and of Public Order to the UN CAT (13 December 2001):** GNCHR submitted its comments on the above Reports, upon request of the relevant Ministries, in accordance with Law 2667/1998 founding GNCHR. GNCHR urged the Ministries to make particular reference in their Reports to the actual practice, that is, application of the UN Convention against Torture by Greek authorities. GNCHR also stressed the importance that Greek authorities should attach to the advancement of education and training of law enforcement personnel, to the amelioration of detention conditions in Greece and to the treatment by Greek authorities of immigrants and asylum seekers in accordance with international law and protection standards.
- **Main issues of racial discrimination in Greece – Proposals for the modernization of Greek law and practice (20 December 2001):** With this report GNCHR underlined the major issues concerning racial equality in Greece already raised by competent UN and Council of Europe organs and proposed that the Greek government proceed to the overhaul of the relevant policy and legislation, taking in particular into account Directive 2000/43/EC *implementing the principle of equal treatment between persons irrespective of racial or ethnic origin*. GNCHR stressed that Greece should fully comply with the recommendations of the UN CERD and ECRI and proceed to the modification of Greek anti-racism legislation and policy with a view to living up to current EC law and relevant standards laid down by the Council of Europe.

- **2001 Greco-Turkish Protocol for the implementation of article 8 of the Greco-Turkish Agreement on combating crime, especially terrorism, organized crime, illicit drug trafficking and illegal migration (31 January 2002):** GNCHR issued an opinion expressing its serious concern at, inter alia, the non-inclusion in the above Protocol (Law 3030/2002) of any express clauses pertaining to the effective protection of asylum seekers arriving in Greece from Turkey, according to the Geneva/New York Refugee Convention and Protocol. GNCHR pointed out that in a number of cases the conditions of aliens' refoulement/readmission raise concerns as to the safeguarding of fundamental rights of all persons attempting to enter Greek territory, including illegal migrants.
- **Appeal to the Greek Foreign Minister pertaining to the treatment by the US authorities of Afghan detainees (28 February 2002):** GNCHR has called upon the Greek Foreign Minister to exercise his utmost influence so that international human rights principles are adhered to in this case, especially those emanating from the UN Convention against Torture, the International Covenant on Civil and Political Rights and international, conventional and customary, humanitarian law.
- **Appeal to the Greek Foreign Minister for the ratification by Greece of the anti-discrimination 12th Protocol to the European Convention on Human Rights, already signed by Greece (28 February 2002).**
- **Resolution on the 2001 proposals for an EU Council Framework Decision on combating terrorism and for an EU Council Framework Decision on the European arrest warrant and the surrender procedures between Member States (28 February 2002):** GNCHR commented on the above proposals dated December 2001 and stressed that these Decisions should be squarely based upon international and European human rights standards and principles. With regard to the decision on combating terrorism GNCHR stressed that EU member states should show utmost cautiousness to the identification of the aims by which terrorist acts are identified and that the right to a fair trial should be always adhered to in the course of the relevant procedures. As to the European arrest warrant decision, GNCHR pointed to the precarious situation that the above decision may engender especially for third country nationals who have occasionally been discriminated against and victimised by state measures and policies adopted by certain states following the events of 11 September 2001.
- **Research project on TV news bulletins and human rights protection (28 February 2002):** The Fourth Sub-Commission of GNCHR commissioned the Department of Communication and Mass Media of the University of Athens to carry out the above research that was concluded in February 2002. The research demonstrated the existence of a pattern of serious violations of human rights by TV news bulletins, which have taken the form of "infotainment", of mainly private TV channels in Greece. The research attested to the fact that TV news in Greece tend to arbitrarily categorize and stigmatize particular ethnic and

social groups infringing upon their human dignity and flagrantly violating fundamental contemporary standards of human rights protection, primarily the one of presumption of innocence. The research results were publicized at a special public discussion event in the premises of the Athens Journalists' Association, organized by the Fourth Sub-Commission of GNCHR on 5 December 2002.

- **2002 Core Document of the Greek Foreign Ministry to the UN Human Rights Committee (28 February 2002):** GNCHR submitted to the Greek Foreign Ministry, upon the latter's request, its comments on the above Core Document pertaining to basic information on the framework of human rights protection in Greece. The main issues that were regarded by GNCHR as insufficiently covered by the above Core Document were the following: 1. Human rights education of law enforcement officials and public servants; 2. Compliance and cooperation of Greece with the recommendations of the Council of Europe Social Rights Committee and ECRI, as well as with the judgments of the European Court of Human Rights; 3. Provision by Greece of data regarding religion and languages used in Greece.
- **Bill on combating trafficking in persons and providing protection to victims (28 February 2002):** GNCHR submitted to the Greek authorities a series of substantive proposals for the amendment of the above Bill (later Law 3064/2002 and relevant Presidential Decree 233/2003), in accordance with the relevant protection standards agreed upon by the United Nations, the Council of Europe and the European Union. The main issues on which GNCHR focused its attention are: 1. The necessary modification of the limited nature of the definition of trafficking included in the above Bill; 2. The necessity for expansion of the manners in which the victim's coerced acquiescence may be obtained; 3. The necessary establishment of a holistic legal and institutional framework for the provision of effective legal social protection to all victims of trafficking, especially during the phase of their repatriation; 4. The extensive protection that should be provided to minors; 5. The necessary criminalisation of professional exploitation of prostitutes.
- **Appeal to the Greek Foreign Minister for the signature and ratification by Greece of the 13th Protocol to ECHR (concerning the abolition of the death penalty in all circumstances, 24 April 2002 –** The death penalty in time of peace had already been abolished in Greece).
- **Restrictive quotas against women employed by the Greek Police and Fire Brigade (29 May 2002):** GNCHR issued a special report on the above issue calling upon the Greek Ministry of Public Order, in charge of Greek Police and Fire Brigade, to abide by the new provisions of the Greek Constitution on affirmative action in favour of women, the relevant case law of the Greek Council of State and EC legislation. GNCHR stressed that according to the new article 116 para 2 of the Greek Constitution (2001) any kind of gender-based exclusion or restriction, including restrictive quotas against women, is to be considered as null and void. The competent Minister of Public Order in December 2002 put forward a Bill providing for the elimination of restrictive quotas against police women candidates.

- **Issues relating to reception and access of asylum seekers to the asylum procedure in Greece (6 June 2002):** GNCHR expressed its grave concern at reports of international NGOs regarding alleged instances of refoulement of asylum seekers by Greek authorities and issued a series of asylum law and practice-related recommendations with special reference to: the arrest of asylum seekers in border areas; these detainees' information about the Greek asylum procedure and their concomitant rights; provision of legal aid; facilitation of asylum seekers' communication with any person they wish to contact in order to inform them about their case; the creation of new permanent state reception centers for asylum seekers; the application of article 48 of Law 2910/2001, as amended by Law 3013/2002, which provides for the establishment of regional detention centres for aliens subject to administrative deportation.
- **Report on Law 2956/2001 pertaining to temporary employment through "companies of temporary employment" (4 July 2002):** GNCHR forwarded to the Greek government the above report underlining its concerns at the raison d'être itself and application of the above Law that provides for the leasing of employees through the above-mentioned companies to various businesses in Greece. GNCHR stressed that the above form of employment contravenes in practice human and labour rights of the persons employed through this system. GNCHR also pointed to the necessity of strengthening the efficiency of the competent Body of Labour Inspectors, in charge of safeguarding the proper application of labour law in Greece.
- **Bill on the Greek administration's compliance with judicial decisions (9 July 2002):** GNCHR submitted to the Greek authorities a number of proposals for ensuring conformity of the above Bill (late Law 3068/2002) with the prescriptions of the Greek Constitution, the International Covenant on Civil and Political Rights and the European Convention on Human Rights. The main points of GNCHR were the following: **1.** The most effective means of compliance by the administration would be the establishment by law of the "action for performance" against the Greek administration; **2.** Compliance should be provided for also in cases of judgments regarding interim protection; **3.** The judicial board in charge of supervising the administration's compliance should include judges who have already participated in the relevant proceedings; **4.** The waiting period regarding compliance should not be beyond the limits of reasonableness established in European human rights law. Finally GNCHR pointed out that the above Bill should proceed to the abrogation of the antiquated preferential default interest of the Greek state, as prescribed by contemporary human rights law and principles.
- **Initial (2002) Report of Greece to the UN Committee on Economic, Social and Cultural Rights (4 September 2002):** GNCHR, upon urgent request of the Greek Foreign Ministry, submitted its comments on the above Report, which had been prepared by thirteen Ministries, in accordance with Law 2667/1998 founding GNCHR. GNCHR pointed to a series of issues falling under the scope of the Report that were not sufficiently, or at all, tackled by the above

Report, such as: **1.** The inadequate Greek legal framework against racial or ethnic discrimination; **2.** The inadequate legal and institutional framework for the protection and integration of alien immigrants and refugees; **3.** Issues of unemployment and new forms of employment, such as temporary employment through "companies of temporary employment", that contravene modern human rights standards; **4.** High poverty rate and inadequate social welfare infrastructure; **5.** Implementation of the development and protection programme for Roma; **6.** Issues pertaining to socio-legal protection of aliens, especially women, victims of human trafficking; **7.** Issues regarding state education; **8.** Issues arising from the practice of mass media, especially from private TV channels, and the flagrant or indirect violation by them of human dignity.

- **Athens Conference on the Greek Presidency of the EU Council and the challenge of asylum and immigration, 8-9 November 2002 (co-organised with the Greek Ombudsman, UNHCR BO for Greece and the Greek Council for Refugees):** This was a two-day open conference attended by representatives of competent Greek Ministries, the EU Commission, UNHCR, GNCHR and Greek NGOs. The conference ended with the adoption of a series of conclusions on the European and Greek immigration and asylum law and policy, which were publicized and forwarded to all competent Greek, European and international organizations.
- **International Conventions on Migrant Workers and the position of Greece (12 December 2002).** GNCHR proposed that Greece accede to the following Conventions on Migrant Workers, regarding them as necessary for, inter alia, the planning and implementation of a contemporary, human rights-based immigration law and policy by Greece: ILO Convention (No 97) concerning Migration for Employment (revised 1949), ILO Convention (No 143) on Migrant Workers (Supplementary provisions, 1975) and the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.
- **Issues relating to discrimination against alien workers with regard to their employment injury compensation (12 December 2002).** GNCHR recommended the abrogation of article 5 of Royal Decree of 24.07.1920 and of Law 551/1915 which condition employment injury compensation to alien workers on the norm of reciprocity or the alien worker's residence in Greece, in violation of, inter alia, fundamental social rights provisions of the Greek Constitution and relevant provisions of the 1966 International Covenant on Economic, Social and Cultural Rights. With the same resolution GNCHR recommended also the ratification by Greece of the 1964 Employment Injury Benefits Convention of ILO (No 121).
- **Commentary on the Bill of the Ministry of Public Order regarding arms possession and use of firearms by police personnel and their relevant training (12 December 2002).** Upon request of the Minister of Public Order, GNCHR submitted its comments on the above Bill (later Law 3169/2003) of 12.11.2002. GNCHR regarded this Bill as moving in the right direction, in

accordance with its own earlier proposals of 5 April 2001, the 1979 UN *Code of Conduct for Law Enforcement Officials* and the 1990 UN *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*. GNCHR proposed the modification of a series of provisions of the above Bill so that they conform to the principles of necessity and proportionality in which the relevant policy and practice should be grounded. GNCHR also stressed the necessity of intensification and streamlining by the Ministry of Public Order of human rights education and further training in the curricula of all law enforcement officials in Greece.

- **Resolution on Greece's combat against terrorism in its territory (12 December 2002).** GNCHR, following its former relevant Resolutions of 2001 and 2002, expressed its outright condemnation of acts of terrorism carried out in Greece and called upon all competent Greek authorities and professional associations, such as the Athens Bar and the Athens Journalists' Association, to ensure that the struggle against terrorism is not carried out to the detriment of the fundamental principles enshrined in international human rights law and in the Greek Constitution.
- **Greece's compliance with the Conclusions of the European Committee of Social Rights (12 December 2002).** Given the importance of the European Social Charter (ESC) and of the supervisory work of the European Committee of Social Rights (ECSR) for the protection of fundamental social rights in contracting states such as Greece, GNCHR proposed that Greece recognize the right of Greek NGOs to lodge complaints with ECSR, according to the 1995 Additional Protocol to ESC, and fully comply with the Conclusions of ECSR, pertaining to the collective complaints against Greece.
- **The detention conditions in Greece in 2002 (12 December 2002):** GNCHR paid particular attention and studied the latest relevant reports of the European Committee for the Prevention of Torture, the United Nations Committee against Torture and the Council of Europe Commissioner for Human Rights. Taking also into account the responses of the Greek authorities to the above reports, GNCHR proceeded to submitting to the competent Greek authorities a series of recommendations with a view to ensuring, inter alia, the following: full compliance of Greece with the recommendations of the above United Nations and Council of Europe organs; promotion and strengthening continuous education of all personnel involved in the detention process; creation of detention centers of aliens under deportation according to Aliens' Law 2910/2001; special legislation for and attention to asylum seekers under detention, in accordance with the relevant GNCHR proposals of 06 June 2002; establishment of a detainee complaint procedure in all detention centers; decongestion of the prison and detention centers in the area of Athens through establishment of new prisons and detention centers in other regions; special treatment of detainees who are drug addicts and their strict separation from other detainees in all prisons and detention centers.

- **Proposals to the European Convention for the Constitutional Treaty of the European Union (07 May 2003):** GNCHR submitted to the European Convention a series of reasoned proposals pertaining to the following major issues: (a) The inclusion of peace and equality, especially equality between men and women, in the "values" of the European Union; (b) The addition to the Union's objectives of social objectives proclaimed by the EC and EU Treaties; (c) The addition to the Constitution of a provision mainstreaming the principle of, and concomitant right to, environmental protection and amelioration; (d) Providing the EU Charter of Fundamental Rights with constitutional force; (e) The entrenchment in the Constitution of the proscription of all forms of discrimination; (f) The express entrenchment in the Constitution of gender equality, protection of maternity and of paternity and of the reconciling of family and professional life; (g) The protection of public health in the European Union.
- **Resolution on Muslim weddings by proxy in Greece (29 May 2003):** GNCHR held extensive discussions on the complex legal and social issues arising from this subject. GNCHR stressed the importance of respect for cultural and religious identities in a pluralist, democratic society. Taking into consideration the relevant principles and rules of international, European and Greek human rights law GNCHR reached the following conclusions: (a) Muslim weddings by proxy should be considered by Greek law as "non-existent" with regard to the proxy and the principal's "spouse" and as "null and void" with regard to the principal; (b) The principle of legal security dictates that Muslim weddings by proxy already carried out in Greece should be considered as valid; (c) The minimum age for the conclusion of a Muslim wedding should be reviewed in the light of article 23 para. 3 of ICCPR and of the fundamental constitutional principle of gender equality.
- **Draft Agreements (a) on extradition and (b) on mutual legal assistance between the European Union and the United States of America (29 May 2003):** GNCHR expressed its reservation to the above Agreements and submitted to the Greek Government and the European Union comments regarding the following major issues: (a) The need for amending article 4 para. 2 of the Extradition Agreement due the unwarranted lowering of the seriousness of the offence with which the persons under extradition are charged; (b) The need for an express inclusion of a provision proscribing the extradition of nationals; (c) The need for amending article 13 so that extradition should be proscribed in cases where no adequate guarantees are provided regarding the non-execution of a potential death penalty by the requesting State and the non-application by the same State of measures amounting to torture or inhuman or degrading treatment or punishment; (d) Article 14 should be modified so that the requesting State is expressly obliged to consult the requested State to determine the extent to which the particularly sensitive information can be protected by the requested State; (e) Article 9 of the Agreement on Mutual Legal Assistance should be amended so that there is

guaranteed every person's right of access to personal data collected and exchanged between the contracting States; (f) Article 9 paras c and e of the same Agreement should be amended so that the requesting State is not provided with unlimited space of action in using personal data-related evidence or information obtained from the requested State.

- **Supplementary reply of GNCHR to the Greek Foreign Ministry on the Initial Report by Greece to the Committee of the International Covenant on Economic, Social and Cultural Rights (29 May 2003):** Upon the above Ministry's request, GNCHR submitted to it supplementary comments regarding the following main issues: (a) The independent nature, operation and work of GNCHR; (b) The protection by Greece of the social rights of Roma, refugees and asylum seekers. GNCHR stressed once again the need for Greece to intensify her efforts for the improvement of the socio-legal situation of the above specially vulnerable groups; (c) The need to improve the conditions relating to the education of children belonging to these social groups; (d) The promotion by the Fourth GNCHR Sub-Commission of human rights education in Greece in co-operation with the Ministry of Education.
- **Bill on the reform of juvenile criminal law (29 May 2003):** GNCHR recognized the improvement of the relevant legislation that the above Bill (later Law 3189/2003) brings with. However it submitted to the Justice Ministry a series of recommendations pertaining to the above Bill and the protection that should be afforded by Greek criminal law to the physical and mental health of minors. GNCHR proposed, inter alia, the following: (a) Introduction into Greek legislation of special protective measures aiming at the rehabilitation and social integration of juvenile offenders; (b) Amendment of the Bill so that specialized psychological care is provided to juvenile offenders; (c) The strict observance of the rule prescribing the separation of minor and adult detainees, especially if the latter are drug addicts and (d) The avoidance of institutionalized treatment of juvenile offenders.
- **Bill on the acceleration of criminal procedure (29 May 2003):** GNCHR submitted to the Justice Ministry a series of recommendations on the above Bill (later Law 3160/2003). The major issues are the following: (a) The need for furthering the protection of suspects, taking fully into account the case law of article 6 ECHR; (b) The preservation of the right of appeal against judicial council decisions; (c) Problems arising from the restriction of the right of appeal by the increase of the appeal ability limits. GNCHR stressed that the above new provision raises serious issues of incompatibility with ECHR and ICCPR; (d) The issue of restriction of the right of appeal against ultra vires acts. GNCHR proposed that the relevant restrictive grounds in the law should be indicative.
- **Proposals on the protection of the rights of mentally disabled persons subject to criminal security measures (19 June 2003):** Taking into account the international and European developments in the area of protection of the above particularly vulnerable persons, GNCHR proposed to the Justice

Ministry a series of amendments of criminal law for the enhancement of the protection of these persons. In particular GNCHR submitted to the Greek State the following major proposals: (a) Amendment of Greek criminal law so that detention of the above persons is ordered solely by courts of justice following open court sessions; (b) The detention should be primarily conditioned on the existence of the relevant pathology and not on vague legal conditions such as "danger to public safety"; (c) Amendment of legislation so that detention is subject to a complete judicial control as prescribed by contemporary international and European human rights standards; (d) The entrenchment in Greek law of the right of the mentally disabled to be present in all relevant judicial proceedings.

- **Reply of GNCHR to the appeal of the "Committee for the recognition of the ancient Greek religion of the Twelve Gods" regarding human rights violations (25 September 2003):** GNCHR held an extensive discussion on the above issue with representatives of the aforementioned Committee and reached the following conclusions: (a) GNCHR advised the Ministry of Education and Religious Affairs that they respond immediately and definitively to the application of the above Committee regarding the granting of a permit for establishing a place of worship; (b) GNCHR also advised the above Ministry that they review the outdated legal framework regarding the establishment of churches/temples and places of worship, as already proposed by GNCHR on 01 March 2001 (see supra).
- **Bill regarding the provision of legal aid to persons with low income (30 October 2003):** GNCHR submitted to the Greek Ministry of Justice its comments on the above Bill (later Law 3226/2004). The major points raised by GNCHR were the following: GNCHR proposed that the Bill should not condition the provision of legal aid to non-nationals on the latter's legal residence in the European Union. GNCHR proposed that legal aid should be provided also with regard to administrative law litigation and that it should cover early preliminary (legal counseling) stages of all legal proceedings (civil, criminal and administrative). GNCHR also recommended that special consideration should be given by the Bill to asylum seekers as well as to victims of racial discrimination, as already noted by GNCHR in its relevant recommendations of 25 June 2001 (see supra).
- **The incorporation of the EU Charter of Fundamental Rights into the draft Constitutional Treaty of the Union (30 October 2003):** Following up to a relevant document of the French National Human Rights Commission, GNCHR submitted to the Greek Government and the European Union a series of proposals the most important of which are the following: (a) The incorporation of the Charter into the Constitution keeping intact the letter and spirit of the Charter as adopted at Nice; (b) Avoidance of Charter amendments that would restrict the interpretation potentials of European domestic courts; (c) The deletion of all Charter amendments made by the Convention (except for the

purely “drafting adjustments”); (d) The need for informing the jurists and the public of the EU Member States on the above legal documents given their utmost politico-legal significance.

- ***The continuing use by Greece of anti-personnel mines in border areas (30 October 2003):*** GNCHR welcomed the deposition by Greece of the instrument of ratification of the Mine Ban Treaty (Ottawa, 1997, Law 2999/2002) at the United Nations on 25 September 2003. However GNCHR expressed its grave concern at the continuing use by Greece of anti-personnel mines in border areas that have caused a large number of victims including asylum seekers and illegal immigrants. This has been a practice that violates the fundamental human right to life entrenched in international human rights law, as well as basic international principles of refugee protection. GNCHR called upon the Greek State to immediately de-mine the above areas, to destroy the anti-personnel mines currently on stock and to avoid their use in the future.
- ***The loss of Greek nationality by virtue of ex article 19 of the Greek Nationality Code (GNC) and the procedure for its reacquisition (30 October 2003):*** The above provision, in force until 1998, led to the denationalisation of approximately 60,000 Greek citizens, mainly of Muslim/Turkish origin in Thrace, who had left Greece “with no intention of return”. GNCHR expressed its concern at the fact that the Greek State did not provide through statutory legislation for the reacquisition of Greek nationality in the above cases, given the fact that ex article 19 GNC was considered as contrary to the Greek Constitution and to contemporary human rights protection standards. GNCHR also pointed out that it would be necessary the promulgation of specific statutory legislation providing for the possibility of reacquisition of Greek nationality in these cases. GNCHR also proposed that Greece accede to the 1961 Convention on the Reduction of Statelessness.
- ***Defining the position of cultural rights in domestic legal order and the relevant action of GNCHR (17 December 2003):*** The above issue was forwarded to the Plenary by the Second Sub-Commission that decided to propose to GNCHR the promotion of the position of cultural rights in Greece. GNCHR took into account the international, European and national standards of cultural rights protection and concluded that even though in Greece there are institutional safeguards of cultural rights the latter have not been adequately advanced or protected by the State in actual practice. GNCHR pointed out the need for protecting not only “horizontal” cultural rights covering the whole population of the country but also “vertical” cultural rights regarding members of minority groups who live in Greece and constitute a significant part of modern Greek society.
- ***The protection of “de facto” refugees in Greece (17 December 2003):*** GNCHR expressed its concern at the practice of the Greek Ministry of Public Order by which the renewal of de facto (“humanitarian”) refugee permits was unjustifiably denied. GNCHR welcomed the declaration of the above Ministry that this practice has ended but called upon it to give express and clear orders

to the competent authorities so that they correctly apply current Greek asylum law and they treat favourably de facto refugees, according to the international and European standards of refugee protection. GNCHR reemphasized that refugee and immigration law and policy should be seriously overhauled by the Greek State and be characterized by clarity and broadmindedness in accordance with the European rule of law.

- **Bill entitled "Application of the principle of equal treatment irrespective of racial or ethnic origin, religious or other beliefs, disability, age or sexual orientation" (transposition of Directives 2000/43/EC and 2000/78/EC) (17 December 2003):** GNCHR submitted to the competent Ministries a series of comments on the above very significant Bill that attempts to introduce into Greek law new standards of protection against discrimination which has not been developed in Greece so far. GNCHR underlined that the relevant legislation should be flexible and effective for the protection of the especially vulnerable social groups it purports to cover. As a consequence, GNCHR proposed amendments of the Bill provisions relating to the following major issues: (a) *Defence of rights*: The law should expressly enable all NGOs with a legitimate interest to provide legal support to/on behalf of the complainants; (b) *Burden of proof*: For the effective transposition there is to be an amendment of all Greek Procedural Codes; (c) *Criminal sanctions*: There is to be a harmonization of the new law with the existing anti-racism Law 927/1979; (d) *Social dialogue and equality bodies*: GNCHR proposed that social dialogue take place with all members of the civil society with a legitimate interest in ensuring the observance anti-discrimination legislation. Also the equality bodies should have a wider scope of action and adopt policies that will bring them closer to (potential) victims of discrimination. Finally GNCHR stressed the need for a systematic overhaul by the competent Greek Ministries of Greek legislation so that it becomes harmonized with the principle of equal treatment, especially in cases of religious minorities.
- **The prevention of torture and other cruel, inhuman and degrading treatment or punishment and the accession and application by Greece of the Optional Protocol to the relevant United Nations Convention (2002) (17 December 2003):** GNCHR reminded the Greek State of the significant issue of protection of the rights of detained persons in Greece and especially of detainees who are mentally disabled, of alien detainees and of detainees belonging to minority groups, all of whom are especially vulnerable. As a consequence, GNCHR stressed the particularly important role that the above Optional Protocol may well play in human rights protection and especially for the protection of detainees. GNCHR underlined in particular the significance of the new Subcommittee on Prevention and of the independent National Preventive Mechanisms provided for by the Protocol. These organs, especially through their visits to places of detention and the relevant reports, have the potential to enhance the detention conditions and to prevent detainees' ill treatment worldwide. As a consequence, GNCHR called upon the Greek State to

accede to the above Protocol and proceed to its effective implementation, especially through the independent National Preventive Mechanisms provided for by the Protocol.

- ***Human rights violations through the provision and application of inhuman and degrading penalties in certain states (17 December 2003):*** Following a proposal by the Marangopoulos Foundation for Human Rights (MFHR, NGO member of GNCHR) GNCHR decided to deal with the issue of inhuman and degrading penalties provided for and imposed by criminal legislation of certain States. MFHR has submitted to GNCHR a relevant study that, after its approval by GNCHR, will be forwarded to the other three NHRIs members of the European Coordinating Committee of NHRIs requesting their cooperation. The Greek Society of Criminology has also accepted to cooperate with GNCHR on the same issue.
- ***Translation into Greek, publication and distribution of the Pocket Book on Human Rights for the Police entitled "International Human Rights Standards for Law Enforcement" (United Nations High Commissioner for Human Rights, UNHCHR):*** In 2003 the Fourth Sub-Commission of GNCHR (Promotion of Human Rights) received the permission by the Office of UNHCHR to translate into Greek, publish and distribute the above Pocket Book to the Greek police. The Pocket Book was published by the Greek National Printing House in early 2004 and has, in the meantime, been distributed to all police force in Greece.
- ***Opinion/decision on the Protection of the Scarce Green Areas in the City of Athens and its surroundings (10 May 2004):*** The Commission carefully examined the appeals and reports submitted by a number of non-governmental entities dealing with the protection of the environment (e.g. the Greek branch of WWF). The opinion underlined the importance and emergency of the matter and invited all competent State authorities to make it a priority issue in their agenda. It stressed the negative effect that the Olympic Games' related constructions have had on the green areas of the periphery of Athens. It also made reference to the fact that the relevant Authorities often disregard decisions of the Supreme Administrative Court pertaining, inter alia, to the protection of green areas in the city of Athens, a practice that has been previously criticised by the NCHR (see NCHR's 2002 report: Comments and proposals of the NCHR on the Bill on the Greek administration's compliance with judicial decisions, 9 July 2002). Finally, the GNCHR made a series of proposals with regards to the issue. It is noteworthy that a considerable number of media has taken interest in the above decision, when rendered public.
- ***Resolution on the appeal of the "Holy Synod of the Old Calendarists" in Greece regarding violations of its constitutional rights and freedoms (10 June 2004)***  
The Holy Synod of the Old Calendarists submitted an appeal presenting the problems related to the dissolution of marriages: following a recent opinion issued by the Piraeus Prosecutor's Department, Old Calendarists wishing to have

their marriage dissolved spiritually, after the issuance of the divorce, should request the dissolution from the Church of Greece instead of their own Old Calendarist Church, which has originally officiated them. It is worth mentioning that, currently in Greece, marriages officiated by the Church –as opposed to the civil ones- need to be dissolved at both the civil and the confessional levels. Consequently, once a marriage is finally dissolved at the civil level, and in order for the dissolution to be completed, the Church that has originally officiated it, needs also to pronounce its “spiritual” dissolution, while the Prosecutor’s Department provides the service of legal document. The Plenary of GNCHR held extensive discussions on the aforementioned issue, and proposed the following: 1) since the confessional aspects of the dissolution are not affecting the lawfulness of the dissolution at the civil level, no legal document service is required by the Prosecutor’s Department to any ecclesiastical authority. 2) Advises the relevant State authorities to take initiatives aiming at filling the legal gaps on the status of the Old Calendarist Church. 3) To the request by the Old Calendarists’ Holy Synod for GNCHR to intervene and ask the Piraeus Prosecutor’s Department to revoke its opinion, GNCHR replies that such action is not among its substantive competences, as provided by its founding law.

- ***Proposals on matters relating to conscientious objectors and the institution of alternative civil-social service in Greece (10 June 2004):***

The GNCHR decided to submit the following proposals to the Government: (a) that the duration of the alternative social service be longer than that of the regular military service by 50%; (b) that the duration of the unarmed military service be longer than the regular military service by 30%; (c) that the instigation of continuous and repeated prosecutions for refusing to perform military service be abolished; (d) that, as far as the competence of the Supervisory Body for Conscientious Objectors is concerned, it should be initially the responsibility of the Ministry of National Defence, on the condition that, when conscientious objectors are removed from the Enlistment Register, there would be a joint responsibility of the Ministry of the Interior and the Ministry of Health on the matter; (e) that rejections by the Committee for the Examination of Conscience be justified in detail; (f) that the composition of the aforementioned Committee be strengthened with two more State representatives, one from the Ministry of the Interior and one from the Ministry of Health; (g) that a special list of public benefit NGOs in which conscientious objectors may serve be drafted by a joint ministerial committee; (h) that the geographical criterion for the completion of the alternative unarmed or social service be brought to conform to the same rules that apply to regular armed military service; (i) that the Council of Europe Resolution providing for long-term and elderly conscientious objectors to meet their military obligations be implemented. Finally, GNCHR addressed a letter to the Minister of National Defence (03.12.04), concerning the cases in which a professional soldier expresses his conscientious objection in relation to a particular military operation (the recent war in Iraq). The

views expressed were: (a) that the term "conscientious objector" be interpreted in a broader way and (b) that the chronological point of its expression should be extended. The Ministry's reply (17.12.04) referred to recent positive developments on the topic introduced by Law 3257/2004 and, more specifically, the reduction of the duration of the service for both categories (unarmed /social service) and stressed the fact that, at present, conditions are not judged favorable for a reconsideration of the term, although these could well change in the immediate future.

- **Opinion on the draft Presidential Decree of the Ministry of Public Order entitled "Code of Police Ethics" (1st July 2004):** The GNCHR gave its opinion on the draft Presidential Decree entitled "Code of Police Ethics", proposed by the Minister of Public Order and by which Greek Government intends to implement many of the national and European rules of law concerning the Code of Conduct for Law Enforcement Officials, the use of force and firearms by Law Enforcement Officials etc. The Commission has previously translated into Greek, published and distributed to all Greek police force the Pocket Book on Human Rights for the Police entitled "International Human Rights Standards for Law Enforcement" (United Nations High Commissioner for Human Rights). This is the reason why the GNCHR while examining the above-mentioned draft expressed its concern about its effectiveness, as there would be two different manuals distributed, thus causing confusion as to the choice of the standards and rules to apply. Moreover, the Commission made a series of observations: a) in the draft there is no provision on the Policeman's obligation to be aware of and apply all international binding rules concerning human rights protection, b) the draft does not provide for the policeman's immunity in case of disseverance of an hierarchical order which is in breach of human rights law, c) there is no provision on the policeman's obligation not only to abstain from any act of corruption but also to fight against it and to denounce it to his/her superiors, d) there is no specific provision about the use of firearms, as provided in the "Basic Principles on the Use of Firearms by Law Enforcement Officials" adopted by the U.N. High Commissioner for Human Rights, mainly based on the principle of non-using firearms except in cases of "vis major", and on the principle of proportionality, in the event firearms are used, e) the Commission underlined the fact that there is no special provision for the need to special care vis-a-vis vulnerable social groups, such as asylum seekers, migrants, women, children, disabled, old or sick persons, f) there are not very strict rules concerning the law Enforcement Officials' behaviour during the investigation

procedure, emphasising the personal freedom of the detained persons, the prohibition of torture or any other cruel, inhuman or degrading behaviour and some other procedural points, g) the right to personal security, to a fair trial and to privacy should be mentioned more explicitly. The Minister of Public Order took into consideration the observations of the GNCHR, and the Presidential Decree No. 254/2004 (O.J. A' 238) which was finally issued, encompassed the quasi totality of the observations mentioned above, except for the one on the policemen's immunity in case of disseverance to a superior's order which is in breach of human rights law. Yet, GNCHR continues to express its reservations as to the efficiency of this Code, and maintains that the Manual produced by the GNCHR was, probably, more consistent with the international and European human rights law.

- **Report of the GNCHR Special Committee to Korydallos central prison (1st July 2004):** *1. Men's prison.* Following a request by the imprisoned members of the "17 November" Organization, a sub-committee visited, the facilities, on May 21st. Their semi-basement cells are under observation on a 24-hour basis, and what is judged particularly inhuman is the narrow yard in which they exercise, with no trace of greenery and very high walls, one of which is covered with metal sheeting with a ceiling of barbed wire. Nevertheless, each prisoner has his own cell, which is comfortable enough and well-equipped. They are not in isolation, their lawyers and relatives are allowed to visit them, the premises (as well as the surgery and the kitchen) are clean and the catering satisfactory, but the library needs improvement. In contrast, the conditions of ordinary prisoners' cells are appalling: due to overcrowding, there is no separation of prisoners, even by category, and nearly all of them are drug-addicts. There is also a serious lack of occupational opportunity and the number of wardens is inadequate, but the Prison Council is a very useful institution. In conclusion, the conditions of the "17 November" Organization prisoners were incomparably better than those of the others. *2. Women's Prison (30 June 2004)* On June 28th, the above committee visited the prison, which included, in a special wing containing more than 20 cells, 7 members of the "17N" Organisation. Each prisoner lives in a separate cell with a window looking on to the wing's separate yard; which is more spacious than that of the Men's Prison. Each cell is clean and well-equipped, has bathroom facilities, and all the prisoners exercise together in the yard. However, because of the height of the walls and the material with which they are constructed (whitewashed zinc), the yard is very hot in summer and carries heat to the cells through ventilation. Contact with relatives and lawyers is the same as in Men's Prison. Two of the

prisoners do artwork, and a request expressed by all of them was that there be a workshop to practice handicrafts, as well as plant-pots in which to grow plants. In contrast, in the main Women's Prison two to three detainees are housed in each cell (bigger than those in the Men's Prison) with a large window and rudimentary equipment. Prisoners can move about in the corridor separating the cells and there are also tables and seats at which they can sit in groups. Toilets are in a poor condition. The committee also visited two (of sixteen) large wards – with no seats or furniture - where 27 Roma women were packed into one and 35 in the other (there was another ward, in another wing, not in use). It seemed that women with mental illness were not given any special treatment. Most of the women have no occupation except in the laundry and the kitchen. The latter was clean and the food satisfactory. It should be noted that in there are no full-time doctors or a specialist nurse. As a general conclusion, it should be stressed that the prison suffers from overcrowding, while the living conditions of the "17 Nov." Organization members are clearly better than those of the rest. 3. In response to GNCHR's recommendations the Ministry of Justice undertook a number of measures to improve the situation. As regards the "17th Nov." Organization men prisoners, the walls have been reduced in height and the metal sheeting removed. In general, steps have also been taken regarding AIDS-infected prisoners, the categorization of prisoners, the decentralization of Agrarian and Closed Prisons, the inclusion of therapeutic institutions in the National Health System, the introduction of more dental clinics in prisons, the educational and professional development of prisoners, the overall improvement of facilities, and the legislation concerning prison overcrowding and public welfare work.

The following dissenting opinions of members of the Commission should be noted: Ms Divani is of the opinion that, although the cells of the "17 N" Organisation prisoners are better than those of others, the isolation to which they are subjected, without any obvious reason, and, the unacceptable conditions of their outside exercise render their detention conditions inhumane.

According to Mr. Papaioannou, it is clear that they are being detained in a Special Security Unit, that is, a prison within a prison. The prisoners have been given no explanation of the reason why they are being considered as "high risk for escape" in relation to other prisoners serving similar sentences. Companionship is restricted to 10 people, usually the same, something that in the long term may have a negative impact on their health. They are forbidden to participate in any common prison activity and the space for outside exercise is, to say the

best, judged as unacceptable. All visits take place within closed quarters. In conclusion, the "17 N. Organization" prisoners are treated differently, in that they are being detained in a prison within a prison: as far as their cells are concerned, this discrimination is, it would seem, beneficial; apart from this, though, it constitutes a violation of their fundamental rights.

According to Mr. Theodoridis' minority opinion, the detention conditions of the "17 N. Organization" prisoners lack legality, since the relevant presidential decrees provided for in the law relating to penitentiary confinement have not been promulgated."

- **Observations/proposals on the protection of the rights of the mentally ill persons hospitalised in three hotels in the centre of Athens (7 October 2004):** following complaints submitted to GNCHR by associations for the protection of rights of mentally ill persons, an ad hoc sub-committee of the GNCHR was formed and given the mandate to examine the issue on the basis on an in situ visit to the hotels in question, where a number of patients of the Dafni Psychiatric Hospital are relocated since the 1999 earthquake. The Plenary decided that the observations' document serves as a basis for a further elaboration by GNCHR of a series of concrete proposals on the psychiatric reform in Greece, as well as on the issue of the rights of mentally ill persons subject to criminal security measures (the GNCHR has previously deliberated on the above mentioned topic, see supra, Resolution of 19/6/2003) in collaboration with other relevant entities, such as the Greek Ombudsman, the Psychiatric Society of Greece and other NGOs active in the field of the protection of rights of this particularly vulnerable group of persons. It is worth noting that the GNCHR is among the entities invited to participate to a series of working sessions convened by the Ministry of Health on the issue of the enforcement of criminal security measures on mentally ill persons (the process is ongoing, and following the first session –January 2005-, the GNCHR has already formulated and, subsequently submitted, a series of observations to the Ministry of Health).
- **Resolution on the violation of Human Rights by "employment seeking" television programmes (4 November 2004):** The GNCHR discussed the problem concerning two T.V. reality shows scheduled for release on Greek TV, where the prize would be the passing of a work contract. The first show –named "Your chance"- invited the unemployed to compete with a view to earning a contract for any job, irrespective of qualifications. The selection process consisted in gaining the sympathy of the TV viewers, who would actually make the judgment on who the final winner would be. The second one –entitled "The candidate"- invited

candidates to compete with a view to earning a contract with a specific employer, promising a very high salary to the eventual winner. According to the opinion issued by the GNCHR, the former reality-show is in breach of the constitutional, as well as the international law's principle of the right to work – as established by art. 22 of the Greek Constitution, art. 23 para 1 of the Universal Declaration of Human Rights, art. 6 of the International Covenant of Economic, Social and Educational Rights of the U.N. and the International Work Convention no. 122/1964-. The right to work is a social right, translating into the State's legal obligation to provide for the adequate conditions of every citizen's full-time employment aiming at their moral and material improvement. In the frame of that constitutional provision, the Greek legislator has provided for the establishment of Private Offices of Work Counselors (POWC), which are legally responsible for finding employees on behalf of the employers. Consequently, the above-mentioned reality-shows are in breach of the right to work, as no resignation from this specific social right may be conceived, the latter being a State's obligation; moreover, according to the Constitution, the TV viewers cannot substitute and/or replace the employer in its duties and rights. Finally, through these shows the Private Offices of Work Counselors (POWC) are replaced by the media –in this specific case, the TV-, thus altering the bilateral work contract (employer-employee) to a multilateral relationship (TV-unemployed person – employer - viewers) non-compatible with the constitutional and legal conception of the right to work and the guarantees provided by the law for the proper function of the POWC. In addition, these reality-shows breach the right to privacy, conceived both as the right to personal freedom and the right to personal data. Consequently, the GNCHR was of the opinion that the TV reality show entitled "Your chance" breached the right to work and the right to privacy, which are guaranteed on the constitutional and the international level and, should, therefore, be banned. A few days after this decision by the GNCHR was made public, the show was eventually banned and discontinued.

- ***Resolution of the GNCHR on issues pertaining to discriminatory treatment and behaviour vis-à-vis gays, lesbians, bisexuals and transsexuals and the extension of the right to civil marriage to same-sex couples (16 December 2004):*** At the request of the Greek Section of Amnesty International and the Greek Gay and Lesbian Association, GNCHR examined the aforementioned issues at the Plenary level and held extensive discussions on the complex legal and social issues arising from the subject. It stressed the importance of the respect for sexual identities

in a pluralist, democratic society. Taking into consideration the relevant principles and rules of international, European and Greek human rights law, the GNCHR adopted the following positions and put forward proposals to the Greek competent authorities: 1. The GNCHR supports the legal recognition of the real symbiotic relationship between persons of the same sex, so that homosexuals and heterosexuals have equal social and welfare benefits. In this view, it proposes the formation of an ad hoc committee to be initiated by the Justice Ministry, which will examine in detail all the aspects associated with the introduction of new legal provisions to cater for the needs of same-sex couples, while taking into account the local context, the international experience, as well as the views of relevant actors and entities in the field. 2. It is also proposed that L. 927/1979 –on anti-discrimination- is modified so that protection on the grounds of sexual orientation is explicitly included therein. 3. It calls for the implementation of the public information campaigns related to the Law 3304/2005 entitled «Application of the principle of equal treatment irrespective of racial or ethnic origin, religious or other beliefs, disability, age or sexual orientation» (transposition of Directives 2000/43/EC and 2000/78/EC). 4. It proposes the abolition of art. 347 of the Greek Penal Code (on lechery between male homosexuals- sic-), which stipulates a different age of consent to the sexual encounter for the male victim of the act (17 years of age), whereas other legal provisions set the age of consent for the female victims of sexual offences to 15 years of age. Moreover, the same article penalises male homosexual prostitution, in opposition to recently adopted legislation, which sets the legal framework for the prostitution related issues irrespective of sex. 5. It calls the Greek National Council for Radio and Television to rigorously inflict the penalties provided by its statutes to those radio and television programmes and/or channels, which portray gays in a condescending way or infringe their rights. 6. Proposes to the Ministry of Public Order to establish a series of directives and training for law enforcement agents promoting the respect of the dignity and rights of gays; moreover, to facilitate the attribution of refugee status to those applicants who have flown their country of origin due to persecution on the grounds of their sexual orientation. 7. Last, but not least, it invites the Ministry of Education to introduce to the school curricula a course on sexual education, inspiring and instigating school children to tolerance and acceptance of differing sexual identities; it also encourages the Ministry not to allow the discriminatory treatment of gay teachers, through circulating relevant directives.

- ***The transformation of the European Monitoring Centre on Racism and Xenophobia (EUMC) into a Fundamental Rights Agency (20 January 2005):*** The GNCHR adopted a resolution on the creation of a European Fundamental Rights Agency, after having actively participated to the debate that took place during the Public Hearing on the issue held in Brussels on 25/1/2005, and in co-operation with the European Group of NHRI. The topics tackled were the following: 1. *The extent of the mandate of the Agency-to-be:* it is proposed that the Agency has a large thematic area of work, covering all three pillars of the EU, in consistency with art. II-111 of the future Constitution and extending beyond the issues falling within the European level per se; the national level of action should be included inasmuch as it would be necessary for the implementation of art. 7 of the EU Treaty. 2. *The list of rights:* it is proposed that the competence of the Agency extends over the totality of rights included in the EU Charter of Fundamental Rights, while taking into account the "acquis communautaire" and maintaining emphasis on combating racism. 3. *Competence of control to third countries:* it is proposed that the Agency confines itself to the EU member States, including candidate countries, unless otherwise agreed with a particular country through a bilateral agreement; the geographical scope should cover 2nd Pillar activities in third countries. 4. *Competencies/activities:* it is proposed that data collection is maintained, as well as the conduct of studies and analyses. These tasks should be performed in co-operation with the CoE, the NHRIs of member States, the network of Independent Experts of the European Commission and the RAXEN network, so that overlapping of competencies is avoided. The Agency should also have the competency to submit expert opinions and analyses to the member States, and to perform evaluations and follow-up on the above, and to disseminate data, analyses and proposals to the civil society. The possibility and the power to intervene as *amicus curiae* before European jurisdictions, as well as the right to instigate public interest litigation before them, should also be examined. 5. *Structure/independence:* Independence should be ensured through maintaining the existing requirements for membership to the Managing Board of the EUMC, while adding representation of the European NHRI. No additional body should be created, beyond the Board, the Executive and the Director.
- ***Proposals on the issue of the free circulation of genetically modified organisms in the Greek market (20 January 2005):*** GNCHR took the initiative to issue an important decision concerning the free circulation of Genetically Modified Organisms (GMOs) and Genetically Modified Foods (GMFs). According to the vast majority of its

members, the principle of precaution and the principle of prevention - guaranteed by international, European and domestic law- concerning the right to the protection of the environment and the right to health, prevail on the principle of economic freedom; as a result, this latter can be curtailed when there is a serious risk for the environment and/or the public health. In particular, the GNCHR took into consideration the provisions of: art. 15 of the Rio de Janeiro Declaration on the Environment and the Development; the "Carthage Protocol" on bio-safety and biological diversity; art. 174 of the E.U. Treaty; the provisions of the E.U. Directive 2001/18 and those of the E.U. Regulation 1830/2003; and of art. 24 (1) of the Greek Constitution on the right to environment. The main points of the decision were: a) Greece should immediately incorporate Directive 2001/18 into its national legal order (recently, the European Court passed a judgment against Greece for omission on that ground); b) scientific research should be encouraged, as stipulated in the E.U. Directive 18/2001; c) the Greek State should establish specific institutions responsible for public awareness on the preventive level, d) finally, all products should carry clear notification on the existence of GMOs in their composition/ingredients, irrespective of percentage. These proposals fall within the spirit of the opinion of the GNCHR that financial considerations should by no means prevail on the protection of the environment and public health.

- ***Positions of the GNCHR and the Greek League for Women's Rights regarding the restrictive quotas against women candidates:*** Following a resolution of the Plenary Session (20.01.2005), the Marangopoulos Foundation for Human Rights and the Greek League for Women's Rights -both GNCHR members- publicised a text entitled "Equality and restrictive quotas at the expense of women". In it, they referred to a news report which stated that during the deliberation in the Council of State concerning the selection of border guards it was argued that the establishment of quotas to the disadvantage of women by the authority responsible is allowed, considering that it is common knowledge that women are not, or are less, suitable than men for that type of service. It is GNCHR's belief that such a decision by the Council of State would constitute a breach of Art. 116, par. 2 of the Constitution, which introduced substantial equality between men and women, signifying that the enactment of restrictive quotas concerning the selection of women for any office is impermissible. In fact, the above provision constitutionally prescribed positive measures in favour of women, including favourable quotas. The Council of State as well as GNCHR played a crucial role in the

establishment of this new perception. Furthermore, it should be stressed that advocates of substantial equality have always campaigned for employment based on merit, irrespective of gender, and not for the numerically equal hiring of men and women. From this point of view, women candidates for the post of border guard should be judged not only according to their theoretical knowledge but also according to their physical and intellectual competences. Successful candidates, be they male or female, should be appointed on the basis of the same criteria. In conclusion, it must be stressed that the acceptance of restrictive quotas would clearly constitute a violation of international conventions providing for substantial equality between the two sexes, which Greece has ratified and, therefore, recognizes as binding over national law (Art. 28, par. 1 of the Constitution).

- **GNCHR Positions regarding the implementation of the Greek Law for Refugees (3 March 2005):** This text was laid before the Plenary Session following a session of the Third Sub-Commission (01.11.2004) during which the Greek Council for Refugees (GCR) reintroduced the following issues concerning the non-application of the law: (a) access to the asylum process, (b) recognition of refugee status, (c) non-recognition of "humanitarian status" / non-renewal of the one previously granted, and (d) implementation of the Dublin Convention. The GNCHR: (a) points out that the above stated cases constitute a violation of Greek legislation as well as the Geneva Convention (1951) and the New York Protocol (1967), (b) calls on the Ministry of Public Order (M.P.O.) to ensure that Greek as well as international legislation ratified by the Greek State relating to refugee protection is properly implemented by it, (c) underlines the fact that these constitute a recurring phenomenon and are directly connected to the general framework of refugee protection in Greece, for the improvement of which GNCHR has, since 2001, submitted its proposals to the government, (d) expresses its disapproval of the fact that these problems, the majority of which has already been highlighted by GNCHR, not only continue to be present, but have significantly worsened over time, (e) calls on the M.P.O. to take immediate action for the protection of asylum-seekers and/or refugees under "humanitarian status" according to the specific Greek legal provisions and not the ones concerning economic migrants, as those deprive them of the rights to which they are entitled to by Greek and international law, and (f) calls on the M.P.O., as the Ministry responsible, to urgently initiate a process of general revision of the Greek refugee-protection framework in cooperation with the competent NGOs and public organizations and in accordance with the Geneva Convention and

GNCHR's recommendations. The text was adopted by the Plenary Session, but not in the form of a resolution, for reasons of urgency. The matter was also highlighted in a presentation to the GNCHR by Mr. D. Makris, référendaire to the Council of State.

- ***Observations-proposals on the Law 3251/2004 entitled "European arrest warrant: amendment of the Law 2928/2001 regarding the criminal organisations" (10 February 2005):*** Greek legal order had to incorporate two major Framework-Decisions of the European Community concerning the European arrest warrant and the surrender procedures between member-States and other antiterrorist measures. The GNCHR adopted the following points:
  - a) First, it questioned the need to modify Law 2928/2001 and introduce Law 3251/2004; in GNCHR's view the former law was adequate enough to deal with the phenomena of organised crime and terrorism. The majority of the members of the Commission, in its plenary session of November 4th 2004, were of the opinion that the modification of the former law was not necessary from a social point of view.
  - b) Second, to the question whether Greece has the legal obligation to incorporate European legal norms into its domestic legal order, the vast majority of the members voted in the affirmative.
  - c) Third, to the question whether the principle of "double punishable offence" for the extradition of the persecuted person should be abolished, the overwhelming majority of the members of the Commission voted in the negative.
  - d) Fourth, the question was arisen whether restraining the principle of "speciality" was right. Once again, the overwhelming majority of the Commission's members voted in a negative way.
  - e) Fifth, on the question whether the "temporary transfer" of a wanted person -and without any time-limits-, should be allowed, the majority of the members voted in the negative.
  - f) Moreover, the plenary session of the Commission had to answer to the issue of whether the lack of provision concerning the prohibition of the extradition of a Greek citizen was tolerable. The negative approach prevailed, beyond any doubt,
  - g) In addition, the Commission decided that the provision concerning the definition of an act of terrorism (incorporated in the Greek Penal Code) in a way that the subjective criterion was also to be taken into mind was not proper,
  - h) The issue of the definition of an act of terrorism as an individual act also troubled our Commission, which was of the opinion that this definition was not right,
  - i) Finally, it was decided that the legal provision concerning the appliance of the procedures of "special interrogative acts" and the procedure of the DNA examination to every crime described by the law as "terrorist", was not proper.

- **Proposals with regard to the improvement of the implementation of the European Convention of Human Rights to the internal law and order: treatment measures regarding the issue of excessive duration of trials (31 March 2005);** The Plenary Session of the Commission issued a decision related to the acceleration of the procedures before the Courts, in accordance with art. 13 of the European Convention of Human Rights, the Recommendations N. 2004/5 and 2004/6 of the Committee of Ministers of the Council of Europe and the European Court of Human Rights which not only issued an "arrêt de principe" *Koudla v/Poland* condemning the latter for the excessive length of its trials in the frame of art. 13 of the ECHR, but also passed many judgements against Greece, the 2/3 of which tackled the problem of the excessive duration of the procedure before the Courts. Consequently, our country had to adopt legal measures providing for a special legal means concerning the excessive duration of trials, especially the administrative ones. Our Commission shifted towards this direction and undertook a complete analysis of the law of most member States of the Council of Europe on the special issue of how the problem of excessive duration of the judicial procedures could be solved, underlying that the overwhelming majority of these state-members' law provide for a special legal means that can be lodged before the Court of a higher degree (or before the same Court where the case is pending) for excessive duration of the trial either during the trial process or after the Court's decision has been issued. Legal provisions concerning the liability to pay damages of the litigants that have not complied with their obligation to act in accordance with art. 6 al. 1 of the ECHR or the deduction of the penal penalty inflicted to the person accused or the personal liability of the judges that are in delay in issuing court decisions, are also found in many legal systems of the member States of the Council of Europe. Based on this comparative analysis and on the existing provisions of the Greek Code of Civil Procedure - bearing, also, in mind the provisions of the Greek Constitution- concerning the independence of Judges, our National Commission of Human Rights, approved the Report of its 1st Section presented to its Plenary Session, almost unanimously. The conclusions which were finally adopted by the Plenary Session are the following: a) *First*, in compliance with art. 13 of the ECHR and the jurisprudence of the ECourtHR, there should be a special legal means that could be lodged during the main trial and filed by the litigant to the Court of a higher degree on the grounds of the excessive duration of the main trial. This Court (of a higher degree or, in general, the Court which is competent to decide upon the issue of excessive duration)

could issue a decision (in the form of a recommendation or of a circular) "urging" the Court, before which the main case is pending, to decide upon it within a reasonable time-limit. b) *Second*, the litigant that has suffered damages from the excessive length of the trial can claim damages for this delay from the other litigant part, provided that the behavior of the first litigant before the Court has been flawless from the point of view of prompt acting. c) *Third*, techniques should be provided for and established in order to support judges in carrying out their duties faster, such as the litigants' obligation to lodge their documents in an electronic form as well. d) *Fourth*, in case of a penal procedure, there should be a possibility of deduction of the penalty inflicted to the person accused and, finally, found guilty, if the excessive length of the procedure and the way this procedure took place, contravened art. 6 al. 1 and art. 13 of the European Convention of Human Rights, on the condition that the person accused, as well as his/her legal defenders and witnesses acted in accordance with the provisions of the ECHR and that the penalty's deduction stays in proportion with the damage he suffered from the trial's delay. e) *Finally*, our Commission expressed its wish that the Greek State should support the judicial system from the point of view of increasing its personnel and upgrading its technical means, so that "the administration of Justice" would be more efficient according to the provisions of the European Convention of Human Rights and in compliance with the jurisprudence of the European Court of Human Rights.

- ***Resolution on the marriage of minors by the Muftis in Thrace (31 March 2005)***: The issue was introduced to the Plenary Session by the President, following the negative comments in both the Greek and the foreign Press about marriages of juveniles as young as eleven years of age, by the Muftis in Thrace. The GNCHR adopted the following: (a) Unanimously expresses its strong disapproval of these marriages. (b) Considers that the provisions of the Athens Treaty (1913) and the Lausanne Treaty (1923) are generally in force, particularly in relation to the Mufti's competence on matters of family law according to the rules of Muslim holy books. (c) Underlines the fact that exceptionally some provisions of the above treaties are amended or replaced by more recent ones. (d) Stresses the point that, as far as the age of the persons to be married is concerned, recent internationally binding conventional provisions -as stipulated in Conventions ratified by Greece-, apply, namely: Art. 23, par. 2 of the ICCPR; Art. 16 of the CEDAW; as well as articles I 5 and II B3, 38 of the 1993 (UN) Vienna Declaration for Human Rights. (e) CEDAW, art. 16 para 2, declares null and void marriages between minors and refers for the minimum marriage age to

the national laws. For Greece this law is art. 1350 of C.C. which fixes 18 years for both members of the couple. (f) In view of the above the GNCHR decided that marriages between Greek citizens and solemnized in Greece -irrespective of creed- are only valid if both members of the couple are 18 years old. (g) Accepted, by majority, the proposal for the amendment of par. 2 of Art. 1350 of the CC, which, exceptionally, and for serious reasons, allows for a marriage to take place regardless of age, and its replacement by a provision of transitional character stipulating that for a five-year period a marriage between persons of a minimum of 16 years of age, may be permitted for serious reasons and following a judicial decision.



#### **IV. GNCHR'S ACTIVITIES AT THE EUROPEAN AND INTERNATIONAL LEVEL**

- a) Statements of GNCHR representatives to National, European and International Conferences**



**i. Statement by Pr. Ch. Dipla, representing GNCHR to the annual meeting of the European Co-ordinating Group of National Human Rights Institutions held in Geneva (April 15th, 2004) in the framework of the 60th session of the UN Commission on Human Rights**

**La législation hellénique à la lumière du projet de Convention globale et intégrée pour la protection et la promotion des droits et de la dignité des personnes handicapées**

Contribution de la Commission nationale hellénique à la discussion sur le thème "le handicap et la nouvelle Convention " à la réunion annuelle du Comité de Coordination des institutions nationales

Genève 15 avril 2004

La prise de conscience au niveau régional, international et mondial de l'importance des droits des personnes handicapées et l'action des Nations Unies dans ce domaine ont amené les législateurs nationaux à se pencher sur cette problématique. Le droit grec porte lui aussi les empreintes de cette évolution; il contient bon nombre de dispositions concernant les personnes handicapées, dont une grande partie adoptée les dernières années, suite à la sensibilisation de l'opinion publique sur cette question.

En droit grec, les droits des personnes handicapées sont inscrits dans la Constitution et dans des textes législatifs et administratifs, comme le requiert l'article 4, par. a) et b) du projet de Convention.

**Au niveau constitutionnel**, l'article 21 de la Constitution impose à l'Etat l'obligation de prendre des mesures spéciales en faveur des personnes souffrant de maladies incurables physiques ou mentales (par. 2), ainsi que des mesures spéciales de protection pour la jeunesse, la vieillesse, **le handicap** et les pauvres (par. 3). Lors de la dernière révision, un paragraphe additionnel y a été inséré; il prévoit que les individus ayant des handicaps ont le droit de jouir des mesures assurant leur autonomie, leur inclusion professionnelle et leur participation à la vie sociale, économique et politique du pays (par.6). Ainsi, la Constitution hellénique s'aligne aux principes incorporés dans la Charte des droits fondamentaux et le projet de Constitution de l'Union Européenne (article 26 sur les mesures en faveur de l'autonomie, l'inclusion et la participation des personnes handicapées).

**Au niveau législatif**, il existe une large gamme de lois concernant les droits des personnes handicapées. La loi 2430/1996 est en ceci importante, car le législateur grec prend acte du Programme d'action mondial et des

Règles des Nations Unies pour l'égalisation des chances des personnes handicapées.<sup>1</sup>

### **1. Egalité et non-discrimination (articles 7 et 9 du projet de Convention)**

L'article 7 du projet de Convention impose aux Etats l'obligation de reconnaître l'égalité devant la loi et interdire toute discrimination fondée sur le handicap. La reconnaissance de l'égalité des droits de toutes les personnes est prévue dans la Constitution hellénique (article 4). Le principe de non-discrimination est introduit dans le droit de l'Union Européenne qui fait partie du droit grec (article 6A du Traité d'Amsterdam et 13 de la version consolidée du traité CE qui prévoit que des mesures doivent être prises pour combattre la discrimination fondée, entre autres, sur un handicap) ainsi que dans le droit communautaire dérivé.<sup>2</sup> L'interdiction de la discrimination en raison d'un handicap est inscrite également dans la Charte des droits fondamentaux et le projet de Constitution de l'Union européenne (article 21, par. 1).

L'article 9 du projet de Convention introduit le principe de la pleine capacité juridique de celles-ci. En ce qui concerne la reconnaissance de cette capacité, le droit civil grec prévoit l'assistance judiciaire pour certaines catégories de personnes qui se trouvent dans l'incapacité de prendre soin de leurs affaires suite à un handicap (Code de droit civil et procédure civile). Le Décret présidentiel 250/1999 relatif à l'organisation d'un service social dans le cadre de l'application de l'institution de l'assistance judiciaire vise spécialement des personnes physiquement handicapées, toxicomanes ou alcooliques.<sup>3</sup>

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<sup>1</sup> *En vue de sensibiliser l'opinion publique, la loi proclame le 3 décembre de chaque année comme Journée des personnes handicapées; le Président de la République reçoit chaque année le rapport de la Confédération nationale des personnes handicapées sur la manière dont l'Etat fait face aux problèmes de ses membres..*

<sup>2</sup> *Par ex. la directive 2000/78/CE sur l'égalité de traitement dans l'emploi et le travail dont l'incorporation dans l'ordre juridique hellénique est actuellement en voie d'examen devant par le Parlement..*

<sup>3</sup> *Les personnes souffrant de maladie mentale font l'objet d'une législation spécifique, la loi 2071/1992 sur la modernisation et l'organisation du Système de la Santé, qui règle entre autres l'institutionnalisation des malades mentaux et introduit une procédure d'appel en faveur des personnes involontairement internées. La loi 2716/1999 a établi une Commission Spéciale pour le Contrôle des droits des personnes psychiquement dérangées. Les garanties posées par les textes législatifs et l'établissement de la Commission, sa composition et ses compétences reflètent les soucis généraux auxquels s'efforce de répondre le texte de l'article 10 du projet de Convention (liberté et sécurité de la personne), et plus spécialement le par. c), i et ii qui exigent qu'un recours soit mis à la disposition du handicapé privé de sa liberté. En réponse au **Questionnaire du Haut Commissariat des Nations Unies pour les droits de l'homme**, la Commission nationale hellénique pour les droits de l'homme a présenté ce système et les garanties qu'il offre à la personne handicapée dans une note du 28 mai 2003. Cette note est attachée au présent rapport.*

Au plan du droit pénal (Code de droit pénal et procédure pénale), une responsabilité pénale limitée est prévue pour certaines catégories de personnes souffrant de handicaps, telles les sourds-muets et les personnes physiquement ou mentalement malades.<sup>4</sup>

## **2. Education (article 17 du projet de Convention)**

Le droit à l'éducation des personnes handicapées fait l'objet de l'article 17 du projet de Convention et met à la charge des Etats l'obligation de prendre des mesures positives en faveur des enfants handicapés en vue de leur offrir une éducation qui leur permette d'assurer leur développement, leur dignité et participer de manière effective à la vie d'une société libre.

Une législation spéciale et étendue a été adoptée récemment en Grèce (loi 2817/2000) concernant l'éducation des personnes ayant des besoins spéciaux d'éducation, la création et l'organisation d'écoles spéciales (loi 2817/2000). Aux termes de la loi, la définition de ces personnes est bien large, elle englobe des personnes souffrant d'immaturation mentale, ayant des problèmes physiques (malvoyants, sourds, sourds-muets) neurologiques ou orthopédiques, des problèmes linguistiques, des difficultés d'apprendre (dyslexiques etc.) et encore des difficultés complexes sentimentales ou sociales, autisme et autres dérangements de développement. La méthode de définition des personnes protégées se rattache, pour la première fois peut-être, au modèle social plutôt qu'à l'acceptation médicale, malgré le fait que ces difficultés doivent être constatées par des spécialistes et des médecins. Les buts de la loi sont d'aider ces personnes de développer leur personnalité, d'améliorer leurs capacités et dextérités, d'assurer leur inclusion ou re-inclusion dans le système d'éducation commun et leur participation dans l'ensemble social, leur apprentissage professionnel et leur contribution dans le processus de production, enfin leur acceptation mutuelle avec l'ensemble social et leur développement social sur un pied d'égalité avec les autres citoyens. Le principe de base est que ces personnes doivent pouvoir recevoir leur éducation dans des écoles normales dans lesquelles un personnel spécialisé doit s'occuper d'elles, à moins que leur fréquentation dans ces écoles ne devienne extrêmement difficile en raison de leur problème. Dans ce cas, ils doivent pouvoir recevoir une éducation adéquate dans des écoles et établissements d'éducation spécialisée, et, rarement, à la maison.

<sup>4</sup> *La Commission nationale pour les droits de l'homme a exprimé l'avis que les dispositions du droit pénal permettant au tribunal compétent d'ordonner l'internement de ces personnes dans des établissements psychiatriques n'assurent pas le respect des droits de ces personnes. Avis de la Commission nationale pour les droits de l'homme du 19.06.2003.*

La décision ministérielle 10344 du 21 mai 2001 prévoit un examen spécial pour les personnes handicapées (entre autres les dyslexiques ou ayant des problèmes d'apprentissage spéciaux) à tous les niveaux de l'éducation primaire et secondaire ainsi que dans le cadre du concours national en vue d'occuper des postes au secteur public. En plus, des quotas sont imposés pour l'occupation d'un nombre de places lors des concours nationaux d'entrée aux Universités de tout le pays en faveur des personnes handicapées, suite à des examens spécialement conçus et organisés pour elles.

En réalité, la vie de ces étudiants est bien difficile, car, une fois dans les Universités, les services compétents ne disposent pas des moyens de leur produire le matériel nécessaire (documents, livres, notes) sous formes accessibles à elles (par ex. forme électronique, langage des signes et méthode Braille). Selon leurs handicaps, celles-ci sont alors obligées de dépendre d'autres personnes par ex. pour se faire lire des notes ou autres documents et livres.

### **3. Accessibilité et mobilité individuelle (articles 19 et 20 du projet de Convention)**

L'article 19 du projet de Convention impose aux Etats parties l'obligation de prendre des mesures pour identifier et éliminer les obstacles et assurer l'accessibilité des personnes protégées par la Convention à l'environnement bâti, aux transports, à l'information et aux communications pour permettre à celles-ci de vivre de façon indépendante et de participer pleinement dans tous les domaines de la vie sociale.

L'ordre juridique grec fait face à ces problèmes au moyen de différents actes législatifs. Ainsi, des lois prévoient d'une part des facilités spéciales d'accessibilité vers et à partir des logements, bâtiments, transports en commun, voies publiques et autres espaces. Elles prévoient des places de parking, des interdictions de garer pour permettre l'accès des personnes ayant des problèmes de mobilité, la permission pour celles-ci de circuler exceptionnellement sur les trottoirs avec leur engins spéciaux (voitures spéciales et chaises roulantes), ou encore l'utilisation de signes distinctifs spéciaux pour les voitures conduites par des personnes handicapées (loi 2696/1999). Les personnes handicapées ayant été munies d'une carte spéciale pour les transports publics (sur terre et sur mer) ont droit à une réduction de 50% dans ces transports, alors que dans certains cas, lorsque leur revenu ne dépasse pas un certain montant (11.608 euros), elles ont le droit d'utiliser gratuitement les moyens de transport publics. Par décrets présidentiels est imposée l'obligation aux bateaux effectuant des transports publics d'être munis d'ascenseurs ainsi que des espaces et des toilettes prévus spécialement pour les personnes handicapées. Des facilités similaires

sont prévues pour la construction des immeubles dans lesquels fonctionnent des services publics et autres organismes du secteur public ainsi que des rampes sur les trottoirs et autres espaces (loi 2831/2000 et décret présidentiel 27/1999).

Alors que dans le domaine de l'accessibilité il y a un vaste arsenal de lois et règlements, il manque toujours un organe central de coordination au niveau de l'administration qui s'occupe de tous les aspects et des problèmes des personnes handicapées.<sup>5</sup>

En plus, la mise en oeuvre des droits des handicapés dans ce domaine laisse à désirer. Celles-ci se plaignent justement de l'état insatisfaisant des moyens d'accès dans les transports publics. Par ex. alors que dans le Métro d'Athènes, les arrêts sont annoncés par écrit et oralement, tel n'est pas le cas dans les bus, ce qui empêche les malvoyants de circuler d'une manière indépendante.

En ce qui concerne leur mobilité individuelle, traitée à l'article 20 du projet de Convention, l'Etat grec offre des facilités à ces personnes en leur donnant l'occasion, d'une part de conduire des voitures spécialement transformées et adaptées à leur difficulté (l'achat de celles-ci étant exonéré de taxes pour certaines catégories de personnes gravement handicapées - lois 1798/88 et 1882/90-), d'autre part en participant financièrement aux frais d'achat des engins spéciaux pour leur mobilité individuelle (par ex. Décisions ministérielles 7094/ 30-8-1983 et A7a/10619/92).

Les associations des personnes bénéficiaires de ces mesures se plaignent cependant de l'absence d'information concernant les nouveautés de la science dans le domaine des dernières techniques d'aides aux handicapés et du refus des caisses de contribuer -ou couvrir totalement- le coût d'achat d'engins technologiquement avancés. Sous cet angle, toutes les exigences des articles 13 sur l'accès à l'information et 19 sur l'accessibilité ne sont pas remplies.

#### **4. Emploi et sécurité sociale (articles 22 et 23 du projet de Convention)**

L'article 22 du projet de Convention reconnaît le droit des personnes protégées de gagner leur vie par un travail librement choisi ou accepté. La loi 2643/1998 sur les mesures relatives à l'emploi des personnes de catégories

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<sup>5</sup> Actuellement, des compétences sont attribuées au Ministère de l'environnement, au Ministère de l'Intérieur, d'administration publique et de Décentralisation et au Ministère des Transports et Communications.

spéciales prévoit des mesures positives en faveur de personnes souffrant d'incapacité causée par une maladie ou un dommage chronique physique, mental ou psychique qui n'ont pas d'emploi, ainsi que, dans certaines conditions, leur famille. Les entreprises privées sont obligées, à certaines conditions (lorsqu'elles emploient plus de 50 personnes), d'embaucher des personnes appartenant aux catégories de personnes protégées par cette loi. Les services publics, les banques et les autres organismes du secteur public sont aussi obligés d'embaucher, en plus, un pourcentage qui peut s'élever à 80% de leur personnel pour certaines catégories de postes déterminés (standardistes téléphoniques, huissiers, postes de sécurité, nettoyeurs etc.) parmi les catégories de personnes protégées par la loi. La loi introduit des incitations pour les entreprises privées qui embauchent ces personnes sous forme de subventions et des programmes de formation professionnelle spéciale pour ces employés. Par décision ministérielle (302/2001) sont approuvées des subventions à des entreprises privées pour encourager la création de nouveaux postes d'emploi destinés à des personnes handicapées et autres catégories de personnes (comp. art. 22, par. d) du projet de Convention).

En ce qui concerne la sécurité sociale des personnes handicapées( article 23 du projet de Convention), elle est régie par une série d'actes législatifs qui datent de 1951 jusqu'à nos jours et règlent les conditions dans lesquelles les personnes handicapées, assurées à une Caisse de pension, peuvent être bénéficiaires d'une pension en raison de leur handicap. Des lois spéciales prévoient des droits à la sécurité sociale pour des personnes handicapées dans des catégories professionnelles spécifiques, par ex. les agriculteurs (loi 2458/1997). Dans certains cas de personnes handicapées non assurées, les Directions d'assistance sociale des Préfectures versent des sommes modestes en tant qu'appuis économiques. Certaines facilités financières (prêts bancaires) sont aussi prévues dans le cadre de l'assistance des personnes handicapées en vue de leur permettre d'obtenir un logement.

#### **5. Participation à la vie culturelle, aux loisirs et aux sports (article 24 du projet de Convention)**

La loi 2725/1999 sur l'athlétisme amateur et professionnel a été adoptée suite à la décision de confier à la Grèce l'organisation des jeux olympiques et para-olympiques de 2004. La loi contient des dispositions concernant l'athlétisme des personnes souffrant de handicaps ou autres incapacités et le place sous la protection de l'Etat. Elle détermine la manière dont doivent être fondées les corporations et les fédérations athlétiques et crée la Commission hellénique para-olympique composée de représentants de l'Etat et des représentants de la Fédération nationale d'athlétisme pour personnes

handicapées. La Commission a de vastes compétences dans le domaine de la préparation et de l'organisation des jeux para-olympiques, ainsi que l'obligation de veiller aux travaux de modernisation des espaces de préparation et d'exercice, en vue d'assurer l'accès aux athlètes ayant des problèmes de mobilité et aux athlètes malvoyants. La loi prévoit des incitations économiques et des facilités pour les athlètes qui se sont distingués lors des sports olympiques.

Cependant, la mise en oeuvre de l'organisation et de l'amélioration des lieux de préparation et d'exercice laisse toujours à désirer. Certains offres ont été faits dans ce sens par des entreprises privées, qui ont permis à des athlètes appartenant à la catégorie des jeux para-olympiques de se préparer dans des espaces adaptés et adéquats.

**En conclusion**, en Grèce des efforts sont déployés les dernières années en vue d'assurer aux personnes handicapées un niveau de vie plus élevé et les inclure dans la vie sociale, le processus économique et culturel du pays. Cependant, la législation est fragmentée, incomplète et les compétences dispersées à plusieurs ministères ayant créé des Services chargés des problèmes ponctuels des personnes handicapées.

A quelques exceptions près, la manière dont sont définies les personnes souffrant de handicaps par la législation, et par conséquent traitées par l'Etat et l'administration, relève d'une acception médicale et diagnostique plutôt que de la définition prenant comme base la notion sociale, beaucoup plus vaste et intégrée, de l'incapacité. En plus, comme dans d'autres domaines, il existe un décalage entre les lois et leur mise en oeuvre. Dans plusieurs cas, les droits accordés semblent théoriques, car ils ne sont pas accompagnés d'impositions de peines pour ceux qui les violent. Beaucoup reste par conséquent à faire encore dans ce domaine.

Les personnes handicapées se plaignent enfin que leur statut n'est pas reconnu par leurs concitoyens, qui ne comprennent leur situation ni ne respectent leurs droits: elles sont maintes fois empêchées d'accès par des personnes indifférentes qui obstruent les passages ou les rampes réservées à elles, alors que souvent elles sont victimes de violence par des personnes qui profitent de leur handicap. C'est pour cela qu'il est extrêmement important, avant tout, d'éduquer la population dans le but de la préparer dès l'âge tendre à comprendre et à respecter les droits de ses concitoyens souffrant d'incapacités. Pour atteindre l'objectif de l'inclusion des personnes handicapées dans la société, il faut prendre des mesures comme celles mentionnées à l'article 5 du projet de Convention sur la promotion d'attitudes positives à l'égard des personnes handicapées, entre autres inculquer aux enfants qui fréquentent les écoles primaires du pays des sentiments de respect pour les droits de leurs concitoyens handicapés (par. 2, b).

**ii. Statement by Pr. Ch. Dipla, representing GNCHR at the 7th International Conference of National Human Rights Institutions for the Promotion and Protection of Human Rights, held in Seoul/Republic of Korea, 14-17.9.2004**

**WORKING GROUP NO 4 ON MIGRATION IN THE CONTEXT OF CONFLICT AND TERRORISM  
STATEMENT ON BEHALF OF THE GREEK NATIONAL COMMISSION FOR HUMAN RIGHTS**

It is common ground that conflict situations existing in almost every continent provoke migration flows which spill over national boundaries and oblige groups of people to leave their own country and try to survive in other lands.

After September 11th 2001, in their fight against terrorism, people in many host countries confuse foreigners with enemies. It is a fact that terrorist attacks violate human rights such as the right to life and personal dignity. Al Qaeda's terrorist attack in the USA provoked responses targeting on persons with a specific ethnic or religious profile. National anti-terrorist legislation and/or measures affect more particularly sensitive groups, such as immigrants, refugees and asylum-seekers.<sup>1</sup> Based on the necessity to protect national communities from menaces coming from foreigners,<sup>2</sup> both the measures themselves and the powers entrusted to the competent national authorities are often exercised in a discriminatory and disproportionate manner against non citizens.

In Europe, the fight against terrorism is undertaken both by the European Union and State Parties. The former has defined terrorism, adopted antiterrorist legislation (Framework decision on Terrorism and Arrest warrant, 2002), imposing on States parties to assert extraterritorial criminal jurisdiction, and concluded bilateral agreements of extradition and mutual legal assistance with third countries (USA). Member States have enacted national legislation in order to comply with Union law.

In Greece, anti- terrorist legislation has been adopted first in 2001, just before terrorist attacks of September 11 (Law 2928/2001, based on the UN Convention against Transnational Organized Crime) and, up to now, it was used to suppress national terrorist group of the 17 November. It aimed at

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<sup>1</sup> Joan Fitzpatrick, "Speaking Law to Power: The War Against Terrorism and Human Rights», *European Journal of International Law*, Vol. 14, No 2, pp. 241-264 at p. 255.

<sup>2</sup> One should not forget that the refugee flows have been considered by the Security Council of the UN as a menace for international peace and security which may lead at the adoption of coercive measures under Chapter VII of the UN Charter. Joan Fitzpatrick, «Terrorism and Migration», *ASIL Task Force Papers*, October 2002, p. 1.

ensuring respect of the rights of the citizens under Greek Constitution and at the same time security for citizens in a democratic society.<sup>3</sup> Recently, the Greek Parliament has adopted additional anti-terrorist legislation in order to align Greek with European law and to introduce and implement the European legislation on arrest warrant and (Law 3251/2004).

Before 1990, Greece was rather a country of emigration. In early 1990's, vast immigration flows coming from the countries of Eastern Europe have transformed Greece into a country of immigration. Being legally and socially unprepared to manage the situation, it had to face on the one hand the urgent problem of the regularization of the first flow of illegal immigrants (about 300.000) and at the same time control future immigration through combating illegal one as well integrating illegal immigrants. Legislation was enacted first in 1997 and then in 2001 (Law 2910).<sup>4</sup>

As in many other countries in Europe and elsewhere, in Greece also, migrants are victims of implementation of very strict laws and administrative measures rather than anti-terrorist legislation itself. This is manifest in police and other administrative practices against immigrants, legal and illegal; it is also of interest that after September 11, whereas the number of asylum seekers has augmented, the corresponding percentage of refugee status recognition fell dramatically.<sup>5</sup>

The Greek National Commission for Human Rights, in its consultative capacity, has in several occasions examined problems concerning, on the one hand, human rights of migrants and asylum seekers and, on the other, antiterrorist legislation and practices.

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<sup>3</sup> *Preamble of the Law. Interestingly enough, is included therein a clause of «positive discrimination» in favor of foreigners, since persons who denounce actions of organized crime, and are themselves under an illegal status as a result of violation of the legislation concerning foreigners (illegal immigrants victims of sexual exploitation by an organized criminal group) are not punished but on the contrary obtain a valid residence permit. See Alice Yotopoulos-Marangopoulos, «Anti-Terrorist Measures of Greece», in *Anti-Terrorist Measures and Human Rights*, Edited by W. Benedek and Al. Yotopoulos-Marangopoulos, Nijhoff, Leiden-Boston, 2004.*

<sup>4</sup> *EU and US Approaches to the Management of Immigration, Report on Greece*, by L. Kovardi and El. Petroula, Hellenic League for Human Rights, Migration Policy Group, Brussels, 2003, pp. 1-3.

<sup>5</sup> *From 11, 2 in 2001, to 0, 3 in 2002 and to 0, 06 per cent in 2003. See A. Skordas and N. Sitaropoulos, «Why Greece is not a Safe Country for Refugees», International Journal of Refugee Law, Vol. 16, 2004, pp. 25-52 at p. 27, although the authors explain that the deficiency of the refugee protection system is not only due to a security oriented policy but also to lack of effective remedies and inadequate social protection of refugees and asylum seekers, p. 28.*

Immediately after September 11, 2001, the GNCHR was among the first National Institutions that issued a resolution calling upon States to abide by their international law obligations in the course of their struggle against terrorism that should in no way lead to new ethno-cultural divisions and enmities all over the world and to human rights violations. (*Resolution on terrorism and human rights after the events of 11.09.2001, 20 September 2001*).

GNCHR has also appealed to the Greek Foreign Minister pertaining to the treatment by the US authorities of Afghan detainees and called upon him to exercise his utmost influence so that international human rights principles are adhered to in this case, especially those emanating from the UN Convention against Torture, the International Covenant on Civil and Political Rights and international, conventional and customary, humanitarian law (*28 February 2002*).

GNCHR, following its former relevant Resolutions of 2001 and 2002, expressed its outright condemnation of acts of terrorism carried out in Greece and called upon all competent Greek authorities and professional associations, such as the Athens Bar and the Athens Journalists' Association, to ensure that the struggle against terrorism is not carried out to the detriment of the fundamental principles enshrined in international human rights law and in the Greek Constitution. (*Resolution on Greece's combat against terrorism in its territory, 12 December 2002*).

As far as pertinent legislation, measures and practices are concerned, GNCHR rendered opinions on the following items:

- *The 2000 Bill on aliens/immigration (9 November and 30 December 2000)*: GNCHR expressed its criticism and submitted recommendations regarding certain provisions and omissions of the above Bill (later Law 2910/2001) which were considered to contravene current international standards of immigration and human rights law, such as: the lack of expert research on which the above Bill should have been based; non justification of visa application decisions by Greek consulates; lack of special protection of long-term immigrants; lack of effective protection of immigrant families; need to prevent human, especially women, trafficking through immigration legislation; access of immigrant children to education; access of detained immigrants to legal counseling. GNCHR stressed that the Greek government should take all appropriate measures for the establishment of specialized research into contemporary conditions of migration and for the establishment of an integrated immigration policy.
- *Bill on organized crime (3 May 2001)*: GNCHR submitted to the Ministry of Justice a series of recommendations, based mainly on European

human rights principles and the UN Convention against Transnational Organized Crime (Palermo Convention), regarding the draft of the "Law on the amendment of the Greek Criminal Code and the Code of Criminal Procedure for the protection of citizens from indictable acts of criminal groups" (later Law 2928/2001). GNCHR pointed out, inter alia, that mixed jury courts should not be excluded from the adjudication of organized crime cases, the investigative infiltration should be supervised by a judge and underlined the cautiousness with which DNA-related information (evidence) should be handled.

- *Protection of refugees (asylum) in Greece (8 June 2001)*: GNCHR submitted to all competent Ministries proposals for a series of legislative and administrative amendments aimed at the modernization and harmonization of the Greek asylum framework with the established and emerging standards of international and European Community law. The main issues of concern were: 1. The free movement of refugees and asylum seekers; 2. Asylum seekers in transit areas of ports and airports; 3. Refugee reception centers; 4. The serious shortage of state trained interpreters and translators; 5. Asylum seekers without documentation, especially in Athens; 6. Review of asylum decisions and lack of judicial appeal on merits; 7. Inadequacy of legal aid to refugees and asylum seekers.
- *Establishment of a comprehensive legal aid system (25 June 2001)*: GNCHR proposed to the Ministry of Justice the restructuring and modernization of legal aid schemes in accordance with the legal aid standards established by the Council of Europe, the European Union and the case law on the European Convention on Human Rights. GNCHR expressed its concern at the inadequacy of legal aid as it was structured and applied in Greece and stressed that legal aid should be available to every person who is in need of it, in all jurisdictions and all procedural stages. Particular attention should be paid by the Greek state to vulnerable social groups such as asylum seekers, refugees and alien immigrants potentially discriminated against on the ground of their racial or ethnic origin.
- *Conditions of detention in Greece (5 July 2001)*: GNCHR, in view of relevant recent reports of, among others, the European Committee for the Prevention of Torture and the UN Committee against Torture, having regard to recent case law of the European Court of Human Rights and having visited some Greek prisons and police detention centers, submitted to the Ministry of Justice and the Ministry of Public Order a series of proposals aiming at the urgent reformation and modernization of the Greek detention centers and related legislation and practice. In particular GNCHR underlined the need for Greece to

effectively comply with the recommendations of the above international and European organs, the need for creation of new modern detention centers, the separation of minor and adult detainees, the provision of adequate health care services to all detainees and the putting into effect of the new aliens legislation that provides for the creation of new detention centers for aliens under deportation.

- *Protection of social rights of refugees and asylum seekers in Greece (20 September 2001)*: GNCHR submitted to the competent Greek Ministries a series of recommendations, based on European and international human rights standards, for the modernization and the strengthening of the current, inadequate system of refugee social protection in Greece. The main issues tackled by GNCHR in its report are: 1. Reception centers for asylum seekers; 2. Employment and vocational training of refugees and asylum seekers; 3. Provision of aid and special allowances; 4. Education; 5. Special protection of unaccompanied minor refugees and asylum seekers.
- *2001 Reports of the Ministers of Justice and of Public Order to the UN CAT (13 December 2001)*: GNCHR submitted its comments on the above Reports, upon request of the relevant Ministries, in accordance with Law 2667/1998 founding GNCHR. GNCHR urged the Ministries to make particular reference in their Reports to the actual practice, that is, application of the UN Convention against Torture by Greek authorities. GNCHR also stressed the importance that Greek authorities should attach to the advancement of education and training of law enforcement personnel, to the amelioration of detention conditions in Greece and to the treatment by Greek authorities of immigrants and asylum seekers in accordance with international law and protection standards.
- *2001 Greco-Turkish Protocol for the implementation of article 8 of the Greco-Turkish Agreement on combating crime, especially terrorism, organized crime, illicit drug trafficking and illegal migration (31 January 2002)*: GNCHR issued an opinion expressing its serious concern at, inter alia, the non-inclusion in the above Protocol (Law 3030/2002) of any express clauses pertaining to the effective protection of asylum seekers arriving in Greece from Turkey, according to the Geneva/New York Refugee Convention and Protocol. GNCHR pointed out that in a number of cases the conditions of aliens' refoulement/readmission raise concerns as to the safeguarding of fundamental rights of all persons attempting to enter Greek territory, including illegal migrants.
- *Resolution on the 2001 proposals for an EU Council Framework Decision on combating terrorism and for an EU Council Framework Decision on the European arrest warrant and the surrender procedures*

*between Member States (28 February 2002)*: GNCHR commented on the above proposals dated December 2001 and stressed that these Decisions should be squarely based upon international and European human rights standards and principles. With regard to the decision on combating terrorism GNCHR stressed that EU member states should show utmost cautiousness to the identification of the aims by which terrorist acts are identified and that the right to a fair trial should be always adhered to in the course of the relevant procedures. As to the European arrest warrant decision, GNCHR pointed to the precarious situation that the above decision may engender especially for third country nationals who have occasionally been discriminated against and victimized by state measures and policies adopted by certain states following the events of 11 September 2001.

- *Issues relating to reception and access of asylum seekers to the asylum procedure in Greece (6 June 2002)*: GNCHR expressed its grave concern at reports of international NGOs regarding alleged instances of refoulement of asylum seekers by Greek authorities and issued a series of asylum law and practice-related recommendations with special reference to: the arrest of asylum seekers in border areas; these detainees' information about the Greek asylum procedure and their concomitant rights; provision of legal aid; facilitation of asylum seekers' communication with any person they wish to contact in order to inform them about their case; the creation of new permanent state reception centers for asylum seekers; the application of article 48 of Law 2910/2001, as amended by Law 3013/2002, which provides for the establishment of regional detention centers for aliens subject to administrative deportation.
- *Issues relating to discrimination against alien workers with regard to their employment injury compensation (12 December 2002)*. GNCHR recommended the abrogation of article 5 of Royal Decree of 24.07.1920 and of Law 551/1915 which condition employment injury compensation to alien workers on the norm of reciprocity or the alien worker's residence in Greece, in violation of, inter alia, fundamental social rights provisions of the Greek Constitution and relevant provisions of the 1966 International Covenant on Economic, Social and Cultural Rights. With the same resolution GNCHR recommended also the ratification by Greece of the 1964 *Employment Injury Benefits Convention* of ILO (No 121).
- *The detention conditions in Greece in 2002 (12 December 2002)*: GNCHR paid particular attention and studied the latest relevant reports of the European Committee for the Prevention of Torture, the United Nations Committee against Torture and the Council of Europe Commissioner for Human Rights. Taking also into account the

responses of the Greek authorities to the above reports, GNCHR proceeded to submitting to the competent Greek authorities a series of recommendations with a view to ensuring, inter alia, the following: full compliance of Greece with the recommendations of the above United Nations and Council of Europe organs; promotion and strengthening continuous education of all personnel involved in the detention process; creation of detention centers of aliens under deportation according to Aliens' Law 2910/2001; special legislation for and attention to asylum seekers under detention, in accordance with the relevant GNCHR proposals of 06 June 2002; establishment of a detainee complaint procedure in all detention centers; decongestion of the prison and detention centers in the area of Athens through establishment of new prisons and detention centers in other regions; special treatment of detainees who are drug addicts and their strict separation from other detainees in all prisons and detention centers.

- *Bill regarding the provision of legal aid to persons with low income (30 October 2003)*: GNCHR submitted to the Greek Ministry of Justice its comments on the above Bill (later Law 3226/2004). The major points raised by GNCHR were the following: GNCHR proposed that the Bill should not condition the provision of legal aid to non-nationals on the latter's legal residence in the European Union. GNCHR proposed that legal aid should be provided also with regard to administrative law litigation and that it should cover early preliminary (legal counseling) stages of all legal proceedings (civil, criminal and administrative). GNCHR also recommended that special consideration should be given by the Bill to asylum seekers as well as to victims of racial discrimination, as already noted by GNCHR in its relevant recommendations of 25 June 2001 (see supra).
- *The protection of "de facto" refugees in Greece (17 December 2003)*: GNCHR expressed its concern at the practice of the Greek Ministry of Public Order by which the renewal of de facto ("humanitarian") refugee permits was unjustifiably denied. GNCHR welcomed the declaration of the above Ministry that this practice has ended but called upon it to give express and clear orders to the competent authorities so that they correctly apply current Greek asylum law and they treat favorably de facto refugees, according to the international and European standards of refugee protection. GNCHR reemphasized that refugee and immigration law and policy should be seriously overhauled by the Greek State and be characterized by clarity and broadmindedness in accordance with the European rule of law.

- *International Conventions on Migrant Workers and the position of Greece*

GNCHR proposed that Greece accede to the following Conventions on Migrant Workers, regarding them as necessary for, inter alia, the planning and implementation of a contemporary, human rights-based immigration law and policy by Greece: ILO Convention (No 97) *concerning Migration for Employment* (revised 1949), ILO Convention (No 143) *on Migrant Workers* (Supplementary provisions, 1975) and the 1990 *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families* (12 December 2002).

- Finally, GNCHR has also organized meetings, conferences and colloquia such as:

a) *The Second Mediterranean Conference of National Human Rights Institutions (1-3 November 2001)*: GNCHR successfully organised and hosted the above Conference from 1-3 November 2001 in Athens, which was attended by 14 National Institutions and was concluded with the adoption of the Athens Declaration (text available at [www.nchr.gr](http://www.nchr.gr)). The major theme of the Conference was immigration and asylum following the Durban World Conference against racism of September 2001. The Conference was coupled with an open Colloquium on the above topic, organized by GNCHR in Athens.

b) *The Athens Conference on the Greek Presidency of the EU Council and the challenge of asylum and immigration, 8-9 November 2002 (co-organized with the Greek Ombudsman, UNHCR BO for Greece and the Greek Council for Refugees)*: This was a two-day open conference attended by representatives of competent Greek Ministries, the EU Commission, UNHCR, GNCHR and Greek NGOs. The conference ended with the adoption of a series of conclusions on the European and Greek immigration and asylum law and policy, which were publicized and forwarded to all competent Greek, European and international organizations.

**iii. Statement by Mr. N. Frangakis, 1st Vice-President of GNCHR, to the 3rd Round Table of NHRIs and the 5th European Meeting of NHRI, held in Berlin, 25-27.11.2004**

**ROLE AND OBLIGATIONS OF STATES FOR THE PROTECTION OF VICTIMS OF HUMAN TRAFFICKING\***

Trafficking in human beings, in particular in women and children, is a phenomenon, which is inextricably connected with national and international organised crime and corruption and has taken, in recent years, huge dimensions. In fact it is considered the third largest criminal financial activity worldwide, after the illegal drugs and arms traffic.

Numerous international conventions and protocols forbid this crime.<sup>1</sup> The massive increase in the number of victims trafficked in Europe over the last years demands immediate action from the European countries to stop the spreading of this modern form of slavery in both a European and a national level.

**I. A GENERAL VIEW OF THE STATE'S ROLE AND OBLIGATIONS**

First of all, there should be a unanimous agreement on the main principles, which define any State's role in human trafficking matters. Its role should be axed on three basic directions: the preventive role, the repressive role and the

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\* 1st Vice President of the Greek National Commission for Human Rights. This paper was presented during the 3rd Round Table of National Human Rights Institutions, Berlin, 25-26 November 2004. The research and original drafting is due to Ms. Chryssoula Moukiou, legal collaborator of GNHRC.

<sup>1</sup> International Convention on repression of trafficking of women and children, of the League of Nations, signed the 30.9.1921 in Geneva and ratified by Greece in 1992. International Convention on repression of trafficking of adult women, of the League on Nations, signed in Geneva the 11.10.1933 and ratified by Greece in 1936. Protocol amending the above mentioned Geneva Conventions signed in Geneva the 12th of November 1947 by the U.N. and ratified by Greece in 1953. The Convention on slavery, signed in Geneva, by the League of Nations, the 25th of September 1926 and ratified by Greece in 1930, and its Protocol as well as its additional convention. The ILO Convention (29) about forced labour signed in Geneva the 28th of June 1930 and ratified by Greece in 1952. The ILO Convention (105) about abolishing forced labour, signed in Geneva, the 25th of June 1957 and ratified by Greece in 1961. Recently, the United Nations Convention Against Transnational Organised Crime, signed in Palermo the 12th of December 2000 and its two additional Protocols, complete the international legal frame for combating human trafficking.

“re-habilitating” one. The good and efficient State’s intervention in all three directions can erect a serious barrier to the expansion of the cruel social phenomenon of human trafficking.

Moreover, when referring to the role of the State, it should be kept in mind that there are three groups of countries: those of origin of the traffic victims, those of transit and those of destination. Often a transit country has a local “market” as well.

### **A. The preventive role of the State**

Beyond the measures of general prevention, consisting in improving the social and economic development of victims’ countries of origin, there must be a specific care for the effective prevention of poor people’s coercion to “sell” their own body in order to survive, at home or abroad. This specific care can take place in four levels, which they can interact between each other.

#### **A.1. Role in defining the problem**

*Firstly*, there must be a State’s intervention (especially by means of its legislation) to define the terms involved in human trafficking matters firmly and in a comprehensive manner.

**a.** The Protocol on prevention, suppression and punishment of trafficking in persons, especially women and children (in article 3), supplementing the U.N. Convention against organised crime (Palermo, 12/12/2000), trafficking in persons is defined as follows: *“The recruitment, transportation, transfer, harboring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs”*. The same definition is used also by the Draft Convention of the Council of Europe.<sup>2</sup>

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<sup>2</sup> See II.B. *infra*.

**b.** On the contrary, the definition adopted by the Council of EU in its Framework Decision of 19/7/2001 (see below) is quite narrow, as it does not encompass every form of exploitation, such as the removal of organs or babies' trafficking; it applies only to sexual and labor exploitation. In these cases, the State's role, based on art. 29 of the EU Treaty, should be to adopt legal measures that transpose the Framework Decision in the national legal order, yet providing for a broader definition of human trafficking, as the Framework Decision guarantees only the minimum of protection of persons and do not set maximum rules.

**c.** Finally, there have to be national legal provisions for the distinction between many different cases that can appear in the frame of a general and broad definition. If we take as example the typical case of trafficking in women, the following definition is usually mentioned: "*There is trafficking in women when a woman is exploited in a country other than her own by another person (natural or legal) for financial gain, the traffic consisting in organising (the stay or) the legal or illegal emigration of a woman, even with her consent, from her country of origin to the country of destination and luring her by whatever means into prostitution or any form of sexual exploitation*".<sup>3</sup> This definition leaves some issues that need to be clarified. First of all, it is not easy to distinguish between human trafficking and voluntary prostitution. According to the "abolitionists"<sup>4</sup> the consent by the prostitute is irrelevant to the prosecution of the exploiter, while for the "regulationists" the penalisation of the exploiter depends on the prostitutes' consent. Furthermore, it has to be a clear distinction between organised crime, victims of terrorism and disguised trafficking, which is not easy to make in practice. It has been shown that many women enter the country of destination legally and initially stay there legally. Only later their stay is "deviated" to an illegal exploitation, usually by means of work permits for dancers. In these cases, the State must adopt specific rules for the diagnosis and the penalisation of all forms of disguised trafficking, sex tourism included.

## **A.2. Role in describing the problem and its causes**

*Secondly*, States must act in the direction of knowing in depth and analysing the problem and its causes. This involves the elaboration of statistics, the promotion of relevant scientific research, the inter-governmental cooperation and exchange of data and, finally, the wise use of technology, as it is the case of SIS I & II of the Schengen System of Information.<sup>5</sup> Thus, States can have sufficient knowledge about the scale of trafficking phenomenon and its real causes.

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<sup>3</sup> JM.HIRSCH, *Plan of action against traffic in women and forced prostitution*, Council of Europe, Strasbourg, 1996, p.11.

<sup>4</sup> *New York Convention of 2 December 1949*.

<sup>5</sup> *See Regulation (EC) 2424/2001 of the Council dated 6th December 2001, OJ L 328, 13/12/2001*.

### **A.3. Role in avoiding the problem**

*Thirdly*, States should take preventive measures in order to avoid the expansion of the trafficking phenomenon, such as informing the public, training the administrative staff and especially the border guards, introducing sexual education and human rights education programs at school, creating a round-the-clock phone-line for the use of trafficking victims seeking assistance, providing for a witness protection program and, finally, by tightening the administrative procedures in granting visas. Signing bilateral agreements between destination countries and countries of victims' origin, providing also for the victims' families protection is also a very useful tool.

### **A.4. Role in monitoring the private sector**

*Fourthly*, States should monitor every non-governmental entity, such as local authorities, NGOs, mass media, even family and church, and ensure adequate control of malicious advertisements. Most importantly, alternative solutions should be offered to potential trafficking victims for escaping from their poverty and for combating their ignorance.

## **B. The repressive role of the State**

The most traditional role of a State in the trafficking phenomenon is the repressive one. It encompasses criminal indictment of all involved, especially of professional exploiters of prostitutes and of their "informed" clients, the extradition, the special protection of minors, the recognition of the right to compensation to all human traffic victims, the seizure and confiscation of the earnings traffickers make and, finally, the penalisation of sex tourism.

## **C. The "re-habilitating" role of the State**

The third role a State should play is taking measures in favor of the trafficked victims in order to "re-establish" their previous situation, i.e. to help them adhere to a normal life. This includes the supply of a proper shelter, the medical and psychological assistance, an appropriate job, victim's adhesion to a system of social security and protection (especially during the phase of their repatriation), legal aid and assistance of an interpreter. If a State plays its role correctly in all the directions, there are good chances that the phenomenon of human trafficking would gradually vanish from modern societies, or, at least, it will be considerably reduced.

## **II. THE EUROPEAN DIMENSION**

### **A. The Council of Europe**

Since the late 1980s, the Council of Europe has been the "natural home" for activities aiming at combating the phenomenon of trafficking.<sup>6</sup> In particular, it has undertaken the role of elaborating common standards and strategies, the promotion of research, as well as monitoring, involving activities of legal and technical cooperation and observation.

In 1991, the Committee of Ministers adopted Recommendation R (91) 11 regarding sexual exploitation, pornography, prostitution and trafficking in children and young minors. This text was the first international document fully regulating this matter.

In 1999, the Commission of Experts for the Protection of Children Against Sexual Exploitation was established (PC-SE), mainly aiming at modifying the above-mentioned Recommendation. On the other hand, the Commission of Experts for Women Trafficking elaborated a Plan of Action Against Trafficking in Women,<sup>7</sup> in which most urgent fields of action were underlined.

Finally, after 2002, the Committee of Ministers of the Council of Europe issued five Recommendations<sup>8</sup> concerning trafficking, mainly in women and children. These Recommendations propose a European strategy for combating the trafficking phenomenon, which encompasses definitions, general measures and methods of repression, prevention, victims' protection and help, as well as penal measures and judicial help and measures for the coordination and cooperation among European countries.

It should be underlined that Recommendation 1545(2002) of the Council of Europe "Campaign against trafficking in women",<sup>9</sup> mentions that more than 500.000 financially vulnerable women from Central and Eastern Europe have been displaced during one year by networks of traffickers in order to be exploited in Western Europe and it proposes the elaboration of a "code of conduct" of all military staff in the Balkans, thus drawing the attention of armed forces to the problem of gender issues.

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<sup>6</sup> *Seminar on action against trafficking in women, considered as a violation of human rights and human dignity (Strasbourg, 1991).*

<sup>7</sup> *Doc. EG (96) 2, prepared by Ms. Michèle Hirsch (Belgium).*

<sup>8</sup> *SRecommendation R (200) 11 concerning action against human trafficking to the purpose of sexual exploitation, Recommendation R (2001) 16 concerning children's protection against sexual exploitation, Recommendation R 1545 (2002) for a Campaign against women trafficking, Recommendation R 1610 (2003) for immigration related to women trafficking and prostitution, and, finally, Recommendation 1611 (2003) concerning human organs trafficking in Europe.*

<sup>9</sup> [http://www.coe.int/T/E/human\\_rights/Trafficking/1-Overview/Rec1545\(2002\)en.asp](http://www.coe.int/T/E/human_rights/Trafficking/1-Overview/Rec1545(2002)en.asp).

### **B. Towards a European convention...**

Recently, a draft European Convention on action against trafficking in human beings has been prepared by the Council of Europe Ad Hoc Committee on Action against Trafficking in Human Beings (CAHTEH).<sup>10</sup> This draft Convention mainly contributes in:

- Recognising human trafficking as a breach of human rights.
- Establishing the principle of non-discrimination of the victims.
- Securing the balance between human rights' protection and persecution.
- Forming a general field of application, which will aim at covering all forms of trafficking (on the national and international level, whether it is connected with organised crime or not) and at protecting all victims, minors or adults.
- Adopting a legal frame for the protection and help to the victims by adopting concrete binding measures.
- Creating an effective and independent control system.
- Enforcing the cooperation between European countries to fight against human trafficking.
- Promoting the harmonisation of legislation all over Europe.

As a matter of fact, European law tends to be the most efficient field in which human trafficking is really under attack, through the gradual increase of the binding character of the European rules and through the osmosis of the member states' national legal orders.

### **C. The European Union**

Since 1996, the European Union fights against trafficking. The European Parliament<sup>11</sup> took vote and the European Commission<sup>12</sup> issued an Announcement, mainly trying to define the term of trafficking in women. Moreover, in the EUROPOL Convention<sup>13</sup>, there was a clear mention to human trafficking, the definition of which was broader than the one given by the European Parliament and the European Commission.

After the Treaty of Amsterdam, combating human trafficking became one of the aims of the Third Pillar of the European Union. As it is already known,

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<sup>10</sup> Revised draft of the 6th Meeting of the CAHTEH (28 September – 1 October 2004), available in: <http://www.coe.int>.

<sup>11</sup> Vote of the European Parliament dated the 5/02/1996 (EE C 219/30.7.1999).

<sup>12</sup> Announcement of the European Commission concerning traffic in women to the purpose of sexual exploitation, COM (96)0567, 20/11/1996.

<sup>13</sup> Signed in Brussels the 26th July 1995 and ratified by Greece by L. 2605/1998.

article 29 al. 1 and 2 of the Treaty on European Union stipulate that the goal of granting to citizens a high level of protection within a space of freedom, security and justice is to be achieved by the prevention and repression of crime, organised or not, especially of terrorism, human trafficking and crimes against children, through the closer cooperation of police forces and other competent authorities, in the ambit of EUROPOL and EUROJUST, the closer cooperation between judicial and other competent state authorities and the approach of the national legislations in criminal matters, according to art. 31 TEU.

Trafficking in human beings is also prohibited by article 5 al. 3 of the Charter of Fundamental Rights of the European Union. This prohibition stems directly from the principle of human dignity and takes account of recent developments in organised crime.

Since 2001, the Council of EU has issued three Framework Decisions, which contributed in setting binding rules for the member States in trafficking issues.

The first was the Framework Decision of the Council 2001/220/JAI dated 15th March 2001<sup>14</sup> related to the status of victims in penal procedures and aiming at setting more procedural guarantees to their protection before and during trial, irrespective of the country in which the victims are found.<sup>15</sup>

The second one was the Framework Decision of the Council 2002/629/JAI dated 19th July 2002<sup>16</sup> on combating human trafficking, which provides more specific and more extensive rules for the penalisation of traffickers and broadens the definition of trafficking in children, so as to encompass every case of production, circulation, dissemination or possession of material on which a child is shown in a sexual way, even if such picture is made artificially by electronic means, to the purpose of sexual exploitation.

Finally, the Council issued the Framework Decision 2002/946/JAI dated 28th November 2002<sup>17</sup> for the enforcement of the penal legal frame concerning prevention of helping illegal entrance to a country.

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<sup>14</sup> OJ L 82, 22.3.2001.

<sup>15</sup> See para. 32 of the European Council's conclusions in Tampere (15-16/10/1999).

<sup>16</sup> OJ L 203, 1/8/2002.

<sup>17</sup> OJ L 328, 5/12/2002.

## **LEGAL MEASURES AGAINST HUMAN TRAFFICKING IN GREECE**

Due to its geographic position, Greece is a transit country. Therefore, it is expected that phenomena of human trafficking, especially in women, would arise. Yet, until 1993, no case of human trafficking had been mentioned in the official country reports.

In the 1993 report of the Sub-Commission for Fighting Against Discrimination and for the Protection of Minorities, of the Human Rights Commission of the Economic and Social Council of the UN, it is mentioned that, according to the observations submitted by the Greek Ministry of Public Order: *"In Greece, there has been no case of human trafficking, similar to the one described by art. 323 of the Penal Code, about slavers' trafficking, neither has any case of child kidnapping, for the purpose of removing organs. Besides, in Greece there is no case of organised exploitation of prostituted persons both on national and international level"*.<sup>18</sup>

According to the opinion of the Ministry of Public Order, the previous legal frame (articles 322-335 and 336-353 of the Penal Code, concerning sexual freedom and crimes against economic exploitation of sexual life) were sufficient measures to prevent actions related to the aforementioned crimes and that the stipulations of Law 5060/1931 were adequate for the recognition as "immoral" of a pornographic material concerning women and children as well as for their protection.

Only at the end of 1992, Greek society has started to "feel" the repercussions of the arrival, after the collapse of the former "eastern block", of thousands of immigrants, legal and mostly illegal. Since then, human trafficking became a part of Greek reality. This is the reason why, Greece ratified the International Convention of Repression Against Trafficking of Women and Children, in October 1992, seventy one years after its signature in 1921!<sup>19</sup>.

### **A. Law 3064/2002 and Presidential Decree 233/2003**

Ten years later the Greek Government passed Law 3064/2002 ("Fighting Human Trafficking, Crimes against Sexual Freedom, Pornography of Minors and, generally, Economic Exploitation of Sexual Life and Help to the Victims of those Acts")<sup>20</sup>. This Law refers only to the repressive and "re-habilitating" role of the Greek State, not dealing with any preventive measure.

<sup>18</sup> *United Nations, Economic and Social Council, Human Rights Commission, Report of the Secretary General on the project of the action/monitoring program for the prevention of human beings' treatment and of the exploitation of the prostitution of another person, 07/12/1993, E/CN.4/1994/71.*

<sup>19</sup> *Geneva, 30th of September 1921, League of Nations, Treaty Series, V.9, p. 415, ratified by Greece by Legislative Decree of 20/10/1992 (Official Journal of the Greek Government A' 220).*

<sup>20</sup> *Official Journal of the Greek Government A' 248/15.10.2002.*

A year later, Presidential Decree 233/2003<sup>21</sup> was issued, in order to provide, in a more detailed way, for the protection and aid given to victims of trafficking, irrespectively of their nationality or origin by the competent services and authorities.

Both L. 3064 and P.D. 233/2003 provide for repressive and "re-habilitating" measures that have to be taken by the Greek State.

### **A.1. The repressive role of Greek State**

Law 3064/2002 amended and extended the pre-existing provisions of the Penal Code, thus broadening their field of application.

*Firstly*, a new article 323A was added, concerning human trafficking. This addition was absolutely necessary, as the previous article 323 provided only for the trafficking of a person as a slave. The new stipulation, defines as trafficking": a) every "transaction", the object of which is a person and the purpose of which is the removal of corporal organs or the exploitation of that person's work by the perpetrator himself or by a third person, b) the act of obtaining the victim's coerced acquiescence by fraud, threat or via various promises.

*Secondly*, article 351 of the Penal Code was also amended and a new article 351A was added by providing for the criminalisation of trafficking for the purpose of sexual exploitation of a person (irrespective of its sex) and by stipulating that trafficking of minors is considered as a more serious crime than the usual human trafficking.

*Thirdly*, the client is also criminalised, if he is aware of the fact that the person with whom he has immoral sexual relations is a victim of trafficking.

*Fourthly*, administrative sanctions, such as revocation of the permit for conducting business, are also imposed to the persons who breach the above mentioned provisions of the Penal Code and use their premises for illegal acts related to human trafficking.

*Fifthly*, the law provides for the criminalisation of any person that helps the perpetrator by using any means of communication, for the purpose of gaining money. Thus, the legislator aimed at criminalising the cases or "rose advertisements" referring to minors.

### **A.2. The "re-habilitating" role of the Greek State**

The second innovation of the Greek legislation consists in taking measures for the victims' protection and help, imposed by international and European law. Law 3064/2002 sets the principle of the protection of victim's life, integrity, physical and sexual freedom. In that frame, it provides for: a) the protection of life, physical integrity and personal and sexual freedom, on the

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<sup>21</sup> *Official Journal of the Greek Government A' 204/28.8.2003.*

condition that there is a "serious danger" threatening them; b) the help for housing, food, living, medical and psychological support of the victim for as long as it is estimated to be necessary, as well as for the existence of a legal counselor and an interpreter; c) the special care for the schooling of minors and their participation in education programs and for their professional training; d) the expulsion's stay/suspension for alien victims, being illegally in Greece; e) finally, the authorities are responsible for the victim's protection and help, called "Services and Units of Protection and Aid". All public services, as well as those of moral persons of public law, the local authorities and moral persons of the broader public sector have been entrusted with this responsibility.

The fact that the person has asked for the protection and aid by these Services and Units is enough for the P.D. to be applied, for as long as there is a danger, even if the victim is not prosecuted. In addition, the P.D. provides for medical, pharmaceutical and hospital aid, and the establishment of a "Permanent Commission" for coordination, consisting of representatives of many Ministers, the competence of which will be the survey and coordination of all Services and Units for Protection and Aid.

#### **B. The GNCHR's approach**

The Greek National Commission for Human Rights has expressed its opinion regarding the bill of law that subsequently became Law 3064/2002, by submitting to the Greek Government a series of substantive proposals for the amendment of the above bill, in accordance with the relevant protection standards agreed upon by the United Nations, the Council of Europe and the European Union. The main issues on which GNCHR focused its attention were: a) the necessary modification of the restrictive definition of trafficking, b) the necessity for expansion of the ways in which the victim's coerced acquiescence may be obtained, c) the necessary establishment of a holistic legal and institutional framework for the provision of effective legal social protection to all victims of trafficking, especially during the phase of their repatriation, d) the extensive protection that should be provided to minors, e) the necessity of criminalisation of professional exploitation of prostitutes.

#### **C. Proposals for the preventive and the "re-habilitating" role of the Greek State**

It is now clear, that the penal approach of the phenomenon of human trafficking is not sufficient. Neither is the narrow-minded conception of the "re-habilitating" State's role. The radical solution of human trafficking problem should be based on all the three axes of the State's role, i.e. the preventive role, the repressive role and the "rehabilitating" role, the last one being conceived in a broad minded way.

**C.1.** The preventive role of the State is the most important one, in order to deal radically with the problem. In this direction, the legislative provision for clear, concise but, also, broad definitions of trafficking, the State's statistics, scientific research and information of the public, as it was mentioned in the European Council's conclusions in Tampere (15-16/10/1999), are the minimum measures that have to be taken by any State of origin of human trafficking victims.

**C.2.** Regarding the "re-habilitating" State's role, in addition to all the above mentioned measures, there should be a more serious and organised approach of the structure and the function of the Services and Units for Protection and Aid. Attention should be drawn to the fact that there is a serious danger of false denunciations and of victimisation by some people, only for the purpose of succeeding a suspension/stay of their expulsion. Nevertheless, this danger can be avoided if an administrative body or an independent administrative authority (a "certification authority") is established, competent for certifying the exactness of these denunciations and, in particular, for investigating whether the person who brings charges is a real victim of human trafficking or his/her denunciation is due to personal reasons or it is submitted in order to hide his/her real identity of trafficker. (Often, victims of trafficking are afraid to talk to public authorities or, sometimes, traffickers themselves pretend to be victims in order to avoid their arrest). This "certification authority" must be equipped by specially trained staff working in places, where there is a greater possibility to find human trafficking victims, even if these places are situated far from the "entering points" of the country, e.g. hospitals.

### **CONCLUSION**

Human trafficking constitutes one of the most serious threats to human dignity. It is directly related to the enormous increase of organised crime and in particular the lucrative illegal immigration and sexual exploitation networks. It is also directly related to the continuously widening gap between rich and poor societies around the world. Rich people, insensitive to human dignity, are prepared to satisfy their sexual demands, to the detriment of persons who, under the pressure of poverty or even under physical coercion, become victims of such odious trade.

Western European States, being countries of transit and destination, should undertake the burden of contributing by all means to the elimination of this problem and offer relief to the grievances of the victims of human trafficking and their families. They should also consult with the countries of origin and provide the necessary aid, in order to minimize the economic and social reasons that nurture trafficking.

It could be said that the measures adopted by both the Council of Europe and the European Union are in the right direction, although the consultation between Governments and with NGOs is not yet sufficient. The problem, though, is not only of enacting an adequate legal framework. It is, mainly, a problem of educating European societies at large, in order not to tolerate any longer behaviours and attitudes of some of their members that render such forms of exploitation lucrative for the perpetrators. A society that is fully aware of what is happening within itself and does not react, is an accessory to the crime.

**iv. Statement by Ms Ch. Moukiou, representing GNCHR at the meeting on Human Rights Education of NHRI, held in Berlin, 3-4.12.2004**

**HUMAN RIGHTS' EDUCATION AS AN INSTITUTION'S GUARANTEE FOR HUMAN RIGHTS PROTECTION  
The Greek approach in the scope of the International and the European Law**

Knowledge of human rights is a prerequisite for individuals and groups so that they can reasonably expect and demand respect for their rights and freedoms.<sup>1</sup> The best way to disseminate that knowledge is to make it part of the official education given to young or elder people, so that human rights' protection and promotion may become a part of a society's culture and educational tradition, preventing any form of human rights' abuse.

After the Vienna Declaration of 1993 and the Programme of Action undertaken by the World Conference of Human Rights<sup>2</sup> and the proclamation of the 1995-2004 as the United Nations Decade for Human Rights Teaching, the substantive provisions in the human rights instruments have attracted increased attention.

But the State's role in human rights teaching remains dominant, not only because in most countries education remains a State's mission,<sup>3</sup> but also, because the mainstreaming of the content and the aims of education is always determined by the State or by Bodies subjected to its control.

**A. THE RIGHT TO EDUCATION AS AN INSTITUTION'S GUARANTEE FOR HUMAN RIGHTS' PROTECTION**

This State's obligation to provide for an educational system stems directly not only from the international, European and national rules of hard or soft law protecting human rights but, also from the protection of the right to

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<sup>1</sup> ALFREDSSON G., *The right to Human Right Education*, in: EIDE A./KRAUSE C./ROSAS A., *Economic, Social and Cultural Rights, A textbook*, 2nd Ed., Martinus Nijhoff Publishers, Dordrecht/Boston/London., p. 273.

<sup>2</sup> *Vienna Declaration and Programme of Action*, UN doc.A/CONF.157/23, Part II, para.79. For the text, see NOWAK M. (ed.), *World Conference on Human Rights: The Contribution of NGOs, Reports and Documents*, 1994, p. 168.

<sup>3</sup> ALSTON P., (ed.), *The United Nations and Human Rights: A Critical Appraisal*, 1992, pp.473-508. EIDE A. *Economic, Social and Cultural Rights as Human Rights*, in: EIDE A./KRAUSE C./ROSAS A., *Economic, Social and Cultural Rights*, op.cit., p.9 ss., FROWEIN in: FROWEIN/PEUKURT, *EMRK-Kommentar*, 1985, Art.2,1 ZP Rdnr. 2, S. 283, f, DERS, *Wirtschaftliche und Soziale Rechte in der Rechtsprechung des Strassburger Organe*, in: *Aspects of the Protection of Individual and Social Rights*, Marangopoulos Foundation for Human Rights, "Hestia" publishers & Booksellers, Athens 1995, p. 217.

education itself. This latter is protected, on an international level, by the article 26 of the Universal Declaration of Human Rights of 1948<sup>4</sup> and the article 13 of the International Covenant on Economic, Social and Cultural Rights of 1966<sup>5</sup>, as well as on a European level, by article 1 of the First Additional Protocol to the European Convention of Human Rights and Fundamental Freedoms of 1950<sup>6</sup> (as amended by Protocol N. 11).

These two levels do not provide exactly for the same protection of the right to education. The international rules of law are based on the social conception of this right, though the European Convention focuses on its civil aspect.

**A.1. The "human-social" approach of the international protection: the establishment of a right to human rights education**

**A.1.1** In that frame, on the level of soft international law, the International Declaration of Human Rights<sup>7</sup>, declares that the right to education is inextricably related to human rights' respect and protection, to tolerance, understanding and friendship. Thus, in the second alinea of its article 26 stipulates that: *"Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace"*.

<sup>4</sup> "1. Everyone has a right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. ...2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace".

<sup>5</sup> "1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect of human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations of the maintenance of peace".

<sup>6</sup> Article 2: "No person shall be denied the right to education. In the exercise of and functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions".

<sup>7</sup> It has to be noticed that the U.N. Declaration of Human Rights, although being considered as international soft law, cannot be regarded as having merely a historical significance. On the contrary, it has its own importance, especially for States that are not yet parties of the International Covenants. Moreover this Universal Declaration is also given prominence in, among others, the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights on 25 June 1992 (S. above, note 2).

According to the U.N. Declaration, education is only the education aiming at human rights' and fundamental freedoms' protection and promotion, in the frame of their universal protection. Otherwise, there is no education at all. Or, it is an education not protected by international law. Because, this latter concerns exclusively "human" education, meaning not only that the persons entitled to it are *all* human beings, but, also, that the content and the target of this education are *all* human beings. Human rights' protection is inherent in any kind of education.

On the contrary, the "inhuman" education, meaning the education, the content and the purpose of which is not the protection and the promotion of human rights and fundamental freedoms, is indifferent to international law. So, no one can defend its right to be educated how to kill or how to violate and exploit a woman or a child. Vice-versa, no States Parties can take measures providing for teaching its citizens how to kill, to violate, to exploit and, generally, not respect the others.

Thus, the right to education is considered both in a universal and a human approach. Its "universal" approach consists in the fact that it is an essential part of the human rights' protection universal system and is inextricably connected with the welfare of every human society. Therefore, it cannot be protected as a civil right. It has to be a social right. The "human" approach consists in the fact that the education is internationally protected only if its content and its goal are the protection and promotion of human rights and fundamental freedoms.

So, even if the article 26 alinea 2 of the Universal Declaration of Human Rights had not explicitly provided for this "universal" and "human" character of the education to be granted, one could have assumed the same conclusion by the interpretation of the alinea 1 of the article 26 of the Declaration as a systemic part of all its articles, globally protecting human rights and fundamental freedoms and aiming exclusively at it. In the scope of the Universal Declaration no other meaning could be attributed to the term education. Its "universalisation" and its "humanization" are inextricably related to the rest of the Declarations' articles and derive directly from them.

**A.1.2.** Moreover, on the level of hard international law, the International Covenant of Economic, Social and Cultural Rights,<sup>8</sup> which is international hard law binding all States Parties,<sup>9</sup> contains similar rules aiming at the same

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<sup>8</sup> *Annex to General Assembly Resolution 2000 A (XXI) of 16 December 1966, U.N. doc. A/6316 (1966).*

<sup>9</sup> *Greece has ratified the International Covenant of Economic, Social and Cultural Rights by Law n. 1532/1985 (Official Journal A' 25). So, since 1985, the stipulations of this Covenant are binding rules of law, being part of the Greek legal order and having superior typical legal force than ordinary laws voted by Greek Parliament, by force of article 28 alinea 1 of the Greek Constitution.*

direction of "universalisation" and "humanization" of the right to education. So, in its article 13 alinea 1 it is provided that the member States: *"agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect of human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations of the maintenance of peace"*. Similar stipulations can also be found in the article 7 of the 1966 International Convention on the Elimination of All Forms of Racial Discrimination (CERD),<sup>10</sup> the ILO Conventions<sup>11</sup> and other international conventions, such as article 29 (1) of the 1989 Convention on the Rights of the Child.<sup>12</sup> They all reflect the universal and human content of education in any part of this world and they clearly protect a "right to human rights education" on an international level.

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<sup>10</sup> U.N. General Assembly Resolution 2106 (XX) of 21 December 1965; it entered into force on 4 January 1969. In its article 7 it is provided that: *"States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration of Human Rights, the United Nations Declaration on the Elimination of All forms of Racial Discrimination, and this Convention"*. Moreover, article 8 of the 1963 Declaration on the Elimination of All Forms of Racial Discrimination (General Assembly Resolution 1964 (XVIII), 20 November 1963) and the 1978 UNESCO Declaration on Race and Racial Prejudice (adopted by the General Conference of UNESCO at its 29th session, 27 November 1978) contain similar provisions.

<sup>11</sup> ILO Convention (N. 111) concerning Discrimination in Respect of Employment and Occupation of 1960 provides, in article 3 (b), that Member States undertake *"to promote such educational programmes as may be calculated to secure the acceptance and observance"* of national policies aimed at equality of opportunities and treatment in the work place. ILO Convention (N. 169) concerning Indigenous and Tribal Peoples in Independent Countries of 1989 stipulates in article 31 that *"Educational measures shall be taken among all sections of the national community, and particularly among those that are in most direct contact with the peoples concerned, with the object of eliminating prejudices that they may harbour in respect of these peoples. To this end, efforts shall be made to ensure that history textbooks and other educational materials provide a fair, accurate and informative portrayal of the societies and cultures of these peoples"*.

<sup>12</sup> Adopted by the General Assembly Resolution 44/25 without vote on 20 November 1989. U.N.doc.A/44/49 (1989).

## **A.2. The "individualistic-civil" approach of the European protection: the contest of a right to human rights education**

**A.2.1.** On the contrary, the European approach is obviously much more individualistic. The article 2 of the 1st Protocol of the European Convention on Human Rights, as amended by Protocol N. 11, only provides for the right to education, without any explicit "human" approach. It points out only the parents' right to opt for their children's' education in conformity with their own religious and philosophical convictions: "*No person shall be denied the right to education. In the exercise of any functions which it assumes in relation and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions*".

Thus, the European approach of the right to education is more oriented towards the guarantee of the individual right to thought, conscience and religion protected by the article 9 of the European Convention, than to the protection of the right to life, the right to liberty and security, protected by articles 2 and 7 of the same Convention and the prohibition of torture, of slavery and forced labor pronounced by its articles 3 & 4.

Two interpretations are possible: Whether the "human" character of the education is indifferent to European Human Rights Law, or it is self-understood.

The first interpretation must be *a priori* rejected as contrary to international law. Although there is no hierarchical relationship between the International Conventions -and Declarations- and the European Convention on Human Rights, it has to be accepted that the second one cannot encompass stipulations contraries to International Law, because, the European Convention being a regional convention for the protection of human rights, though Covenant of Economic, Social and Cultural Right an International one, the interdependence of all human rights, both, at the domestic and international level, is today generally recognized.<sup>13</sup> So, the European Convention must stay in harmony with all international rules protecting human rights, as rules of hard international law. We could even argue in favor of the same approach concerning the international soft law rules protecting human rights, because, logically, a different interpretation could lead to the inefficiency of the whole European Convention, conceived as a full system for human rights protection.

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<sup>13</sup> S. NOWAK MANFRED, *The Interrelationship between the Covenant on Civil and Political Rights and the European Convention on Human Rights*, in: *Aspects of the Protection of Individual and Social Rights*, Marangopoulos Foundation for Human Rights, "Hestia" Publishers & Booksellers, Athens 1995, p. 132. (the author adopts a similar approach concerning the interdependence between the ICCPR and the ECHR).

The second interpretation is the one we must opt for, for two reasons: Firstly, if we assumed that the right to education guaranteed by the European Convention of Human Rights concerns every kind of education, despite its possible "inhuman" content and aim, then we would conclude to a contradiction of the articles of the Convention itself. Yet, such contradictions are not conceived in the frame of a single European Convention. Moreover, we must accept that the European Convention must stay in harmony with every rule of international law, because, otherwise, European Council could be rejected by international community both on institutional and ruling level. So, the European Council must not contain provision contraries to international law, both hard and soft one.

Besides, these are the reasons explaining the fact the Universal Declaration of Human Rights is explicitly mentioned in the Preamble of the European Convention of Human Rights. The signatory Governments of the Council of Europe have agreed on the stipulations of the Convention having considered, first of all, "*the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10th December*" and that "*this Declaration aims at securing the universal and effective recognition and observance of the Rights therein declared*".

So, the text of the European Convention protecting the right to education implies the education as it is guaranteed by the Universal Declaration of Human Rights and the International Covenant of Economic, Social and Cultural Rights, that is, the education the content and the aim of which is the protection and the promotion of human rights and fundamental freedoms. The fact that the article 2 of the 1st Protocol of the Convention does not mention it clearly and that it is confined in stressing out the parents' liberty to choose an education for their children, is irrelevant. According to our opinion, the elliptic or restrictive writing of the article 2 of the 1 Protocol of the European Convention is due to the fact that the right to parents' liberty to choose the education of their children according to their own convictions is regulated not only as a component of freedom of religion and belief, but also as a limitation against totalitarian tendencies and religious prejudices of state education that is, in the framework of the right to education.

Finally, the necessary unification between the member states of the European Convention, at which this Convention aims,<sup>14</sup> and the main method by which that aim is to be pursued, that is the maintenance and further realization of human rights and fundamental freedoms,<sup>15</sup> leaves no doubt about the fact that the protection of the right to education only refers to the

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<sup>14</sup> See the Preamble of the European Convention of Human Rights: "*Considering that the aim of the Council of Europe is the achievement of greater unity between its members and that one of the methods by which that aim is to be pursued is the maintenance and further realization of human rights and fundamental freedoms*".

<sup>15</sup> *Ibid.*

education which stands in conformity with the Universal Declaration of Human Rights and the International Covenant of Economic, Social and Cultural Rights, provided, of course, that they are States Parties of this Covenant.

**A.2.2.** In this direction, the European Charter of Human Rights in art. II-14 remains close to the European Convention of Human Rights protecting the right of parents to opt for their child's education according to their own beliefs and convictions.<sup>16</sup> Yet, we must draw our attention to the fact that the jurisprudence of the European Court of Human Rights in Strasbourg has already adopted a large interpretation of article 2 of the 1st Protocol of the European Convention of Human Rights.<sup>17</sup> As a result, the absolute respect of the parents' right to choose a proper education for their children can be bent in cases social components of an educational system must be taken into account by the State. So, the jurisprudential evolution of the regional system of human rights protection, that is the ECHR, tends to its fruitful osmosis with the international system of their protection, so that the whole system should function in favor of the people who can ground their right to human rights education based on both international and regional documents.

### **A.3. The synthesis of the social and civil approach: The right to a human rights education as a constitutional and international guarantee for human rights protection**

Finally, on a national level, article 16 alinea 1 of the Greek Constitution of 1975/1986/2001 sets the principle that: "*Art and science, research and teaching are free. Their development and promotion constitutes an obligation of the State*". Also, alinea 4 of the same article provides for: "*the free education of all Greek citizens in all ranks of education*". According to these provisions of the Greek Constitution the right to education is protected as a civil as well as a social right (*status negativus + status positivus*).

Moreover, Greek constitution, in its article 16 alinea 2, explicitly provides for the right to education, being considered as a social right of Greek citizens and confines its aims in a very restrictive way: "*Education is a basic mission of the*

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<sup>16</sup> Art. II-14 of the European Charter of Human Rights in its alinea 1 provides that: "Every person has the right to education and to the access to professional and continuous formation" and in its alinea 3 that: "The freedom of establishing educational institutions with respect of the democratic principles as well as the parents' right to secure their children's education and formation according to their own religious, philosophical and educational convictions, are being respected according to the national legislations ruling their exercise".

<sup>17</sup> See case of *Kjeldse, Busk Madsen and Pedersen*, EGMR 23 (1976), S. 26.

*State and aims at the Greek's moral, spiritual, professional and physical training, at the development of their national and religious consciousness and their formation as free and responsible citizens".* This provision concerns less the education as a philosophical notion or a complex social function, than its organized and scheduled approach. It is considered by scholars not as a real, binding, rule of constitutional law, but as a residue of the past, which has been incorporated in the Constitution only in respect for Greek-Christian tradition. So, State's mission to pursue the above-mentioned constitutional goals of education is only a *de minimis* States' obligation, not compulsory for every rank of education and for the totality of the school program.

So, this constitutional stipulation has to be interpreted "in the light" of the international and European protection of the right to education.<sup>18</sup> The former strictly bounds every State about the content and the aim of their education. The latter attributes to this right a more individualistic approach with the latent tendency to recognize a social and human concept of the education. So, the right to education must not be considered just as a citizen's right but as a universal, "human" right, which is simultaneously a precondition and an effect of human rights' and fundamental freedom's real and effective protection. It is, therefore, their *institution's guarantee*<sup>19</sup> tending to the protection of all human rights, on both international and domestic level. That is, an institution's guarantee implicitly provided by the Constitution and explicitly protected by international law, which is the "hermetic criterion" for the interpretation of all domestic provisions protecting human rights. This legal nature of human rights education as an institution's guarantee for the protection of all human rights determines the way human rights education should be realized in the frame of State's educational system: *it should be a mainstreaming of it and not a separate discipline in the curriculum, because it is a general guarantee for human rights protection and, therefore, should "penetrate" every class and every rank of education.*

<sup>18</sup> This interpretation is also boosted by the fact that Greek government has withdrawn the reserves under which had ratified the ECHR in 1974, concerning the interpretation of the phrase "philosophical convictions", according to the Greek rules in valid, as well as the restriction of the State's obligation, stemmed from the second al. of article 2 of the ECHR, in conformity to Greek provisions about efficient teaching and education and the need to avoid excessive public expenses. The first reserve was withdrawn by the Announcement of the Minister of External Affairs of 11/21/ March 1985 (Official Journal A' 50) and the second on the 24th of August 1979 (S. <http://conventions.coe.int/>).

<sup>19</sup> The term of institution's guarantee has been developed by German theory of constitutional law and means that a constitutional guarantee aims at the protection of civil rights protected by the Constitution, although the term institutional guarantee refers to a constitutional guarantee which tends to protect the efficiency of State's institutions. See, KLEIN, *Institutionelle Garantien und Rechtsinstitutsgarantien*, 1934, S. 161 ff.

## **B. MEASURES ADOPTED OR BEING ADOPTED IN GREECE IN THE FIELD OF HUMAN RIGHTS EDUCATION AS A GUARANTEE FOR HUMAN RIGHTS PROTECTION**

### **B.1. The actual situation of human rights' education in Greece**

Greece is a transit country. Very recently it started to be sensitive to the entrance of aliens in its soil. Although Human Rights Education is not explicitly provided in our Constitution, it has always been self-understood in the frame on the general constitutional protection of education.

Yet, nowadays, new necessities have appeared urging for reconsideration of our educational structures and of the global aim of our educational system. Three main obstacles are to be overcome: Firstly, the unequal opportunities and discrimination against persons not being Greek citizens are often exercised or tolerated in the educational, cultural, economic, social and political life of Greek society. Secondly, ignorance is certainly a major reason that causes phenomena of racial, ethnic and religious discrimination. Thirdly, the arguments in favor of language education have to a large extent the same justification as those concerning human rights education, namely the promotion of tolerance and understanding between majorities and minorities. The contribution to language education, to cross-cultural learning and peaceful cohabitation on the basis of equal rights has repeatedly been emphasized.

The first obstacle, concerning the inequality of opportunities, has already been faced by the Greek Government by a *contra legem* interpretation and application of the art. 16 of the Greek Constitution. Although this constitutional provision explicitly mentions education provided to "Greek citizens", in practice, all minors, whose families legally stay in Greece, are accepted in State schools, irrespective of the citizenship of their parents.

The second problem concerning ignorance, is being solved by diffusing information to all groups of persons, whose rights are threatened by their lack of education. The first initiative was taken by the private sector, especially NGOs. Now, it is the State's time to undertake its role in order to provide information about history, languages and cultures of different groups of people. Vice versa, all groups of people should be informed not only about their minority rights but also about the legal status of majority people.

The third obstacle, referring to the language education, has not been solved yet, as every lesson is taught in the Greek language. Nevertheless, it is broadly recognized that in addition to the preservation and use of minority languages and to the international and regional human rights standards established in this regard, the knowledge of national languages by non Greek citizens is a necessary tool for political participation, social contact and other activities leading to their integration in the Greek society.

**a) HR Education in the primary and secondary education.**

In that general frame, the Greek state has undertaken the obligation of introducing human rights teaching in the first two levels of education. So, human rights education is actually a part of civic education in the two higher classes of primary school and in the two lower classes of the secondary school (gymnasium). Moreover, Human Rights are also inserted in the special programs of Olympic Education (both at the primary and secondary education) aiming at teaching children the notion of "good competing", of equality, of non discrimination due to sex, race, religious or philosophical conviction and of non-xenophobia, through simple gymnastics and explanation of the Olympic Ideal. Finally, there are special classes concerning the teaching of the E.U. Convention of Human Rights, called "Programmes of Action", which are based on material prepared by the European Council and involve many practical activities and hypothetical cases to be solved.

**b) HR Education in the High Education**

As far as higher education is concerned, Human Rights Law is a special compulsory course of Constitutional Law and an optional course of International Law in all Law Schools of Greece. Moreover, Human Rights Law is taught in Military Academies, yet, without any direct practical effect, because teaching has a more legal and a less practical orientation. Recently, the Greek National Commission for Human Rights has taken the initiative to issue a booklet called "Guidelines for the Policeman"<sup>20</sup> based on the U.N. texts concerning the protection of human rights by police authorities. This booklet has been distributed to every police department in Greece and has led to the issuance of the Presidential Decree entitled "Code of Police Ethics",<sup>21</sup> which is the first initiative officially taken by the Ministry of Public Order in the direction of including human rights' respect and protection in the way policemen execute their tasks.

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<sup>20</sup> See, *Annual Report of the Greek NCHR, 2003, Summary in English.*

<sup>21</sup> *Presidential Decree n. 254/2004 (Official Journal A; 238).*

## **B.2. The projects about human rights' education in Greece in the frame of the E.U.**

### **a) Projects for the primary and the secondary education**

Yet, it is more than obvious that these initiatives, although indicating the right direction, are not adequate measures for the fulfillment of the State's obligation to grant an education, the content and the aim of which are the protection and promotion of human rights and fundamental freedoms, as their mainstreaming. This is the reason why many projects are going to be undertaken by the Greek Ministry of National Education,<sup>22</sup> with the collaboration of the E.U., for the amelioration of human rights teaching in Greek schools.

First, is the Program called "*Mousses*", the purpose of which is the promotion of the gender equality through Education and Civilization. The Ministry of National Education has acknowledged that the promotion of gender equality has become one of the major axes of strategy of the European and national social policy.

Second, is the Program "*Kallipatira*" concerning Equality in Society, based on the need of pupils' and tutors' active participation in programs promoting equality, in general, and aiming at the equal participation and representation of men and women in every field of social activity, such as economy, decision making, social and cultural life. Through these activities, an effort will be made to analyze the structure of actual social issues, such as the multi-cultural character of the societies, social inequalities, xenophobia, racism, Olympic ideals and other issues, via new approaches and tutoring methodologies, which will demonstrate boys' and girls' interest as future citizens in multi-cultural and international societies.

Third, *Special Activities* are going to take place in order to make pupils feel friendly with people coming from other countries or belonging to different cultures, in order to realize that human rights are a way of living and not just a discipline to learn by heart.

### **b) Projects that could involve the role of the Greek NCHR**

The fulfillment of these projects necessitates the participation of more than one Authorities, in order to achieve the best preparation and coordination needed. In that frame, the Greek National Commission for Human Rights

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<sup>22</sup> Based on information given to the NCHR orally by the representative of the Minister of National Education to NCHR.

could undertake a substantive role based on its mandate including "The cultivation of respect for human rights in the context of the national educational system"<sup>23</sup>. Thus, NCHR could survey the editing of Books, could take care of organizing seminars for tutors training in human rights, could organize a Human Rights Documentation Centre, as provided by law explicitly, and, finally, could render opinions about the contents that human rights education should have in the Greek society, according to the international and European protection of the right to education and the establishment of the human rights education as an institution's guarantee for human rights protection.

### **Conclusion**

Concluding, one may easily understand the great importance of human rights education in modern societies. Human rights education is an institution's guarantee for human rights protection, implemented by international law. All institutions and rules of law of the national legal orders should be meet these international standards, thus, affirming the undoubted interdependence of all human rights, both on the domestic and the international level. In that frame, Greek Constitution has been interpreted "in light" of the international protection of the right to human rights education, leading to the recognition of human rights education as an essential part of Greek education. The initiatives undertaken by Greek Government, the projects that are going to be realized, are only the first steps towards the creation of a system of "human education", that is, an education, in the frame of which human rights teaching would be the mainstreaming in every single class of every rank of education, in order to build up our future citizens with the full respect of human rights and create a society of humanity, understanding, friendship and tolerance for every human being.

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<sup>23</sup> Article 6 of Law 2667/1998. It has to be noted that the Greek NCHR has been established according to the Paris Principles, adopted by the United Nations and the Council of Europe, and has substantive competences of issuing consultative opinions to the Government, not including the investigation of individual cases, which is an exclusive competence of the Greek Ombudsman (before appealing to the Courts).

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**v. Observations of the GNCHR regarding the transformation of the European Monitoring Centre on Racism and Xenophobia (EUMC) into a Fundamental Rights Agency of the European Union**

**THE TRANSFORMATION OF THE EUMC INTO A FUNDAMENTAL RIGHTS AGENCY**

The Greek National Commission for Human Rights participates with particular interest in the discussions on the creation of a Fundamental Rights Agency. The following remarks have been formulated, in the light of the debate that took place during the Public Hearing on the Agency, held in Brussels on 25 January 2005. Our remarks fall within the spirit and lines of the document aggregating the views of the European Group of NHRI regarding the issue examined; they are, therefore, to be read in conjunction with that document.

**ISSUES TO BE EXAMINED**

The Agency-to-be comes as an addition to the set of European bodies already in place (such as the Court of Justice, the Ombudsman, the Parliament etc) which are mandated to perform the judicial and political control with regard to the protection of human rights. This is a crucial element that needs to be taken into consideration when addressing the issue of the effectiveness and the competencies of the new Agency, which should be viewed as an important element for the development of a real human rights culture in Europe and the strengthening of the European Citizenship towards the eventual creation of a European *Demos*, while these very rights are under strong pressure, because of the terrorist threat and the related preventive and oppressive measures.

***The extent of the mandate***

1. The Agency should have a large thematic area of work, covering the maximum remit under the EC/EU legal order, i.e. covering all three pillars of the EU, in consistency with Article II-111 of the future Constitution and extending beyond the issues falling within the European level *per se* (EU policies, acts of European bodies and/or member states implementing European law). The national level of action should be included inasmuch as it would be necessary for the implementation of Article 7 of the EU Treaty.

**The list of rights**

2. The competence of the Agency should extend over the totality of rights included in the EU Charter of Fundamental Rights and taking account of the "acquis communautaire", filling the gap between principle and practice in respect of human rights in Europe. Special emphasis on combating racism should be, nevertheless, observed, thus utilising the expertise of seven years of operation of the EUMC, as well as in result of the explicit commitment of the Heads of EU member States to do so. In addition, and within the framework of the on-going programme of The Hague on the enhancement of co-operation on Justice and Internal Affairs (ref. to Conclusions of European Council, Brussels, November 4/5, 2004), the need for addressing the outbreak of racist phenomena in the EU member States should be underlined. In any event, the Agency should be empowered to define every year its own priority themes.

**Should the competence of control of the Agency extend to third countries?**

3. The Agency would better confine itself to the EU and its member States (including the candidate countries), unless otherwise agreed with a particular country and on the basis of a bilateral special agreement. The geographical scope of the Agency should naturally cover 2nd Pillar activities in third countries.

**Competencies/activities**

4. The data collection on fundamental rights is maintained (while emphasis is given to racism), as well as the conduct of studies and analyses. This should be performed in co-operation with: the Council of Europe (a representative of ECRI is already *ex officio* participating to the Executive body of the EUMC), the National Human Rights Institutions of member States (they should be represented *ex officio* to the Executive body of the Agency), the network of Independent Experts of the European Commission, as well as the RAXEN network, which is operating within the framework of the EUMC. The example of ECRI's relation with the EUMC should guide future relations between the Union and the Council of Europe. The above co-operation scheme will ensure that the data collected and analysed are checked against reality, thus capitalising on the relevant EU policies (in particular, The Hague programme on the enhancement of co-operation on Justice and Internal Affairs, mentioned above). Furthermore it will avoid overlapping competencies which could lead to the weakening of the overall protection of human rights in Europe by undermining legal certainty and favoring forum shopping.

5. The Agency should also have the competency to submit expert opinions and analyses to the member States, and to perform evaluations and follow-up on the above. This is a competency, which is similar to the one currently carried out by the National Human Rights Institutions, on issues falling within the national sphere of activities and/or policies.
6. It is proposed that the Agency disseminates all data, analyses and proposals to the civil society. This will be beneficial to both ends, as the civil society will be able to utilise the output of the Agency's work, while the latter will be able to take advantage of the constructive criticism of the civil society.
7. Last, but not least, the possibility of providing the Agency with the power to intervene as *amicus curiae* before European jurisdictions should be examined, as well as the right to instigate public interest litigation before the European jurisdictions.

***Structure/independence***

8. The Paris Principles call for a pluralistic composition of every independent human rights institution. The independence of the Agency should be ensured. This could be achieved through reinforcing the existing requirements for membership to the Managing Board of the EUMC. In addition to the representatives of the European Parliament, the EU Commission and ECRI (all of which, are already participating *ex officio* to the Executive body of the EUMC), it is proposed that the 25 representatives of the member states be nominated by their respective NCHR among their members or, in case there is no NCHR as yet in certain member states, by an equivalent independent institution. Participation in the Article 29 Working Party of Directive 95/46/EC on data protection offers an appropriate example. Alternatively, a representative of the European group of National Human Rights Institutions should be participating *ex officio*. It is not recommended that any additional body is created, beyond the existing ones (i.e. the Managing Board, the Executive body, and the Director).

Athens, January 2005

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**b) GNCHR contributions to the drafting and implementation of International texts**

**i. List of issues submitted by the GNCHR to the Committee Against Torture on the implementation of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment in Greece**

The Greek National Commission for Human Rights (NCHR) having considered the observations of the competent international and European bodies, the responses of the Greek authorities to the international Committees as well as the in situ inspections carried out by its members and, especially, by its President, expresses its satisfaction for the partial compliance to the aforementioned observations but it also expresses its anxiety about the general situation of detention conditions in Greece. This concern is mainly due to the fact that there is a considerable divergence between the applicable legislation and the prevailing detention conditions. The Greek report does not contain adequate information on the implementation of the applicable legislation and, therefore, does not present the real problems of detention conditions in Greece.

As a general comment, the Greek National Commission for Human Rights draws the attention of the UN Committee against Torture to the fact that in Greece only a few cases of "torture", as phenomena of physical or mental violence against detainees, have been officially registered, due to the fact that these cases are very rarely made public. In this regard, the NCHR has already addressed a number of recommendations to the Greek Government, which could be summarized as follows.

**General issues**

1. The competent Greek authorities should comply fully with the recommendations of the competent international and European organs on the improvement of detention conditions in Greece.
2. The competent Greek authorities should observe faithfully the deadlines for the submission of periodical reports to the competent international organ (Committee against Torture, UNCAT), in accordance with the relevant UN Convention, ratified by Greece.
3. As to the co-operation of the competent Greek authorities with the European Committee for the Prevention of Torture and UNCAT, the introduction of effective inter-ministerial co-ordination is necessary, so as to ensure that these organs have a clear picture of the prevailing situation.
4. The NCHR has requested that a special order be issued by the competent state authorities and communicated to all detention places

permitting NCHR members' unobstructed entry in order to examine the situation in detention places. Such entry has been granted to the Greek Ombudsman and NGO's pursuant to the European Commissioner for Human Rights' Recommendation<sup>1</sup>

5. The NCHR has also proposed that at least once a week the competent Commanding Officer of the Police Department, Supervisor of a detention place, should receive in audience any detained person, who wants to submit a request or a complaint etc.
6. The NCHR has also submitted proposals concerning the reception of asylum seekers, which must be immediately applied, because it has been shown that such persons are detained as illegal immigrants, though it is very possible they are legal immigrants, yet deprived of the possibility to submit a relevant request because of their lack of knowledge about the legislation and the language or because of their financial inability to pay the attorney's fees. Often, attorneys submit requests for asylum on the very last day before the three months' period of detention has expired. As a result, the detained person remains in detention until the completion of the whole procedure, which is quite long, and is obliged to pay high legal fees despite his precarious financial situation and regardless of the quality of the services rendered by the attorney.
7. The NCHR points out that there are, in principle, positive provisions in the Reformatory Code (Law 2776/1999). However, it is desirable that the manner in which the relevant provisions of Law 2776/1999 have been implemented up to the present and its practical effects on the conditions of detention be made clear, given the recent (2001) adverse judgments against Greece delivered by the European Court of Human Rights in the *Dougoz*<sup>2</sup> and *Peers*<sup>3</sup> cases.
8. The Greek Police (EL.AS) should consistently monitor cases of censure of police officers for abuse or ill-treatment of citizens.

### **Overcrowding of Detention Centres**

1. It is essential that the construction of new detention buildings, in strict observance of the relevant international and European standards, should start immediately, as the overcrowding of Greek prisons has not been solved yet.<sup>4</sup> The significant growth of detained persons in

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<sup>1</sup> *CommDH/Rec (2001) 1, Strasbourg, 19.9.2001.*

<sup>2</sup> *Judgment of the EurCHR of 6 March 2001. Also see NCHR, Annual Report, 2001, p. 149.*

<sup>3</sup> *Judgment of the EurCHR of 19 April 2001.*

<sup>4</sup> *See Report of the European Parliament of 25th February 2004 (Committee on Citizen's Freedoms and Rights, Justice and Home Affairs, Rapporteur, Maurizio Turco), p.11.*

detention centres, especially in Athens (1897 detained persons for 640 places) - or, in other large cities, for example Larissa (728 detained persons for 363 places), Patras (706 detained persons for 343 places) and Thessaloniki (620 detained persons for 370 places),<sup>5</sup> and their resulting malfunctioning, is mainly due to the fact that many of the detained persons insist on staying in the detention centres of Athens or other large cities using the pretext of family contacts, although the real reason is the contact with their business' operation or the drugs provision.

2. On the contrary, there are vacant places in the detention centres in rural areas, which were fully successful in the past (Agia/ Kassandra), as well as in the detention centre for minors/juveniles in Kassaveteia. The same is true, to a large extent, for the Detention Centre of the Olive Plantation of Thiva (27 detained persons, 300 places), which recently became operative as a model detention centre at the European level. This phenomenon is basically due to the aforementioned reluctance of detained persons, who are drug users, to be locked away from large cities.
3. The program of construction of new detention centres will lead to the dispersement of detained persons throughout Greece and will keep them away from the capital and other large cities, where they could constantly be in contact with their illegal business' operations and their drugs suppliers.
4. Referring to this program, the budget of which is estimated at about 386 million euros, the NCHR would like to draw the attention to the imperative need of construction of additional detention centres and to the improvement of the existing ones (e.g. the Detention Centres of Kassaveteia, of Corfu and the detention centres in rural areas), so that the neighbouring populations' protest would stop.

### **Separation of prisoners**

1. The NCHR stress the need for strict separation of juvenile from adult detainees, as well as the need for separation of juvenile detainees, who are drugs users, from non-users.<sup>6</sup>
2. The NCHR is in agreement with the opinions of the Public Prosecutors of the Appeal Courts and of the Court of Cassation (Areios Pagos) on

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<sup>5</sup> *Statistics of the Greek Ministry of Justice of January 2003.*

<sup>6</sup> *See the report of the European Parliament, op.cit., p. 8-9.*

the detention of aliens after they have completed their sentence, where their expulsion is not feasible, in special detention or prison facilities, and calls upon the judicial authorities to take the appropriate action.

3. The NCHR considers there is an obvious need to devise a plan for regular and emergency co-operation between police stations and the public hospital nearest to the places of detention, given the serious lack of medical and paramedical staff in the places of detention.

4. It is also proposed that art. 48 of Law 2910/2001 on aliens (Official Journal of the Hellenic Republic Issue A' no. 91) should be immediately implemented. According to this article, special facilities for the detention of aliens facing administrative expulsion, which operate within the responsibility of the Region and are guarded by the Greek Police, are to be set up.<sup>7</sup>

5. There should be a new legislative regulation to ensure that the applications for asylum filed by detainees are examined as a matter of priority by the competent state authorities, as the NCHR had proposed in its observations on the draft Law 2910/2001.<sup>8</sup>

### **Information**

The NCHR believes that it desirable for the information leaflets issued on 24 October 2000 on the rights of the detainees and aliens to be expelled to be posted at prominent points in the centres of detention of aliens, as stipulated in the Order of the Directorate of Organization of the Command of the Greek Police and have in practice been used by the detainees.

### **Training - Legal aid**

1. It is essential that there should be more vigorous and constant training of the totality of the staff of the Ministry of Public Order responsible for the detention of individuals in Greece in all centres of detention without exception.

2. In connection with the training of police officers in human rights issues, in its communication of 26 March 2001 to the Minister of *Public Order, the 4th* Sub-commission of the National Commission for Human Rights (Promotion of Human Rights) drew his attention to the special importance of introducing a

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<sup>7</sup> See NCHR, *Annual Report 2002*, p. 264.

<sup>8</sup> See NCHR, *Annual Report, 2001*, p. 156.

special teaching unit in the Greek Police Academies, as well as the immediate need to strengthen and upgrade the Ministry's Training Directorate. It was also pointed out that the Minister himself should have the authority to modify the training program of the police officers during their courses as well as after their graduation in a program for further training.

3. Moreover, the NCHR in its Report of November 2001 to the competent ministries on the living conditions of the Roma community in Greece stressed in particular the need for the State to take all appropriate measures for the education and sensitization of the whole society, and particularly of public officials, so that the rights of Roma are not violated.

Nikolaos Klamaris  
President of the 1st Section of NCHR  
Professor, Athens University

Haritini Dipla  
President of the 5th Section of NCHR  
Ass. Professor, Athens University

Chryssoula Moukiou  
Legal Officer/NCHR

**ii. Observations of the GNCHR on the report of the Working Group of the Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities**

**OBSERVATIONS ON THE REPORT OF THE WORKING GROUP TO THE AD HOC COMMITTEE**

Athens, the 7th of May 2004

Dear Colleagues,

In general terms, the Greek National Commission for Human Rights adopts the general observations of the Irish homologue Commission.

Moreover, we would like to underline three points:

The first refers to the fact that, in the Draft preamble, there should be references to the Migrant Workers Convention and to international co-operation. The GNCHR has already issued an opinion dated the 12th of December 2002 proposing to the Greek State to accede to the ILO Conventions<sup>1</sup> and to the U.N. Convention<sup>2</sup> protecting migrant workers in accordance with the principle of universalism and of the spirit of art. 63 al. 3 & 4 of the EU Treaty aiming at the creation of a "migrant policy". In that respect, we agree that there must be a special protection for migrant workers with disabilities.

The second consists in the fact that in the draft article 2 (general principles) an additional paragraph should be included providing the principle of "effective exercise" of all handicapped persons' human rights. Otherwise, the Convention risks to be not 'self executing" and its ratification by the States Parties will be inadequate for the real protection of handicapped persons' human rights.

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<sup>1</sup> ILO Convention (n. 97) "Migration of Employment Convention (Revised)" 1949, and the Recommendation n. 86 "Migration for Employment Recommendation (Revised)" 1949 (<http://ilolex.ch>). ILO Convention (n. 143) "Migrant Workers (Supplementary provisions) Convention", 1975 and Recommendation N. 151 "Migrant Workers Recommendation" 1975 (<http://ilolex.ch>).

<sup>2</sup> The International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, of 1990.

The third point is related to the draft article 25 concerning the Monitoring. The stipulations of this draft article are not precise enough, thus jeopardizing the effectiveness of the whole Convention.<sup>3</sup> In that frame, the GNCHR is proposing the introduction of two level control bodies: The first should be an International Committee and the second a National one, as has been provided for in the Protocol to the Convention against Torture.

Yours faithfully,

**Haritini Dipla**

President of the 5th Section of NCHR  
Ass. Professor of the Athens University

**Chryssoula Moukiou**

Legal Officer of NCHR

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<sup>3</sup> *Besides, the footnote n. 113 of the Draft Convention mentions that the provisions of art. 25 have not been discussed in detail by the Working group.*

**iii. Response of the GNCHR to the National Institutions Unit of the UN Office of the High Commissioner for Human Rights, on activities contributing to the implementation of the Durban Declaration and Programme of Action, following the World Conference Against Racism (WCAR) in Durban/South Africa 2001**

11 June 2004

**The Greek National Commission for Human Rights**

The Greek National Commission for Human Rights (hereinafter, the NCHR) was founded by Law 2667/1998 and inaugurated on 10/1/2000, when it was first convened by the Prime Minister, and its President and two Vice-Presidents were elected.

NCHR is a statutory Human Rights institution having a consultative status with the Greek State on issues pertaining to human rights protection and promotion. Its creation emanated from the need to monitor developments regarding respect of human rights standards on the domestic and international levels, to inform the Greek public opinion on issues related to human rights and, above all, to provide guidance to the Greek State aimed at the establishment of a modern principled policy on human rights protection. NCHR was founded in accordance with the *Paris Principles*, adopted by the UN and the CoE.

Since its establishment, the President of the Greek NCHR has been Emer. Professor Alice Yotopoulos-Marangopoulos. Currently, its first Vice-President is Mr Nikos Frangakis, whereas Ms Angeliki Chrysohoidou-Argyropoulou is the second Vice-President.

**National Human Rights Institutions and the WCAR**

National Human Rights Institutions (NHRI) and other specialised agencies were accredited to the WCAR in accordance with art. 65 of the rules of procedure of the Conference. Fifty NHRI took advantage of their right to participate in the Conference. The Greek NCHR was among the institutions present.

Since the WCAR, NHRIs have been considerably active in follow-up initiatives. Activities relate to the review of national legislation for compliance with international norms regarding discrimination; the development of national action plans and national and local-level consultations on race; the strengthening of networks; the dissemination of information on race issues and human rights education; addressing racism on the Internet; and other WCAR-related issues.

### **The Greek context regarding the issue of racism and discrimination: facing the new challenge of a multicultural society**

In recent years Greece has been experiencing major changes in migration patterns. In the last decade and a half, it has become a country of immigration, as opposed to its traditional self-perception –as well as reality– of a country of emigration. These developments cast doubt on the continuing validity of the traditional view of Greece as a country with only one, relatively small and self-contained minority recognised as such, namely the Muslim minority in Western Thrace, which is mostly of Turkish origin, along with Pomak and Roma.<sup>1</sup>

Roma are an important ethnic group in Greece that has for a series of decades remained on the fringes of modern Greek society. Human rights violations affecting Roma in Greece span the whole spectrum of civil and social rights. The Greek state has only recently (late 1990s) started to show a particular concern for this disadvantaged ethnic group which is in dire need of urgent and effective affirmative, inter alia, action on the part of the Greek state.<sup>2</sup>

The reality is, however, that there are now other important minority groups, significant in size and which experience distinctive long-term problems and needs. With the inflow of large numbers of legal and illegal alien immigrants, particularly from neighbouring Balkan and Eastern European countries, Greece has ceased being a rather homogeneous society, as was the case until recently. The exacerbation of social prejudices which this new reality may entail, are considerable.<sup>3</sup>

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<sup>1</sup> EUMC, *Diversity and equality in Europe, Annual Report 2002: other than the Muslim population, the report notes the existence of numbers of Vlachs, Arvanites, Slavo-Macedonians, Albanians; and Jews. In addition, it notes the presence of numbers of Eastern Europeans. The list, though, is far from being exhaustive (and it doesn't pretend to be so).*

<sup>2</sup> *These remarks notwithstanding, it has to be noted that the issue of the position and status of Roma within the Greek social tissue is hotly debated; NCHR has been recently informed, by its member representing the Pan-Hellenic Federation of Greek Roma Associations, of the Declaration of Self-determination that has been adopted by the Federation in 2001: in this text, the official representatives of a considerable number of Roma associations, categorically state that they consider themselves as "a component of Hellenism indissolubly bound to it and that [they vigorously object] any different approach by any individual or entity".*

<sup>3</sup> ECRI: *Third report on Greece (adopted 5 Dec. 2003), [www.coe.int/ecri](http://www.coe.int/ecri)*

The Greek Ombudsman in his latest annual reports has stressed that “the most serious human rights violations keep affecting, as a rule, individuals belonging to marginal population groups such as, among others, alien economic immigrants ...and Roma...”. A particular immigrant group which has severely suffered from Greek mass media “demonisation”, and consequently by Greek public opinion at large, is that of Albanians, constituting, for more than a decade now, the majority of third country legal and illegal immigrants in Greece. Major areas where alien immigrants have been experiencing discrimination are employment and housing services.

Despite indications that the significance of these developments is recognised at the highest political level in Greece, and some welcome policy initiatives have been undertaken, it is open to question whether this perception is shared by public opinion as a whole; the latter still tends to perceive recognition of multiculturalism as a threat to national identity. This attitude may also be reflected, in certain instances, at the lower level of national and local administration.

### **The GNCHR and the Durban follow-up**

Since its establishment, the NCHR has placed issues of racism, discrimination and all abhorrent forms and manifestations, very high in its priority agenda. Within the context of implementing the Durban PoA, the NCHR has focused its attention on the latest forms of discrimination, which affect, in particular, immigrants, refugees and non-nationals and make them particularly vulnerable.

In this context, the Greek NCHR has performed several Durban follow-up activities. In concrete, it has initiated and/or implemented the following actions:

**1. *Participation to and organisation of conferences related to the subject of racism, racial discrimination, xenophobia and related intolerance; meetings with subject-related entities/bodies.***

- 1.1. At the international level, NCHR participated to the Sixth International Workshop for NHRI, held in Copenhagen/Denmark in April 2002. The workshop focused on the follow-up to the WCAR with discussions revolving around remedies, monitoring, advocacy and education, and it was organised by the OHCHR and the International Co-ordinating Committee of NHRI. The participating NHRI adopted the *Declaration*

of *Copenhagen*, which explicitly recognises the right of NHRIs to intervene and/or participate as *amici curiae* in courts where important human rights cases are tried.

- 1.2. NCHR also participated at the seminar organised by ECRI, addressed to national bodies specialised in the fight against racism and racial discrimination (Strasbourg, CoE, November 2003)
- 1.3. At the 59th session of the UN Commission on HR held in Geneva in April 2003, the Greek NCHR made a statement (under agenda item 18(b) "NHRIs and Regional Arrangements") on the subject of "The need for activation of the European NHRIs in the area of protection of immigrants and refugees in the context of the EU field of Justice and Home Affairs". It reiterated its position that the European States, in shaping a common policy and practice on immigration, should be inspired by a series of fundamental principles, including that of non-discrimination.
- 1.4. At the national level, NCHR hosted in Athens, soon after the Durban Conference itself (in November 2001), the second Conference of Mediterranean NHRI; the theme of the conference was, precisely, the implementation of the Plan of Action of the WCAR, in connection with the issues of immigration and asylum. The conference concluded with the adoption of the *Declaration of Athens*, stipulating, inter alia, the role of NHRI in overseeing the process of the implementation of the Durban Programme of Action at the national level, and in sustaining their efforts aimed at the adoption of concrete measures by the competent State authorities.
- 1.5. Moreover, NCHR has co-organised –along with the Migration Policy Group- a conference on the Application of European anti-discrimination legislation (directive 2000/43/EC), in Chalkida, on the Island of Evia, in April 2003. Fifty five experts representing both governmental and non-governmental organisations from five European countries attended the Conference: Germany, Greece, Ireland, Lithuania and Slovenia.
- 1.6. In addition, NCHR met with the ECRI committee visiting Greece (in view of the drafting of its third report on the country), at the request of the latter, in October 2003. NCHR, thus, had the opportunity to elaborate on its positions and initiatives regarding racism and discrimination issues

## **2. Initiatives, proposals and opinions regarding legislation and legal matters related to racism and discrimination**

- 2.1 Appeal to the Greek Foreign Minister for the ratification by Greece of the 12th Protocol (on anti-discrimination) to the European Convention

- on Human Rights (February 2002). To date, the Greek State has signed but not yet ratified the above-mentioned Protocol.
- 2.2 Proposals to the European Convention for the Constitutional Treaty of the European Union (May 2003): the ongoing drafting process of the Treaty is closely followed by the NCHR and additional comments and proposals are addressed to the competent authorities. NCHR submitted a series of reasoned proposals pertaining, inter alia, to the issue of entrenching –in the Constitution– of the proscription of all forms of discrimination.
  - 2.3 Comments on the draft Report of the Greek Foreign Ministry to the Committee of Ministers of the Council of Europe, on Racism, Intolerance and Xenophobia (22 October 2001): NCHR stressed, inter alia, that Greece should proceed to the ratification of the European Framework Convention for the Protection of National Minorities, as well as of the Protocol No 12 of ECHR on the prohibition of all forms of discrimination.
  - 2.4 Proposals for the modernisation of Greek law and practice regarding issues of racial discrimination (December 2001): in this report, NCHR underlined the major issues concerning racial equality in Greece already raised by competent UN and CoE organs and proposed that the government proceed to the overhaul of the relevant policy and legislation, taking into account the Directive 2000/43/EC. Moreover, it stressed the need for Greece to comply fully with the recommendations of the UN CERD and the CoE ECRI and proceed to the reform of the Greek anti-racist legislation and policy, with a view to living up to current international law and standards.
  - 2.5 Comments on and amendments to the Bill entitled “Application of the principle of equal treatment irrespective of racial or ethnic origin, religious or other beliefs, disability, age or sexual orientation” (transposition of EU Directives 2000/43/EC and 2000/78/EC (December 2003). The draft Bill moves in general in the right direction, promoting the effective transposition of the Directives by Greece and filling the serious lacunae of current Greek anti-racism legislation. However, there is a series of problematic points that need to be noted. Therefore, NCHR submitted to the competent Ministries a series of comments on and amendments to the above very significant Bill attempting to introduce into Greek law new standards of protection against discrimination. (N.B. In the meantime -in early 2005, by Law 3304/05-, the Directives were eventually incorporated into Greek national legislation).
  - 2.6 Issues relating to discrimination against alien workers with regard to their employment injury compensation (December 2002). NCHR recommended the abrogation of article 5 of Royal Decree of 24.07.1920

- and of Law 551/1915 which condition employment injury compensation to alien workers on the norm of reciprocity or the alien worker's residence in Greece, in violation of, inter alia, fundamental social rights provisions of the Greek Constitution and relevant provisions of the 1966 International Covenant on Economic, Social and Cultural Rights. With the same resolution NCHR also recommended the ratification by Greece of the 1964 Employment Injury Benefits Convention of ILO (No 121).
- 2.7 Issues regarding protection of Roma in Greece (November 2001): NCHR submitted to the competent Greek authorities its report on Roma in Greece proposing a long series of measures that Greece should adopt in order to meet the needs for the social and legal protection of this particularly vulnerable social group. The main issues of concern to NCHR have been the following: the de facto social marginalisation of the Roma; their housing conditions and access to adequate health services; the need to establish an education system tailored specifically on them; and the discrimination and violence against Roma by the local population and law enforcement personnel.
- 2.8 Comments on the Initial Report of Greece to the UN Committee on Economic, Social and Cultural Rights (September 2002): upon request of the Greek Foreign Ministry, NCHR pointed to a series of shortcomings of the report. Issues such as the inadequate Greek legal framework against racial or ethnic discrimination, or the inadequacy of the legal and institutional framework for the protection and integration of alien immigrants and refugees, were not sufficiently, if at all, tackled by the report. Furthermore, NCHR suggested that special reference is made to issues pertaining to the protection of Roma and aliens –especially women, victims of human trafficking.
- 2.9 The prevention of torture and other cruel, inhuman and degrading treatment or punishment and the accession and application by Greece of the Optional Protocol to the relevant United Nations Convention (2002) (17 December 2003): NCHR reminded the Greek State of the significant issue of protection of the rights of detained persons in Greece and especially of detainees who are mentally disabled, of alien detainees and of detainees belonging to minority groups, all of whom are especially vulnerable. As a consequence, NCHR stressed the particularly important role that the above Optional Protocol may well play in human rights protection and especially for the protection of detainees. NCHR underlined in particular the significance of the new Subcommittee on Prevention and of the independent National Preventive Mechanisms provided for by the Protocol. These organs, especially through their visits to places of detention and the relevant reports, have the potential to enhance the detention conditions and to

prevent detainees' ill treatment worldwide. As a consequence, NCHR called upon the Greek State to accede to the above Protocol and proceed to its effective implementation, especially through the independent National Preventive Mechanisms provided for by the Protocol.

### **3. Human Rights Education & Promotion**

- 3.1 In late 2002, an important study on Greek TV bulletins and the promotion and establishment by them of stereotypes and discrimination mechanisms (that the 4th Sub-Commission working on HR promotion, had previously commissioned to the Communication and Mass Media Department of the University of Athens), was widely publicised and debated at the Athens Journalist's Association. The research demonstrated the existence of a pattern of serious violations of HR by TV news bulletins, mainly committed by private TV channels. It also attested to the fact that TV news in Greece tend to arbitrarily categorise and stigmatise particular ethnic and social groups infringing upon their human dignity and flagrantly violating fundamental contemporary standards of HR protection, primarily the one on presumption of innocence.
- 3.2 Translation into Greek, publication and distribution of the Booklet on HR for the Police, entitled "International HR Standards for Law Enforcement: a pocket book for the police" (UNHCHR professional training series). In 2003 the 4th Sub-Commission (on HR Promotion) received the permission by the OHCHR to translate, publish and distribute the above booklet to all Greek Police, including the Police Academies. Amongst the HR standards stipulated in the booklet, are those related to adopting non-discriminative attitudes by the Greek police, when addressing the public and/or potential offenders. The police are often accused of the so-called "institutional racism". Therefore, the importance of the adoption of such tools, which contribute to changing the negative attitudes, cannot be overemphasised. Such preventive actions and strategies aimed at promoting behavioural changes are at the epicentre of NCHR's policy on HR education and awareness raising programme.
- 3.3 NCHR's 4th Sub-Commission developed a proposal for the production and screening of TV spots aiming at promoting respect for human rights. The very first spot –which is currently under production, after a long process of bureaucratic procedures- touches upon the issue of racist and discriminatory attitudes of adults vis-à-vis immigrants and of how these attitudes are passed on to the younger generations (N.B. In the meantime –May 2005-, the production of this TV spot is completed, and its screening on national TV channels is to commence shortly).

3.4 NCHR is currently in the process of submitting its comments to the Ministry of Public Order –upon request by the latter- on the drafting of a brand new code of conduct for the police. NCHR regards this initiative as a move in the right direction. NCHR proposes the modification of a series of provisions of the above Code so that they conform to the principles and standards of international relevant texts (e.g. the 1979 UN Code of Conduct for Law Enforcement Officials). Furthermore, the NCHR recommends that the code allows for further provisions aimed at the increase of the awareness for the protection of vulnerable -to discrimination- groups of the population by law enforcement officials. It also underlines the need for introducing special provisions on the behaviour vis-à-vis aliens, immigrants (legal or illegal), asylum seekers and refugees (N.B. The Minister of Public Order took into consideration the observations of the GNCHR, and the Presidential Decree No. 254/2004 (O.J. A' 238) which was finally issued, encompassed the quasi totality of the observations mentioned above).

Another dimension of activities related to anti-discrimination work, is that performed by the NGOs/members of the NCHR, namely the Greek section of Amnesty International, the Greek Council for Refugees, the Hellenic League for Human Rights, the Marangopoulos Foundation for Human Rights, the Greek League for Women's Rights and the Panhellenic Federation of Greek Roma Associations. In addition, it has to be noted that there is a considerable number of other NGOs, non-members of the NCHR, which are active on issues pertaining to discrimination. Nevertheless, specific reference to their activities exceeds the scope of the present report/contribution.

### **Conclusion**

In line with the Durban documents' call to reinforce regional co-operation in the fight against racism and discrimination, the NCHR acknowledges the important work performed in this field by the CoE, the OSCE, or the EU. The fight needs to be organised in a coherent as well as consistent way, with the use of the experiences and the synergies between relevant bodies, such as the UN CERD, the CoE ECRI and the EUMC. Monitoring mechanisms of the discrimination phenomena need to be reinforced all around the world: this in an essential tool of the fight, to the extent that this monitoring is based on factual analyses, accurate reports and reliable information.

NCHR also wishes to express its appreciation for the significant role of the OHCHR, and the anti-discrimination unit in particular, in co-ordinating the implementation of the Durban PoA and in collecting the relevant information.

At the Greek level, NCHR is pleased to note practical manifestations of a shift towards a greater recognition of the multicultural reality of contemporary Greek society. However important these steps may be, NCHR stresses that they can be effective only if continuity over the long term is ensured and if political backing to these initiatives persists.

**Christina Papadopoulou**

Research Officer

GNCHR

**iv. GNCHR Observations to the Steering Committee for Human Rights (CDDH) of the Council of Europe on issues relating to Human Rights and the Environment**

**Topics related to Human Rights and the Environment, tackled by the Greek NCHR**

**1. Within the framework of providing recommendations regarding the 2001 Amendment of the Greek Constitution (February 2001):** GNCHR submitted to the Greek government and to the parliamentary political parties recommendations regarding the amendment of a series of constitutional provisions on, inter alia, *the protection of the natural and cultural environment.*

**2. Proposals to the European Convention for the Constitutional Treaty of the European Union (May 2003):** GNCHR submitted to the European Convention a series of reasoned proposals pertaining to a series of major issues, including the addition to the Constitution of a provision mainstreaming the principle of, and concomitant right to, environmental protection and amelioration. In concrete, NCHR proposed the addition of a 7th paragraph in art. 3 of Part I (pertaining to the Objectives of the Union), as follows: *"The Union will integrate the protection and improvement of the natural and cultural environment into the definition and implementation of all its policies and activities (mainstreaming), in a way that will ensure the best possible conditions of physical and mental health and the fullest possible development of the personality of each individual."* Furthermore, it suggested the addition of a new article 6C: *"1. Everyone has the right to a healthy and ecologically balanced environment, apt to ensure the development of his/her personality. 2. The above right includes in particular the right to environmental information and the right to access to justice. 3. The Council and the European Parliament shall, according to the procedure provided in Article .... [co-decision, majority of Council,] adopt European laws and framework laws for the implementation of the 1st and second paragraphs of this Article"*.

In the «Explanatory note» attached to the above proposals, NCHR stressed the following, with regards to the **"Provisions related to the Environment"**:

"...a) We consider as necessary the addition of a 7th paragraph to Article 3 which will proclaim the protection and improvement of the environment as a horizontal objective of the EU (mainstreaming) and will establish, with Constitutional force, the principle of integration of environmental protection in

all policies and actions of the EU. The principle of integration constitutes one of the most important principles of Community law and is already included in Article 6 of the TEC. This principle means that environmental protection must be taken into account even within the framework of commercial and regional policy, and in all other policies and actions, for example transport policy, development policy, agricultural policy, etc.

The suggested provision combines environmental protection with the protection of health and the development of the personality, thereby including in the concept of environmental protection both the ecological and the human dimension. The insertion of the aforementioned provision is necessary for the effective fulfilment of the obligations undertaken by the Union by its accession to the international Treaty of Aarhus.

b) We also consider it necessary that the fundamental right to a healthy and ecologically balanced environment is expressly established, since it constitutes an important factor for the formation and the development of the personality and the safeguarding of an adequate standard of living. The importance of the abovementioned right is recognized by numerous international and regional texts. But above all, well-known facts, especially during the last few years, clearly prove the devastating consequences of the serious damage on the natural environment with repercussions obvious in international climatological conditions, on human health and on social conditions of living.

In the Millennium Declaration the member - states of the UN have recognized the importance of environmental protection.

In the context of the Council of Europe, environment is recognized as a value that must be protected. Towards this aim two conventions have been adopted: the Lugano Convention of 1993 concerning state liability for actions dangerous to the environment and the Strasbourg Convention of 1998 for the protection of the environment through criminal law, which is not yet in force.

According to the TEC the achievement of a high standard of improvement and protection of the environment constitutes a task of the Community (art. 2 TEC), while according to Article 6 of the TEC, environmental protection requirements must be integrated into the definition and implementation of all Community policies and activities (principle of integration). Articles 174 s. refer in detail to the policy of the Community in the field of the environment.

At the national level, most of the member states of the EU have included in their constitutions provisions guaranteeing the right to the environment and its protection. As an example, we mention art. 66 of the Portuguese Constitution, 45 of the Spanish, 24 of the Greek, 21 of the Constitution of the Netherlands, 23 of the Belgian Constitution, 2 and 73-80 of the Swiss Constitution, 20A of the German, 14A of the Constitution of Finland and 110B of the Constitution of Norway. Even where such a right is not expressly

provided at Constitutional level, it is provided by other legal provisions such as Article L-110-2 of the French Environmental code. All these constitutional provisions recognise the right of every person to live in a healthy and ecologically balanced environment.

The enrichment of environmental protection with a constitutional fundamental right, at Union level, enables persons to have recourse to justice in case they risk suffering environmental harm or in any case environmental goods are in danger. For the exercise of such a right it is of course necessary that everyone has free access to environmental information, a right established by the EC Directive 2003/4/EC of 28 January 2003.

Moreover, the right to environmental information as well as the right to access to justice are in conformity with the fundamental principles of preservation and protection, laid down in Article 174 of the European Convention.

Finally, it must be emphasised that these rights are regulated in detail in the Aarhus Treaty, to which the EU has acceded.

We note that the suggested provisions assure the protection of the environment in particular as a directly effective right.

We consider that environmental protection, as a process of continuous progress, is not satisfactory, for the reason that an economic - mainly, if not exclusively - dimension is often attributed to progress, as it ought not to be, despite general trends. Consequently, the environment remains without adequate protection when its damage serves economic profits. Actually, almost every reaction against its effective protection is motivated by profiteering reasons, concealed under the "decent" mantle of progress.

Besides, everyone knows that progress in reality follows a process that has broadened and deepened the gap between rich and poor countries and peoples. "Environment" should stop being used as a facilitating factor of this process.

We consider that all the aforementioned reasons sufficiently justify our suggestion to protect the right to a healthy and ecologically balanced environment as a directly effective right, which will be respected by the EU in all policies and activities.

c) For the effective protection of the suggested fundamental right we propose an unambiguous **legal basis** for the adoption of legislative measures by the EU (according to Articles 24 and 25 of the Draft, "European laws" correspond to present regulations, while "European framework laws" will correspond to directives).

These proposals are also necessary for the effective fulfilment of the obligations undertaken when the EU adhered to the international treaty of Aarhus. It is obvious that diverse and very serious problems concerning the environment can be dealt with only by European legal rules".

**3. In addition, NCHR has recently (on May 10th, 2004) delivered and publicised an opinion/decision on the issue of the protection of the scarce green areas in the city of Athens and its surroundings.** The Commission carefully examined and deliberated on the appeals and reports submitted by a number of non-governmental entities working in the field of the protection of the environment (e.g. the Greek branch of WWF). The opinion underlined the importance and emergency of the matter and invited all competent State authorities to make it a priority issue in their agenda. It stressed the negative effect that the Olympic Games' related constructions have had on the green areas of the periphery of Athens. It also made reference to the fact that the relevant Authorities often disregard decisions of the Supreme Administrative Court pertaining, inter alia, to the protection of green areas in the city of Athens, a practice that has been previously criticised by the NCHR (see NCHR's 2002 report: Comments and proposals of the NCHR on the Bill on the Greek administration's compliance with judicial decisions, 9 July 2002). Finally, the GNCHR made a series of proposals with regards to the issue, and circulated its decision in the Greek media. It is noteworthy that a considerable number of media has taken interest in the above decision, and in the recent days the issue has been debated in the national press.

**Christina Papadopoulou**  
Research Officer  
GNCHR

## **v. GNCHR PROPOSALS TO THE COUNCIL OF EUROPE'S GUIDELINES ON THE ISSUE OF THE PROTECTION OF VICTIMS OF TERRORIST ACTS AND THEIR FUNDAMENTAL RIGHTS\***

As a general remark, GNCHR would like to draw the attention of the Council of Europe to the fact that the "Guidelines on human rights and the fight against terrorism", adopted by the Committee of Ministers on 11 July 2002, mainly deals with the protection of the perpetrators' human rights and only on a secondary level (Article XVII) with the protection of the victims' rights.

### **1. Definition of the term "victims of terrorism"**

In this frame, it has to be underlined that there is no definition of the term "victims of terrorism", as there should be in Article I of the Guidelines. For that reason, we propose the adoption of a broader definition of the term, in order to provide more protection to these victims. This definition could result from a synthesis of the definition of "victims of terrorism", as expressed (a) in the "Madrid Declaration", adopted during the first Congress of Victims of Terrorism (26-27 January 2004), which states that the latter "are those whose rights have been stripped from them and whose lives have been shattered by physical and psychological sufferings. Society as a whole, threatened with the risk of terrorist acts, is also a victim of terrorism",<sup>1</sup> and (b) the definition given by the National Victim Assistance Academy (Office of Victims of Crime) of the US Department of Justice:<sup>2</sup> "the victims of terrorist acts are the individuals and communities (both primary and secondary) that suffer the short and long-term emotional, psychological, physical, economic and spiritual trauma that accompanies terrorism".

Moreover, Art. I of the Guidelines does not mention the positive legal obligation of states to take "preventive" measures to protect individuals whose life is at risk from the criminal acts of another individual, in certain well-defined circumstances (ECHR, *Osman v/United Kingdom*, 28 October

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\* *Drafted by Mr. V. Georgakopoulos. Research Officer, with the contribution of Ms C. Moukiou, Legal Officer.*

<sup>1</sup> *TCouncil of Europe: Steering Committee for Human Rights (CDDH), Protection for victims of terrorist acts: possibility of the CDDH expanding the Guidelines on human rights and the fight against terrorism, Texts emanating from different sources: Declarations and Proposals, p.9.*

<sup>2</sup> *National Victim Assistance Academy (2002), Chapter 22 Special Topics, Section 9: Terrorism and Victim Assistance Issues, US Department of Justice: Office for Victims of Crime, [http://www.ojp.usdoj.gov/ovc/assist/nvaa2002/chapter22\\_9.html](http://www.ojp.usdoj.gov/ovc/assist/nvaa2002/chapter22_9.html), p. 1.*

1998, Reports 1998 – VIII, par. 115, *Kiliç v. Turkey*, no 22492/93 - Sect. 1, ECHR, 2000-III, par. 62 and 76, ECHR, *Pretty v. United Kingdom*, 29 April 2002, par. 38). The circumstances under which the adoption of preventive measures is legal are well defined by the jurisprudence of the ECHR (*Osman*, op.cit., par. 116, *Paul and Audrey Edwards v. the United Kingdom*, no 33747/96, 23 November 1999, *Mastromatteo v. Italy*, 24 October 2002, par. 68) and mainly consist of the possible and proportional nature of the measures to be taken in the existence of a real and immediate risk in the knowledge of the obligation of knowledge on the part of the State's authorities of this risk and in the reasonable character of the measure, meaning that it might have been expected to avoid that risk. (*Osman*, op.cit., par. 116, *Mastromatteo*, op. cit., par. 68).

2. Compensation for victims of terrorist acts (Article XVII)- Additional steps.

In addition, Article XVII of the Guidelines does not tackle the other rights of the victims of terrorism, beyond the right to compensation, as they have been recognized by the jurisprudence of the European Court of Human Rights, in Strasbourg. Therefore, this article should mention explicitly the right to a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life of every victim (ECHR, *Velicova v. Bulgaria*, no 41488/9, par. 80, ECHR, 2000-VI, *Ulku Ekinci v. Turkey*, 16 July 2002, par. 144, *Tepe v. Turkey*, 9 May 2003, par. 195). This article should also include that "victims and their families should be protected as vulnerable persons" ("Framework Decision on Combating Terrorism", 8 December 1999) and that their right of access to information, their right of access to justice by means of specific assistance or guidance, their entitlement to compensation and their right to protection of privacy are recognized ("Framework Decision" of 15 March 2001). It should be also added that, pursuant to Article 75 of the Rome Statute, the Court may lay down the principles for compensation for victims, which may include restitution, compensation and rehabilitation.

3. In addition to the above mentioned and taking into account that victims' advocates have focused mostly on legal rights, thus neglecting what may be far more important for the victims - that is their right to rehabilitation and protection against future victimization, a political and social right which rarely figures on the victims' agenda - it would be advisable for the Council of Europe to transform the following into guidelines:

a. "French Law 90-86" of 23 January 1990, which grants to the victims of terrorism the status of civil victims of war (status of *pupille de la nation* – war orphan).<sup>3</sup>

b. "Resolution 2002/35 on human rights and terrorism" (22 April 2002), which includes the establishment of a voluntary fund for victims of terrorism, as well as their rehabilitation and reintegration into society.<sup>4</sup>

c. The proposals of the Northern Ireland Human Rights Commission in its report "Human Rights and Victims of Violence" (June 2003), particularly in relation to the right of recognition of the status of victims of violent acts, the right to compensation, the right to appropriate medical assistance, the right of access to justice, and the right to receive and give information.<sup>5</sup>

d. The recommendations of the Committee of Ministers of the Council of Europe:

- "Recommendation R (83)7 on Participation of the Public in Crime Policy" (23 June 1983).<sup>6</sup>

- "Recommendation R (85)11 on the Position of the Victim in the Framework of Criminal Law and Procedure" (28 June 1985).<sup>7</sup>

- "Recommendation R (87)21 on the Role of Public Prosecution in the Criminal Justice System" (6 October 2000).<sup>8</sup>

e. The Rights proposed by the Group of Specialists (DH-S-TER), mentioned in the conclusions of the "State of Play".<sup>9</sup>

4. It would also be advisable for the Council of Europe to:

a. establish and organize a Special Office (Bureau, Branch, Agency) for the victims of terrorism.

b. set up and organize a Web-site, on a European level, for the victims of terrorism and their families.

c. plan and organize a European Compensation Fund as an aid to the EU Member State which has suffered a terrorist act,

(ex. Spain) since, as a victim of terrorism, a member state can be further defined as a national of the EU.

d. cooperate with the US Department of Justice "Terrorism and International Victims Unit" (TIVU)<sup>10</sup> through the above mentioned Special Office to be established by the Council of Europe (see Proposal No. 4).

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<sup>3</sup> *Ibid*, p.7.

<sup>4</sup> *Ibid.*, *Declarations and Proposals* p.8.

<sup>5</sup> *Ibid*, p.9.

<sup>6</sup> *Ibid*, *Victims in General – Principles*, p.10.

<sup>7</sup> *Ibid.*, p.10.

<sup>8</sup> *Ibid.*, p.10.

<sup>9</sup> *Ibid*, *Appendix*, p.12.

<sup>10</sup> *Op.cit*, *National Victim Assistance Academy*, p. 6.

5. Establish an EU Agency in the Council of Europe for the Supervision of the Media Coverage of Terrorist Acts, considering the possible negative effects of the media coverage on the victims of terrorism in the aftermath of a terrorist act.

6. Organise special emergency departments in hospitals of the EU Member States for the victims of terrorism, especially for psychological support to children-victims or to parents who have lost their children, as both need to become the focus of special attention and care.

In conclusion, we should like to emphasize the fact that the number of victims increases when the law of proportionality between terrorist and antiterrorist measures is not respected. In any case, preventive wars should be prohibited as "antiterrorist measures", as they do not correspond to the principle of proportionality – they violate an unparalleled number of human rights, approximately those of the whole population of the country under attack – and, furthermore, contribute to the rise of terrorism. They could result in a tremendous increase in the number of victims of the civilian population.

**vi. GNCHR Comments on the Draft European Convention of the Council of Europe on the Prevention of Terrorism (CODEXTER 1st reading)**

**Quelques remarques sur le projet de Convention pour la prévention du terrorisme**

1. La Commission Nationale de la Grèce pour les Droits de l'Homme (CNGDH) exprime sa satisfaction du fait que le Conseil de l'Europe, par le Projet de Convention pour la prévention du terrorisme, continue à jouer son rôle avant garde dans la promotion et protection des droits de l'homme sur le plan international.

En effet, l'initiative d'une Convention concernant le terrorisme et la réaction contre celui-ci selon l'optique des droits de l'homme est la première sur le plan international. Et elle est plus que nécessaire, puisque terrorisme et antiterrorisme ont porté – et portent encore – des coups très graves au système universel des droits de l'homme. Un cercle vicieux de violence et de sang a été créé qui s'achemine en croissant.

Par conséquent il existe la nécessité urgente de faire face à ce double phénomène (terrorisme/anti-terrorisme) qui a pris – surtout après le dogme de «preemptive antiterroriste wars» – une forme menaçant tous les droits de l'homme, tels que reconnus et consacrés par le droit international actuel.

Je comprends, donc, la hâte avec laquelle les compétents du Conseil de l'Europe agissent. Mais le temps qu'ait été mis à notre disposition ne suffit pas pour une étude approfondie afin d'arriver à un texte de Convention satisfaisant sur un sujet tellement complexe et délicat.

Nous nous réservons donc de présenter nos propositions pendant la seconde lecture du texte.

Pour le moment nous formulons les remarques suivantes:

2. Le titre de la Convention devrait être plus large. Les dispositions du projet ne prévoient pas que des mesures de prévention mais aussi de punition. En effet, les incriminations des articles 4-7 ont un caractère principalement punitif ce qui constitue une réaction contre un acte déjà commis, mais qui peut avoir aussi un résultat préventif.

Je pense que, les mesures principalement ou exclusivement préventives ne sont mentionnées ou sont très faiblement mentionnées aussi bien dans le préambule que dans les dispositions du texte proprement dit.

Par exemple, dans le préambule et puis dans le texte, la nécessité de la collaboration des pays européens pour retracer les vraies causes du terrorisme ainsi que de son augmentation n'est pas même mentionnée.

Pourtant, une vraie prévention d'un phénomène social est impossible sans combattre les causes qui l'engendrent. L'article 3 bis nous semble avoir besoin d'être complété.

3. Quant aux critiques concernant la définition plutôt floue par le projet de l'acte terroriste, nous remarquons ce qui suit.

La difficulté d'une définition précise et acceptée par tous a échoué non pas pour des raisons scientifiques, mais pour des raisons politiques. C'est ainsi que les actes violents organisés visant à la libération d'un pays subjugué par un Etat étranger sont considérés comme terroristes par la majorité des spécialistes. Au contraire, le renversement du gouvernement légal d'un Etat par des actes de violence armée organisés, la terreur semée parmi la population afin de l'obliger à accepter une dictature imposée par la force, n'est pas considéré, en règle générale, comme un acte terroriste (p.ex. le coup contre le gouvernement du Chili, le 11 septembre 1972).

4. A mon avis, les actes terroristes devraient être précisés de la façon qu'a employée l'Union Européenne. C'est à dire, mentionner des actes déjà incriminés par le Code pénal qui pourraient constituer des crimes terroristes s'ils sont inspirés par des mobiles précis (outre le dol ou la négligence du *Talbestand* de tout crime) et s'ils ont été organisés par des organisations criminelles ayant comme cible de semer la terreur afin d'atteindre des buts politiques illégaux.

Il ne s'agit pas de définition. Mais c'est une façon de ne pas laisser tout à fait floue la notion de l'acte terroriste ou de renvoyer ceux qui vont appliquer la Convention en même temps à plusieurs instruments internationaux ou régionaux qui ne s'harmonisent même pas entre eux.

En attendant le texte révisé après les remarques déjà présentées par nos homologues d'autres pays, nous nous réservons de présenter des remarques additionnelles lors de la deuxième lecture du Projet.

Athènes, le 12 janvier 2005

**La Présidente**

**Prof. Alice Yotopoulos-Marangopoulos**

**vii. GNCHR Comments on the Draft European Convention of the Council of Europe on the Prevention of Terrorism (CODEXTER 2nd reading)**

**QUELQUES REMARQUES SUR:  
Le Projet de Convention adopté par le Codexter  
et  
La position commune du 'European Co-ordinating Group of National Institutions for Human Rights' (ECG-NIHR)**

Nous sommes d'accord sur la majorité des commentaires du ECG-NIHR. Nous signalons donc que quelques différences de position ou quelques réflexions complémentaires.

1. Nous ne sommes pas d'accord avec la remarque No 5 du commentaire sur le projet de Convention. Nous pensons qu'il s'agit d'un malentendu, puisque le texte, du moins celui français, par le par.7 du préambule, exclue – et non pas soutient – tout argument justificatif du terrorisme de n'importe quelle nature. Il mentionne—et cela non pas de façon exclusive d'ailleurs—, quelques arguments (idéologiques, politiques etc.) qui sont souvent soutenus par les terroristes et leurs amis. Il les mentionne tout simplement pour les caractériser comme non appropriés à justifier les actes terroristes.

Nous trouvons, au contraire, que la phrase «rappelant l'obligation des Etats-Parties de prévenir de tels actes» devrait être renforcée. En effet, la prévention d'un phénomène social ne peut être réalisée que si on combat ses causes, puisque tout phénomène social est le fruit de la combinaison de plusieurs causes génératrices.

2. Dernier paragraphe du préambule. Nous pensons que sa formulation est juste, mais qu'il est souhaitable, après la phrase «Rappelant que les actes de terrorisme» ajouter: «sont des actes violents qui» par leur nature ... D'ailleurs le par. 1 de l'article 1 de la Convention complète de façon plus précise la notion du terme «infraction terroriste» de la Convention.

Nous croyons opportun de souligner le fait qu'il n'existe pas une définition du «terrorisme» et de «l'acte terroriste» généralement acceptée ou au moins dominante en science politique et en science criminologique.

3. Quant au nouveau par.4 de l'art. 3 et la note 11, nous désirons rappeler le fait que la Convention de Palerme sur le délit organisé, que cette note

mentionne, n'a pas osé inclure expressément dans son texte le terrorisme. Ce n'est que par l'Exposé des Motifs que le terrorisme a été couvert.<sup>1</sup>

#### 4. Sur les articles 4, 5 et 6

Les trois articles sont vraiment dangereux puisque les infractions prévues par ceux-ci sont formulées de façon assez vague et en plus laissent la liberté aux Etats-Parties d'en préciser le contenu et de faire le choix des mesures qui devraient être utilisées. Or les exemples de quelques législations 'antiterroristes' qui sont déjà en application sont vraiment alarmants en ce qui concerne des droits humains fondamentaux.

La formulation vague de ces articles, surtout de l'article 4, ouvre la porte non seulement à la transgression du principe de formuler de façon très précise la notion de tout crime (Tatbestand) — sinon «nullum crimen sine lege» perd son sens — mais aussi à la restriction de la liberté d'expression de son opinion. Il faut prendre en considération que la critique politique dans un régime démocratique prend — chose parfois nécessaire — un ton combatif, aigu et incitateur de la réaction du peuple.

Nous considérons donc nécessaire de modifier la formulation des art.4-6 de façon plus précise et protectrice des droits de l'homme et en tout cas ajouter au para 2 de tous les trois la formule employée maintes fois par la CEDH: «dans une société démocratique» après la phrase: «Chaque Etat-Partie adopte les mesures qui s'avèrent nécessaires»

5. Il nous semble plausible que cette formule («dans une société démocratique») soit ajoutée dans tous les articles où la Convention autorise tout Etat-Partie à adopter les mesures qu'il considère nécessaires pour la concrétisation et l'application de cet article sur son territoire.

6. A notre avis, il ne faut pas que le nombre des délits caractérisés comme terroristes soient très nombreux. Par ailleurs les délits que les Codes pénaux considèrent comme actes terroristes doivent inclure un élément subjectif en plus (outre le dol ou le négligence) — comme les buts ou mobiles mentionnés dans le dernier paragraphe du préambule. Il nous semble qu'ils sont nécessaires pour compléter la notion d'acte terroriste.

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<sup>1</sup> La même chose arriva avec la loi grecque 2928/2000 par laquelle fut ratifiée la Convention de Palerme, en raison des objections de plusieurs juristes grecs qui s'opposaient à l'inclusion du terrorisme dans le cadre du délit organisé.

7. Sur l'art. 13

Nous considérons absolument nécessaire que la remarque No 11 du commentaire soit prise en considération. Nous ajouterions seulement qu'il nous semble utile d'ajouter une référence à la Convention Internationale contre la Torture qui protège toute espèce de détenu. Les qualifications de quelques détenus comme prisonniers de guerre ou non prisonniers de guerre n'empêche pas la prohibition absolue de la torture et de tout traitement inhumain ou dégradant (torture au sens large).<sup>2</sup>

Il faut encore inclure une référence aux art. 4 para 2, et 7 du Pacte International de Droits Civils et Politiques.

Il faut noter que le para. 2 de l'art. 2 de cette Convention stipule ce qui suit: 'Aucune circonstance exceptionnelle, quelle qu'elle soit, qu'il s'agisse de l'état de guerre ou de menace de guerre, d'instabilité politique intérieure ou de tout autre état d'exception, ne peut être invoquée pour justifier la torture'. Par conséquent la torture et les traitements inhumains et dégradant ne peuvent être appliqués en aucun cas même sur des terroristes.

**La Présidente**

**Prof. Alice Yotopoulos-Marangopoulos**

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<sup>2</sup> *Cette distinction avait provoqué des arguments appuyant les tortures appliquées sur des détenus de Guantanamo, en leur refusant la qualité de prisonniers de guerre.*

## **V. ANNEXES**



**ANNEX a**  
**Report on detention conditions**  
**in Korydallos central prison**



**Visit of the GNCHR *ad hoc* Committee to Korydallos Closed Central Prisons.** (Following a request by imprisoned convicted members of the terrorist organization «November 17th»).

**1. Men's Prison.** The *ad hoc* committee visited the premises of men's prison on May 21st. The visit started from the wing occupied by 10 members of the organization «November 17th». It is a semi-basement construction of cells, small kitchen, corridor, ward and yard, which is under observation on a 24-hour basis. The yard is very narrow, with no trace of greenery and very high walls one of which is covered with metal sheeting – having a ceiling of wire net. Each prisoner has his own cell with a window at the yard, which is comfortable and well equipped (private toilet with shower, TV, ventilator etc.). The detainees are not isolated. Their lawyers and relatives are allowed to visit them and they are in continuous contact between them in their own wing (not with other wings). The catering is satisfactory.

In contrast, the conditions of ordinary prisoners' cells are wretched: mainly due to overcrowding (3 to 4 persons in a cell for one), which generates many disadvantages, among them the impossibility of separation of the detainees in categories. There is also a serious lack of occupational opportunity and the number of wardens is insufficient. The Prison Council is a very useful institution. The surgery and the kitchen are clean and the catering good. In conclusion, the conditions of the "November 17th" Organization detainees were incomparably better than those of the others.

**2. Women's Prison.** On June 28th, the above committee visited the women's prison, which includes a special wing containing more than 20 cells. In this wing are detained 7 members of the "November 17th" Organization. Each detainee has his own cell with a window looking on to the wing's separate yard that is more spacious than that of the Men's Prison. Each cell, clean and well-equipped, has bathroom facilities, TV. All the prisoners exercise together in their yard. However, because of the height of the walls and the material with which they are constructed (whitewashed zinc), the yard is very hot in summer and carries heat to the cells (which anyway are ventilated). Contact with relatives and lawyers are the same as in Men's Prison. Two of the prisoners do artwork, and a request expressed by all of them was that there be a workshop to practice handicrafts, as well as plant-pots in which to grow plants.

In contrast, in the main Women's Prison two to three detainees are housed in each cell (bigger than those of the Men's Prison) with a large window and

rudimentary equipment. Prisoners can move about in the corridor separating the two constructions of cells and there are also tables and seats at which they can sit in groups. Toilets are in a poor condition. The committee also visited two (of sixteen) large wards for 7-8 persons each, equipped only with beds, where 27 Roma women were packed into one and 35 in the other (there was another ward, in another wing, not in use). It seemed that women with mental illness were not given any special treatment. Most of the women have no occupation except in the laundry, the kitchen and a small carpet industry. The kitchen was clean and the food adequate. It should be noted that in there are no full-time doctors or a specialist nurse.

As a general conclusion, it should be stressed that the prison suffers from overcrowding and other failures, while the living conditions of the "November 17th" Organization members are clearly better than those of the rest.

**3.** A member of the Committee, Ms Divani, is of the opinion that, although the cells of the "November 17th" Organization prisoners are better than those of others, the isolation to which they are subjected with the other categories of detainees, without any obvious reason, and the unacceptable conditions of their outside exercise render their detention conditions inhumane.

According to Mr. Papaioannou – another member of the Committee, it is clear that 17 November members are being detained in a Special Security Unit, that is, a prison within a prison. The prisoners have been given no explanation of why they are being considered as "high risk for escape" in relation to other prisoners serving similar sentences. Companionship for the "November 17th" members is restricted to 10 people in the men's prison and 7 in the other, something that in the long term may have a negative impact on their health. They are forbidden to participate in any common prison activity and the space for outside exercise is, to say the best, judged as unacceptable. All visits take place within closed quarters. In conclusion, as for the other detainees of the prison, the "November 17th" Organization members are treated differently, in that they are being detained in a prison within a prison: as far as their cells are concerned, this discrimination is, it would seem, beneficial; apart from this, though, it constitutes a violation of their fundamental rights.

According to Mr. Theodoridis', minority opinion, the detention conditions of the "November 17th" Organization detainees lack legality, since the relative presidential decrees provided for in the law relating to penitentiary confinement have not been promulgated.

**4. Measures taken after our report sent to the Minister of Justice:**

In response to GNCHR's recommendations, the Ministry of Justice undertook a number of measures to improve the situation. As regards the "November 17th" Organization wings, the yard walls of the men's prison have been reduced in height, the yard became larger and the metal sheeting and the metal-wire net ceiling removed. Furthermore, steps have also been taken regarding: AIDS-infected prisoners, the categorization of prisoners, the decentralization of central prisons towards agricultural and far from Athens prisons, the inclusion of their therapeutic institutions in the National Health System (by now the therapeutic installations in the prisons are very poor).



**ANNEX b**  
**QUESTIONNAIRES ADDRESSED TO THE GNCHR**



**i. GNCHR reply to the questionnaire of the  
French National Commission for Human Rights  
regarding homosexuals' rights**

**Greek National Commission for Human Rights**

**Reply to the Questionnaire regarding homosexuals' rights**

1/ Is there any legislation in your country regarding civil partnerships between homosexuals?

- If the answer is yes: what are the rights and obligations provided for by this partnership? What are the similarities and differences with marriage?

- If the answer is no: is there or has there been any public debate on this matter? What are the main arguments put forward?

The answer is NO. However, there is currently a debate on the matter, mainly initiated by civil society organizations and, to a lesser extent, by some political parties of the left, represented or not in the Greek Parliament. A number of NGOs have recently launched a campaign for the abolition of *art. 347 of the Greek Penal Code*, on the grounds of discrimination against homosexuals; the article mentioned above stipulates that the age of consent to a sexual encounter is 17 years for the homosexual males involved in the act, whereas for the females and/or male heterosexuals it is 15 years of age. The article refers to the homosexual encounter as an 'indecent assault', which is a statutory offence. Furthermore, art. 347 penalises male prostitution, by contrast with the more recent Law 2734/1999 (on prostitution), which does not differentiate between males and females.

In addition, the entities active on the subject ask for the enlargement of the criteria of Law 927/1979 (on racial discrimination) so that it includes the offences against homosexuals. Last, but not least, it is argued that the Greek State should harmonize its national legislation vis-à-vis the principles stipulated in art. 13 of the Amsterdam Convention, as well as vis-à-vis those of the art. 21 of the EC Charter of Fundamental Rights.

Compared to other European Countries, the claims put forward by the local civil society movement regarding gay rights, may be considered as embryonic. The local context taken into account, vindications and actions focus on fighting homophobia and on raising awareness vis-à-vis the right to a 'different' sexual orientation. There are also initiatives and actions denouncing some mass media's derogatory and insulting attitudes towards homosexuality, often aiming at attracting audience by approaching 'sensational' issues. Furthermore, the police's derogatory attitude towards homosexuals is denounced.

It is worth noting that Greece has recently transposed the EC Directives 2000/43/EC and 2000/78/EC, on equal treatment irrespective of racial or ethnic origin, religious or other beliefs, disability, age or sexual orientation, into its national legal order. The Greek NCHR had previously submitted a series of comments on and amendments to the Bill based on the above mentioned directives.

2/ Is marriage between homosexuals authorized?

- If the answer is yes: since when and which law/provision authorized it? Was it a subject of great controversy?

- If the answer is no: is there any current debate on this matter? What are the main arguments in presence?

The answer is NO. The Church of Greece is explicitly and vehemently opposing any such authorisation. At the present stage, civil society's action concentrates rather on proposals for introducing the civil partnership.

3/ Is joint adoption of a child by homosexuals authorized?

Is children's adoption of his/her partner allowed?

- If the answer is yes, since when and which law/provision authorized it?

- If the answer is no, is there any current debate on this matter? What are the main arguments against and in favor of adoption by homosexuals?

The answer is NO. The main arguments in favor of, or against such authorisation are similar to those put forward in other countries where this issue is currently debated.

4/ Can a person having contracted a civil partnership have parental rights with his/her partner on his/her partner's children?

- If the answer is yes, since when and which law/provision authorized it?

N/A

5/ Is assisted reproduction authorized for lesbians (married or in civil partnership)?

- If the answer is yes, since when?

- If the answer is no, is there any current debate on this matter and what are the main arguments put forward?

N/A

August 2004

**Christina Papadopoulou**

Research Officer/GNCHR

**N.B.** In the meantime, the GNCHR has issued an opinion on the issue of recognition of gay partnerships and on discrimination against homosexuals; see summary of the proposals submitted to the relevant Greek authorities, in Part III of the present document – 10 December 2004)

**ii. Reply to the questionnaire of the OHCHR  
and the International Council for Human Rights Policy**

**QUESTIONNAIRE**

**HOW NATIONAL HUMAN RIGHTS INSTITUTIONS EVALUATE THE  
EFFECTIVENESS OF THEIR WORK**

**A. BASIC FACTS ABOUT YOUR INSTITUTION**

A1. **Name:** Greek National Commission for Human Rights (hereinafter GNCHR)

A2. **Year established:** GNCHR was founded by Law 2667/1998 (amended in 2002 and 2003) and became operational in January 2000.

A3. **Legislative basis:** GNCHR is a statutory National Human Rights Institution having a consultative status with the Greek State on issues pertaining to human rights promotion and protection.

**A4. Composition – members and staff**

**(a) What proportion of the membership and staff of your institution is drawn from the following groups:**

Women: 19 (one third) out of 58 regular and alternate members in total; three out of four staff members. It is worth noting that the elected President, as well as one of the two elected Vice-Presidents are also women.

National or ethnic minorities: one regular and one alternate member, representing the Pan-Hellenic Federation of Greek Roma Associations.

Persons with disabilities : -

**(b) How do you determine whether your institution ensures pluralist representation?**

In accordance with Article 2 of Law 2667/1998, as amended in 2002 and 2003, the following are currently members of GNCHR:

**1.** The President of the Special Parliamentary Commission for Institutions and Transparency;

**2.** A representative of the General Confederation of Greek Workers and his/her alternate;

**3.** A representative of the Supreme Administration of Civil Servants' Union and his/her alternate;

**4.** Six representatives (and their alternates) of Non-Governmental Organisations active in the field of human rights protection, that is, Amnesty International Greek Section, the Hellenic League for Human Rights, the Marangopoulos Foundation for Human Rights, the Greek Council for Refugees, the Greek League for Women's Rights and the Pan-Hellenic Federation of Greek Roma Associations;

**5.** Representatives of the political parties represented in the Greek Parliament. Each political party designates one representative and his/her alternate;

**6.** The Greek Ombudsman and his/her alternate;

**7.** One member of the Authority for the Protection of Personal Data and his/her alternate, proposed by the President of the above Authority;

**8.** One member of the National Radio and Television Council and his/her alternate, proposed by the President of the Council;

**9.** One member of the National Commission for Bioethics and his/her alternate, proposed by the President of that Commission;

**10.** Two personalities widely recognised for their expertise in the field of human rights protection, designated by the Prime Minister;

**11.** One representative (and one alternate) of the following ministries: Ministry of Interior, Public Administration and Decentralisation, Ministry of Foreign Affairs, Ministry of National Education and Religious Affairs, Ministry of Justice, Ministry of Public Order, Ministry of Labour and Social Security and Ministry of the Press and Mass Media. Each of these persons (who do not have the right to vote) is designated by the competent Minister;

**12.** Three Professors or Associate Professors (and their alternates) of Public Law or Public International Law: University of Athens, Faculty of Political Science and Administration; University of Athens, Faculty of Law; and Panteion University, Faculty of Law.

**13.** One member of the Athens Bar Association and his/her alternate.

The composition of the GNCHR speaks for itself on the pluralism of representation.

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#### A5. Appointment criteria

**(a) Who appoints the members (commissioners, ombudsman, etc.) of your national human rights institution?**

Each institution participating in GNCHR designates its representatives. The Prime Minister designates two personalities widely recognised for their expertise in human rights issues. The seven ministries designate their representatives and their alternates, who take part in the sessions of the

Plenary and the Sub-Commissions without the right to vote. All representatives -except for those of the seven Ministries- elect the President and the two Vice-Presidents of the GNCHR.

**(b) What process of appointment is followed (executive decree, selection committee, other)?**

Following the designation of representatives by the bodies/organisations who are members of the commissions, the appointment is completed by a decision of the Prime Minister. In addition, any other Human Rights NGO and/or individual is entitled to address the Commission and be invited by it in order to present its proposals

**(c) What is the role of civil society?**

Civil Society is participating in the Commission's activities through the appointment of their representatives; currently, six major NGOs active in the field of human rights are present in the Commission (namely, the Greek section of Amnesty International, the Hellenic League for Human Rights, the Marangopoulos Foundation for Human Rights, the Greek Council for Refugees, the Greek League for Women's Rights and the Pan-Hellenic Federation of Greek Roma Associations.

**(d) What criteria (if any) guide the selection of members of the institution?**

Each institution participating in the Commission has its own criteria of selection.

**(e) What form do they take (legislation, rules of procedure, other)?**

The Commission has set its own rules of procedure and by-laws.

## **B. INDEPENDENCE**

**B1. What indicators do you use to determine whether your institution is independent?**

As mentioned above, the law provisions concerning GNCHR membership and the election of its members, of the President and the two Vice-Presidents ensure and reflect themselves, the Commission's independence and impartiality.

**B2. What do you consider to be the most important elements for maintaining the independence of your institution?**

The crucial element is the law provisions for the Commission's membership and election of members (including the election of President and Vice-Presidents by the members with the exclusion of those representing the seven ministries).

**B3. What system is in place to protect independence in relation to the financing of your institution (sources of funds, allo-**

**ation of funds etc)? How do you audit, manage and report on your budget?**

The Commission is financed through the budget of the General Secretariat of the Council of Ministers. Auditing and management of the funds used by the GNCHR are performed by the General Secretariat. As a rule, the Commission submits the expense bills to the General Secretariat, which proceeds to the payment. In case of substantial expenses, the Commission asks for offers from three different providers and then selects the best offer (although not necessarily the cheaper one). There is no annual reporting of expenditure; instead, the GNCHR reports on its expenses on an ad hoc basis. There has never been friction on financial issues, between the Commission and the General Secretariat so far.

**C. ACCESSIBILITY**

**C1. Who do you see as your "Client"?**

The mission and mandate of the GNCHR is to monitor developments regarding human rights protection on the domestic and international levels, to inform the Greek public opinion on human rights-related issues and, above all, to provide guidelines to the Greek State aimed at the establishment of a modern, principled human rights policy. Therefore, the Commission perceives as a "client", all the institutions of the Greek State (e.g. the Ministries) who are called to set and implement human rights-related policies, as well as those other institutions (be it civil society ones, groups or individual representing groups who may need the Commission's assistance over determining whether their rights have been violated according to the international and national human rights standards, principles and provisions), which submit their queries to the Commission for examination.

**C2. How many offices do you have outside the capital city?**

n/a

**C3. Do you consider that your institution is effective in reaching remote sections of the population? If so, what leads you to that conclusion?**

The GNCHR -its relatively short life taken into consideration- has gained remarkable momentum within the Greek society: through the publicisation of its activities and opinions, more and more institutions, groups and organisations seek to get the Commission's opinion over matters of concern to them. The media contribute to reaching remote sections of the population by publishing the Commission's decisions, proposals and opinions. However, we consider that there is yet a lot to be done in terms of broadening the performance of the Commission in this area.

**C4. What steps have you taken to ensure access by disadvantaged groups such as women, minorities, persons with disabilities, etc?**

Access by disadvantaged and/or vulnerable groups is, to a certain extent, ensured by the Commission's membership provisions themselves: the NGO members (their number enlarged since 2004 from four to six organisations), as well as those of the major trade-unions, the political parties, the Office of the Ombudsman, to mention but a few, bring to the attention of the Plenary or the Sub-Commissions all those issues which they judge as important for the protection of the rights of disadvantaged groups. Besides, as it is noted above, any group which deems the Commission's opinion useful may approach it on their own initiative. The more the Commission gains recognition and becomes widely known, the more its accessibility is widened too.

**C5. Do you meet regularly with civil society, the public, etc.?**

The civil society is represented directly in the Commission, through the NGO members. In addition, the GNCHR has been repeatedly approached by other NGOs, who are not members of the Commission, on issues of concern in their field of activities. It is also worth noting, that the GNCHR frequently organises conferences, seminars etc, on human rights-related questions which are in the limelight or which it considers as important; those events are open to the public and have, so far, been well received by both the press and the public.

**C6. How do you monitor the effectiveness of these steps?**

By following-up on the questions examined, in collaboration with the NGO involved and by collecting the feed-back we get from partners, the media etc.

**D. ACTIVITIES**

**D1. Activities of your institution**

**(a) What are the main activities of your institution?**

According to Law 2667/1998, by which GNCHR was established, GNCHR has the following substantive competences:

1. The study of human rights issues raised by the government, by the Convention of the Presidents of the Greek Parliament, by GNCHR members or by non-governmental organisations;
2. The submission of recommendations and proposals, elaboration of studies, submission of reports and opinions for legislative, administrative or other measures which may lead to the amelioration of human rights protection in Greece;

3. The development of initiatives for the sensitisation of the public opinion and the mass media on issues related to respect for human rights;
4. The cultivation of respect for human rights in the context of the national educational system;
5. The maintenance of permanent contacts and co-operation with international organizations, similar organs of other States, as well as with national or international non-governmental organisations;
6. The submission of consultative opinions regarding human rights-related reports which Greece is to submit to international organisations;
7. The publicising of GNCHR positions in any appropriate manner;
8. The drawing up of an annual report on human rights protection in Greece;
9. The organisation of a Human Rights Documentation Centre;
10. The examination of the ways in which Greek legislation may be harmonised with the international law standards on human rights protection, and the subsequent submission of relevant opinions to competent State organs.

**(b) Is equal attention paid to Cultural and Political Rights (CPR) and Economic, Social and Cultural Rights (ESCR)? If not, why not?**

Yes. It is worth noting that within the GNCHR, there is one Sub-Commission handling specifically questions pertaining to Civil and Political rights and one other –out of five in total- Sub-Commission handling questions pertaining to Economic, Social and Cultural Rights. Both Sub-Commissions peruse the subjects falling under their competence and subsequently submit their proposals to the Plenary for further discussion and adoption of a common stance.

**(c) What is the process by which you plan your work?**

In principle, all issues/questions submitted to the Commission by any of its partners/members, the Greek State, other institutions, NGOs, groups etc, are examined by order of priority of submission. However, there is room for flexibility from this rule, when it comes to a matter which is by definition an absolute priority, e.g. meeting the deadlines for providing an opinion on a Bill presented before the Parliament for deliberation, comments to be provided to the reports which Greece is to submit to international organisations, Treaty Bodies, etc. In addition, the GNCHR is also taking initiatives of its own to submit proposals and/or opinions to the competent State authorities, on human rights related issues.

**(d) What is the relationship between your activities and how you plan your work?**

The mission and mandate of the Commission are reflected in the way its plan of action is articulated. Each one of the five Sub-Commissions established (Civil and Political Rights; Social, Economic and Cultural Rights; Application of Human Rights to Aliens; Human Rights Promotion; and International Communication and Co-operation) set their agenda for the year to come, and present this plan to the Plenary, whose agenda is formulated accordingly.

**(e) How do you determine whether your activity is "successful"?**

By examining whether the Commission's proposals and/or opinions have been followed or adopted by the relevant authority. In other words, by checking whether the results match the actions proposed. Recently, the Commission has established a working group with the task to look into this particular aspect of the work, in a systematic way.

**(f) In the course of the planning process, do you set targets, indicators or benchmarks? Do you use any results-based methodologies?**

Not at present. We would be particularly interested in developing such tools, in collaboration with other national human rights institutions.

**(g) How often do you review your implementation rate of activities?**

At the end of the year, within the framework of an overall review of activities, as part of the process of drafting the annual report of the Commission.

**D2. Human Rights Education**

**(a) What activities do you undertake?**

In 2001 the Fourth Sub-Commission (dealing with Human Rights Education and Promotion) of the GNCHR provided a number of Greek Universities with documentation with a view to establishing special human rights courses in their curricula. In April 2001 the Greek Open University accepted and started work on the proposal of the Fourth Sub-Commission, with a view to creating a new course on human rights. On 6 June 2002 the Fourth Sub-Commission provided the Greek Open University with more back-up information and ideas for the creation of the human rights course. In June 2001 the Fourth Sub-Commission commissioned the Communication and Mass Media Department of the University of Athens to carry out a special study on Greek TV news bulletins and the promotion and establishment by them of stereotypes and discrimination mechanisms. The study was completed in February 2002 and

widely publicised in December 2002, after a relevant public discussion which was organised by the Fourth Sub-Commission of GNCHR at the Athens Journalists' Association on 5 December 2002. Also the Fourth Sub-Commission of GNCHR in 2001 had consultations with the Greek Ministry of Public Order and the National School of Public Administration. The Sub-Commission has urged the above Ministry (special educational material has also been provided to them by the Fourth Sub-Commission) and the National School to promote and strengthen human rights education in their curricula for policemen and public servants respectively. In 2003, the Fourth Sub-Commission got the permission by the Office of the UNHCHR to translate into Greek, publish and distribute the Booklet on Human Rights for the Police entitled "International Human Rights Standards for Law Enforcement". This initiative has been received with great satisfaction by the Greek Police, who actually requested that the Booklet be distributed to each and every policeman.

More recently (May 2004), the Greek Ministry of Public Order submitted to the Commission the new draft Code of Conduct for the Police, for comments and suggestions. The GNCHR promptly responded to the request.

(For further information on the educational activities of the GNCHR, please refer to the "Summary in English" report attached herewith).

**(b) Who are your clients in this area?**

Law enforcement, civil servants, lawyers, students, and journalists.

**(c) How do you determine client satisfaction?**

By the feed-back we get from the receivers; e.g. we deem that the very fact that the Ministry of Public Order requested the Commission's comments on the new Code of Conduct for the Police, is a direct result of the positive reception of GNCHR's initiative to distribute the UNHCHR Booklet mentioned above {see D2 (a)}.

**(d) How do you measure results?**

Against the actions planned for the specific topic

**D3. Promotional activities**

**(a) What human rights promotional activities do you undertake?**

In June 2001 the Fourth Sub-Commission commissioned the Communication and Mass Media Department of the University of Athens to carry out a research on Greek TV news bulletins and the promotion and establishment by them of stereotypes and discrimination mechanisms. The research demonstrated the existence of a pattern of serious violations of human rights by TV news bulletins, which have taken the form of "infotainment", of mainly private TV channels in Greece. The research attested to the fact that TV news in Greece tend to arbitrarily categorise and

stigmatise particular ethnic and social groups infringing upon their human dignity and flagrantly violating fundamental contemporary standards of human rights protection, primarily the one of presumption of innocence. The study was completed in February 2002 and widely publicised in December 2002, at an event organised by the Fourth Sub-Commission of GNCHR in the premises of the Athens Journalists' Association in December 2002.

In addition, the same Sub-Commission produced a TV spot in association with the National Broadcasting Corporation, conveying a message on non-discrimination. The spot is to be screened shortly on national TV channels (May 2005).

**(b) How do you measure their impact?**

We do not use specific impact assessment tools so far. We would welcome the development of such instruments.

**(c) Do you have a communications plan? If yes, who was involved in drawing it up?**

Not a comprehensive one. On an ad hoc basis, the President, in collaboration with the Research Officers and the Secretariat, work out communication-related activities.

**(d) What measures do you use to evaluate your effectiveness in getting your messages across to the public?**

No such measures used at present.

**D4. Complaints**

**(a) Does your institution handle individual complaints from members of the public?**

No (the Office of the Ombudsman is the competent authority handling individual complaints)

**i) If yes, how do you evaluate your own effectiveness in dealing with complaints?**

n/a

**ii) Are complaints admissible in relation to public and private sector matters?**

Yes, in case the complaint has the character of a broader social problem or issue, which are of general interest.

**iii) Do you analyse complaints (by the nature of the complaint, characteristics of the complainant, way in which the complaint was resolved etc?) If so, what categories to you use?**

n/a

**iv) What process is followed to arrive at recommendations? What steps are taken to monitor and follow-up recommendations (please explain)?**

n/a

**D5. Monitoring respect for human rights**

**(a) What monitoring systems are in place and what tools are made available to monitors?**

The GNCHR is in itself a national human rights monitoring mechanism put in place, as stipulated in the UN Paris Principles, which constituted the foundation for its creation. In addition, the institutions/organisations represented in the Commission have their own contribution to the monitoring and awareness raising role of the GNCHR. The tools used are those made available by the founding law of the Commission: members and staff follow developments in any part of the country and access to any NGO or group which may be threatened or possess knowledge about violations, is unlimited; channels of communication are established –formally or informally- between the institution and the relevant state organs (the Government, the Parliament or any other competent Body), which the GNCHR advises on specific violations, on issues related to legislation, on the compliance with international human rights instruments and on the implementation of these instruments. Another tool available is the International Co-ordination Committee of National Human Rights Institutions (ICC), which the national institutions have established since 1993. The ICC has been endorsed by the UN Commission on Human Rights as the principal representative of national institutions at the global level. The ICC is responsible for liaising among institutions at the global level and with the UN and for accrediting those institutions that comply with the Paris principles. The ICC is aiming at developing common policy positions for national institutions beyond advocating for their recognition in UN fora. Besides, the European Co-ordinating Group (of which the GNCHR is a member) has been granted observer status to the Council of Europe Steering Committee for Human Rights (CDDH) and aims at creating a platform for creating common positions among the national institutions, through exchanging views and experiences on the promotions and protection of human rights.

**(b) In monitoring respect, protection and fulfilment of human rights in your country, what standards, benchmarks or indicators do you use?**

The GNCHR uses the standards of the international and European human rights and humanitarian law as its guidelines, as well as the standards enshrined into international Treaties and Conventions to which Greece is a

party and the relevant case law; the national legislation and policies are examined vis-à-vis the above standards

## **D6. Advice to government**

### **(a) In the past year, have you given the government advice on human rights issues (policy, legislation etc)? If yes, what was the advice and has that advice been followed?**

Advice to government constitutes the core activity of the GNCHR. Nevertheless, the Greek National Commission is a consultative body; therefore its opinions are not enforceable to the State authorities. This being said, the GNCHR is exercising all the powers provided to it by its founding law, to invite the State to comply with international and European human rights standards and law. The publicisation of its views and opinions in the press and the internet is also a means contributing in the direction of making its opinions adopted. Other than providing its opinion on Bills under deliberation in the Parliament in writing, the Commission's President is frequently invited to present the views of the GNCHR before the Parliament itself (e.g. during the discussion on the Bill concerning the fight against organised crime).

The GNCHR is currently in the process of performing a comprehensive review and follow-up of all its advice and opinions –on legislation, policy, reporting to international organisations, proposals of ratification of international conventions, protocols etc- given to the competent state authorities, since its establishment. When the overall assessment is complete, we will make it available to you. The few examples that follow are only indicative:

- ***Commentary on the Bill of the Ministry of Public Order regarding arms possession and use of firearms by police personnel and their relevant training (12 December 2002)***. Upon request of the Minister of Public Order, GNCHR submitted its comments on the above Bill (later Law 3169/2003) of 12.11.2002. GNCHR regarded this Bill as moving in the right direction, in accordance with its own earlier proposals of 5 April 2001, the 1979 UN *Code of Conduct for Law Enforcement Officials* and the 1990 UN *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*. GNCHR proposed the modification of a series of provisions of the above Bill so that they conform to the principles of necessity and proportionality in which the relevant policy and practice should be grounded. GNCHR also stressed the necessity of intensification and streamlining by the Ministry of Public Order of human rights education and further training in the curricula of all law enforcement officials in Greece. The advice was followed to a large extent.

- **Bill on the reform of juvenile criminal law (29 May 2003):** GNCHR recognised the improvement of the relevant legislation that the above Bill (later Law 3189/2003) brings with. However it submitted to the Justice Ministry a series of recommendations pertaining to the above Bill and the protection that should be afforded by Greek criminal law to the physical and mental health of minors. GNCHR proposed, inter alia, the following: (a) Introduction into Greek legislation of special protective measures aiming at the rehabilitation and social integration of juvenile offenders; (b) Amendment of the Bill so that specialised psychological care is provided to juvenile offenders; (c) The strict observance of the rule prescribing the separation of minor and adult detainees, especially if the latter are drug addicts and (d) The avoidance of institutionalised treatment of juvenile offenders. The advice was partly followed.

- **Bill on the acceleration of criminal procedure (29 May 2003):** GNCHR submitted to the Justice Ministry a series of recommendations on the above Bill (later Law 3160/2003). The major issues are the following: (a) The need for furthering the protection of suspects, taking fully into account the case law of article 6 ECHR; (b) The preservation of the right of appeal against judicial council decisions; (c) Problems arising from the restriction of the right of appeal by the increase of the appeal ability limits. GNCHR stressed that the above new provision raises serious issues of incompatibility with ECHR and ICCPR; (d) the issue of restriction of the right of appeal against ultra vires acts. GNCHR proposed that the relevant restrictive grounds in the law should be indicative. The advice was partly followed.

- **Bill regarding the provision of legal aid to persons with low income (30 October 2003):** GNCHR submitted to the Greek Ministry of Justice its comments on the above Bill (later Law 3226/2004). The major points raised by GNCHR were the following: GNCHR proposed that the Bill should not condition the provision of legal aid to non-nationals on the latter's legal residence in the European Union. GNCHR proposed that legal aid should be provided also with regard to administrative law litigation and that it should cover early preliminary (legal counselling) stages of all legal proceedings (civil, criminal and administrative). GNCHR also recommended that special consideration should be given by the Bill to asylum seekers as well as to victims of racial discrimination, as already noted by GNCHR in its relevant recommendations of 25 June 2001 (see supra). The advice was not followed.

- **Bill entitled «Application of the principle of equal treatment irrespective of racial or ethnic origin, religious or other beliefs, disability, age or sexual orientation» (transposition of Directives 2000/43/EC and 2000/78/EC) (17 December 2003):**

GNCHR submitted to the competent Ministries a series of comments on and amendments to the above very significant Bill that attempts to introduce into

Greek law new standards of protection against discrimination. Main weaknesses: (a) Derogations: The Bill's explanatory memorandum should recall that Art. 116(2) of the Greek Constitution allows no derogations anymore from gender equality and requires positive action, in particular in favour of women, and that it prevails, as more protective than EC law; Art. 5 of the Bill is less strict than the Directives; it should be adapted to them; (b) Scope of Bill (Arts. 4 & 8): more limited than that of the Directives; (c) Direct discrimination: the definitions are more restrictive than those of the Directives; (d) Positive action: the concept does not correspond to that of the directives; (e) Age: the Bill is less protective than the directives and Art. 10(11) of Act 3051/2002; (f) Defence of rights - Burden of proof - Social dialogue: all NGOs with a legitimate interest in human rights should have locus standi in courts and participate in the social dialogue; effective judicial protection requires amendments to the Procedural Codes and improvement of the legal aid mechanisms; (g) Criminal sanctions: the Bill should be harmonised with the anti-racism Act 927/1979; (h) Equality bodies should have a wider scope of action; the Labour Inspectorate is not an independent body and has insufficient human and material resources. The advice has not been followed so far. However, according to latest information, the government is in the process of transposing the above Directives ASAP.

- ***The prevention of torture and other cruel, inhuman and degrading treatment or punishment and the accession and application by Greece of the Optional Protocol to the relevant United Nations Convention (2002) (17 December 2003)***: GNCHR reminded the Greek State of the significant issue of protection of the rights of detained persons in Greece and especially of detainees who are mentally disabled, of alien detainees and of detainees belonging to minority groups, all of whom are especially vulnerable. As a consequence, GNCHR stressed the particularly important role that the above Optional Protocol may well play in human rights protection and especially for the protection of detainees. GNCHR underlined in particular the significance of the new Subcommittee on Prevention and of the independent National Preventive Mechanisms provided for by the Protocol. These organs, especially through their visits to places of detention and the relevant reports, have the potential to enhance the detention conditions and to prevent detainees' ill treatment worldwide. As a consequence, GNCHR called upon the Greek State to accede to the above Protocol and proceed to its effective implementation, especially through the independent National Preventive Mechanisms provided for by the Protocol. The Protocol has not been ratified so far.

- ***Initial (2002) Report of Greece to the UN Committee on Economic, Social and Cultural Rights (4 September 2002)***: GNCHR, upon urgent request of the Greek Foreign Ministry, submitted its comments on the above Report, which had been prepared by thirteen Ministries, in

accordance with Law 2667/1998 founding GNCHR. GNCHR pointed to a series of issues falling under the scope of the Report that were not sufficiently, or at all, tackled by the above Report, such as: **1.** The inadequate Greek legal framework against racial or ethnic discrimination; **2.** The inadequate legal and institutional framework for the protection and integration of alien immigrants and refugees; **3.** Issues of unemployment and new forms of employment, such as temporary employment through "companies of temporary employment", that contravene modern human rights standards; **4.** High poverty rate and inadequate social welfare infrastructure; **5.** Implementation of the development and protection programme for Roma; **6.** Issues pertaining to socio-legal protection of aliens, especially women, victims of human trafficking; **7.** Issues regarding state education; **8.** Issues arising from the practice of mass media, especially from private TV channels, and the flagrant or indirect violation by them of human dignity. The suggestions/proposals of the GNCHR were adopted, to a large extent, in the final document submitted.

**(b) What steps do you take to monitor adherence to the advice you have given?**

As mentioned above, the staff of the GNCHR is currently engaged in performing a comprehensive review and follow-up on all its advice and opinions –on legislation, policy, reporting to international organisations, proposals of ratification of international conventions, protocols etc- given to the competent state authorities, since its establishment. This task is performed in close co-operation with those members of the GNCHR who have access to that type of information, from within the governmental apparatus.

**(c) Have you provided legislative advice to ensure compliance with international human rights instruments? If so, what process was followed?**

On many occasions; the Commission has submitted to the relevant authorities proposals for the ratification of several international conventions and additional protocols; e.g. the 12th and 13th Additional Protocol to the European Convention for Human Rights, the ILO Convention 97(1949), 143(1975) and 121(1964), the 1990 International Convention for the protection of immigrant workers and members of their families, and the Additional protocol to UNCAT (2002).

In all the above mentioned cases, the substantiated proposals have been presented at the initiative of the GNCHR itself.

**D7. Regional and international relations**

**(a) What is your engagement with the international treaty body process?**

The GNCHR submits its input to the authorities of the Greek State that are competent for drafting the official reports to be presented to the Treaty

Bodies, upon request of the former. In addition, the Commission regularly co-operates with the Office of the Council of Europe's Commissioner for Human Rights and also with relevant authorities of the European Union. As an example, we note the submission of proposals to the European Convention for the Constitutional Treaty of the Union, including the proposal for the incorporation of the Charter of Fundamental Rights into the draft Treaty establishing a Constitution for Europe.

**(b) Do you contribute to the preparation of state party reports? If yes how do you do so?**

The Commission does not contribute to the preparation of state party reports per se; nevertheless, it is –in principle- consulted by the competent state authority, before the report is submitted to the Treaty Body. Occasionally, the international bodies request directly the opinions and positions of the GNCHR, in the process of drafting their reports on Greece (e.g. ECRI's –the Council of Europe's Commission against Racism and Discrimination- representatives who visited Greece on late 2003, asked for a meeting with the GNCHR in order to collect information in view of drafting its report on Greece. It is worth noting that the GNCHR's positions were eventually incorporated in the final report).

**(c) Do you report to international treaty bodies? If yes, do you do so directly, or via contributions to or comments on your government's report?**

Via the latter.

**(d) Do you undertake any activities in relation to follow-up to Treaty Bodies concluding observations?**

The GNCHR is using the authoritative status of the Treaty Body in its endeavours to make the Government comply with its obligations. Through the flow of information between the secretariats of the Treaty Bodies and the National Institutions on dates of examination of reports and the publicisation of concluding observations and recommendations, the GNCHR is striving to keep the state authorities updated on the concerns of the Body as well as to create a better understanding of the role and function of the latter.

## **E. OVERALL EFFECTIVENESS**

**E1. What indicators are particularly important for measuring the effectiveness of your institution?**

The major indicator is the compliance of the state authorities to the proposals of the GNCHR.

**E2. How does your organisation arrive at this assessment? What criteria are used?**

So far, we have not elaborated or used any specific impact assessment and effectiveness measuring tools. As we stated earlier, we are particularly interested in working in this direction in co-operation with homologue national institutions and with the assistance of the OHCHR and the International Council on Human Rights Policy

**E3. Does your organisation arrive at this assessment alone, or do you work with other partners to arrive at it (Government, consultants, public surveys, etc)?**

We co-operate closely with all the members of the GNCHR representing a wide spectrum of key actors of the Greek society and state apparatus (including representatives of seven ministries).

**F. OTHER ISSUES**

Please cite any other issues which you feel are relevant in measuring impact and effectiveness.

-No other issues

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