HELLENIC REPUBLIC

NATIONAL COMMISSION FOR HUMAN RIGHTS

Report 2007

Summary

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GREEK NATIONAL COMMISSION FOR HUMAN RIGHTS

SUMMARY REPORT 2007

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The Annual Report of the National Commission for Human Rights, provided for by its founding law, documents the activities and the work of the Commission during the preceding year. The forward, firstly, includes certain estimates for the general international situation of human rights. Then, it gives an account of recent developments in human rights situation in Greece as well as of decisions/recommendations of the Commission. Lastly, it refers to issues concerning the work of the Commission, both on domestic and international level, and its cooperation with the Government.

International situation of human rights

The atmosphere of generalized insecurity, highlighted also in previous Annual Reports of the Commission, continues to overshadow the international plane. This insecurity is, firstly, connected with the enormous inequalities dividing the planet. I do not refer solely to the expanding gap between North and South, but also to phenomena of social cohesion rupture in the domestic of several western societies. Insecurity is protracted by the repercussions of the "war against terror". The Commission, without overlooking the need to fight organized crime and armed violence, has repeatedly underlined that such actions cannot be pursued without being in compliance with international law and human rights. The international tendency of shrinking liberties in the name of security constitutes a severe threat to human rights. This threat is not limited to national boundaries. On the contrary, it has attained global dimensions with visible effects also in our country. In 2007, the Commission adopted two relevant decisions. The first one referred to the potential Greek involvement in CIA's illegal flights and detainees rendition. The Commission underlined, in particular, that "those practices are in breach of international law, because they bypass any judicial or administrative procedure, such as extradition, as well as the lex specialis adopted for fighting terrorism. Furthermore, 'rendition' usually entails multiple human rights violations, such as kidnapping, arbitrary arrest and detention and illegal surrender

without abiding by the procedure prescribed by law". By its recommendations to the Greek Government, the Commission asked for both the full investigation of the allegations and the assurance that such illegal activities will not be repeated. The second resolution contained detailed recommendations to the Greek Government in order to pursue politically and diplomatically the termination of the operation of Guantanamo detention camp, "symbol of lawlessness in the war against terror".

Moreover, both in developed and developing countries, the fear of being 'invaded' by groups of impoverished is used to justify increasingly stringent measures against immigrants, refugees and asylum seekers not in compliance with human rights standards. The erroneous implementation of asylum procedures has turned into a means of exclusion rather than protection. The percentage of granting refugee status has dropped dramatically the past few years, although the reasons for seeking asylum remain as strenuous as ever.
In many cases, immigrant workers not only are not treated as subjects of basic rights but they are persecuted brutally, discriminated against, and left unprotected to be exploited in terms similar to those of slavery. Thus, the fact that the only, in the long run, appropriate solution is the promotion of schemes that protect the rights of vulnerable groups while respecting States' privilege to control migrations, is overlooked. International instruments are able to bring in this balance, but it is constantly attempted to weaken the UN Convention on Refugee Status and ignore the UN Convention on Migrant Workers, which no western country has ratified.

Lastly, it is not just Governments who are responsible for human rights violations. Multinational corporations resist the establishment of binding international standards, while their corporate policy affects huge populations, especially in the Third World. The challenge to develop international standards and mechanisms to hold corporations accountable for human rights violations is deemed great.

Human rights in Greece

Two major developments, during the time period covered by the Report, need to be highlighted: firstly, the negative observations by European States regarding treatment of asylum seekers in Greece and as a consequence their decision not to return asylum seekers to Greece in accordance with 'Dublin II' Regulation due to information for human rights violations. This view is also shared by UN High Commission for Refugees[1]. Secondly, the report

[1] UNHCR Position on the Return of Asylum-Seekers to Greece under the "Dublin Regulation" (15.04.08).

of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment for Greece. The tone and the observations of the report indicate the deep discontent of the Committee due to the continuous non-compliance of the authorities with the former's recommendations. The report emphasizes the constant failure of the authorities to overcome organizational weaknesses regarding prisons and detention facilities for aliens, the unsuitable conditions in many of which are recorded in detail. Furthermore, the Committee expresses its concern due to the manifest absence of effective investigation in cases of ill-treatment allegations, creating an atmosphere of impunity to security forces. Even during the visit of the Committee, in February of 2007, its members took notice of incidents, also recorded in the report, which demonstrate the unwillingness of the authorities to investigate allegations of the kind and to provide medical assistance to the victims. For this reason, the Committee requests emphatically for the message of zero tolerance in cases of detainees' ill-treatment to get across and for this message to be reinforced with a declaration on appropriate political level.

As far as the first issue is concerned, the NCHR made comments regarding asylum procedure and the implementation of respective legislation. It highlighted the serious dysfunctions of the system, as applied by the authorities, and it proposed measures for the proper implementation of asylum procedure. Furthermore, the NCHR, taking into consideration the report of the NGO Pro-Asyl regarding the situation of aliens in the Aegean Sea and the practices of the Greek Coast Guard, addressed a series of questions to the Minister of Mercantile Marine. It also adopted a decision focusing on the treatment of aliens by the Coast Guard and informal refoulement.

In relation to the second issue of detention conditions, the NCHR adopted, after having conducted extensive study and deliberations with other institutions, a decision regarding detainees' rights and detention conditions in Greek prisons. The decision contains a series of analytical recommendations in the area of anti-criminal policy addressed to the Ministry of Justice. It underlines that the construction of new prisons and the improvement of the existing ones is necessary and welcome, but it also needs to be combined with substantial measures for the reduction of prospective inmates. Especially for minors, deprivation of liberty should be imposed as a last resort and solely for violent crimes or crimes committed by recidivists, and not just for common misdemeanors occasionally committed. Moreover, the NCHR proposes measures of immediate effect and urgency, the main one of which is granting access to prisons to independent institutions. It also recommends correctional policy measures, in the area of prevention (immediate

ratification of the Optional Protocol to the UN Convention against Torture, adoption of the 'Istanbul Protocol', UN Manual on Effective Investigation and Documentation of Torture) and in the area of detention conditions (creation of all necessary structures –inside and outside prison- which will allow for the full implementation of the Correctional Code, implementation of beneficial measures provided for by the legislation). Particular attention is paid to special categories of detainees, such as drug addicts and aliens under deportation.

With regards to migration issues, the NCHR has submitted comments on Law 3536/2007 "Special provisions regarding migration policy and other issues falling under the competence of the Ministry of Interior, Public Administration and Decentralization". Related to the said issue was also the decision on the right to health of undocumented migrants. The Commission took the view, inter alia, that access to health services of undocumented migrants needs to be expanded and that prescribed disciplinary and penal sanctions for medical personnel in case they provide medical care except in cases of emergency need to be abrogated.

The Commission, with two decisions, has also touched upon the question of operation of Independent Authorities established by the Constitution. Based on the Administration's non-compliance with the decision of the Hellenic Data Protection Authority, which had expressly forbidden the operation of security cameras, already placed in junctions and central roads, during demonstrations, the NCHR expressed its concern for the weakening of the said Authority's competence, provided for by the Constitution, and emphasized the need for State Authorities to respect the decisions of the HDPA. The NCHR underlined that unconditional respect of institutional independence of the said Authorities constitutes necessary requirement for the effective protection of human rights falling under their competence.

On another note, the NCHR expressed its views regarding the question of university asylum, highlighting that university asylum is still, even nowadays, in jeopardy mainly by public authorities, in particular police forces, which tries to oppose. Third parties or groups who invade arbitrarily university facilities do not violate university asylum, but rather use it abusively to destroy and vandalize university facilities. Those vandalisms will result, in the long run, in the degeneration of university asylum and the obliteration of its moral status. The same effect is also produced by the frequent, prolonged and arbitrary 'sit-ins' in universities by student groups or parties. The NCHR underscored the value of university asylum as institutional guarantee for independent research and teaching free from any kind of intervention or manipulation irrespective

of public or private origin. It underlined the moral responsibility of professors to protect university asylum not only from being violated but also from being gradually degenerated by decisions, practices or competition of political parties and by the exploitation of regrettable incidents by the media.

The NCHR commented extensively on the Periodical Report of Greece to the Committee on the Elimination of Racial Discrimination (CERD). Those comments gave the NCHR the opportunity to express its views regarding various human rights issues in Greece, whereas the participation and intervention of several members with substantive recommendations had been very constructive.

Regarding another major issue, i.e. human trafficking, the NCHR adopted detailed views and recommendations. It noted, inter alia, that the Greek legislation fulfills the requirements set by both international and European law and is deemed, in general terms, as sufficient, whereas important steps have been taken in the area of prosecution, although the actions of police forces to suppress the phenomenon are often inadequate and insufficiently organized. The complaints for inaction on the part of police forces and the allegations for police officers involvement in human trafficking rigs need to be fully investigated. The NCHR, underlined the need for the victims' protection to be further strengthened. It recommended, inter alia, the extension of reflection period to three months, the clarification of the procedure considering one as potential victim and the revision of residence permits scheme granted to victims so as victims' protection not to be dependent on their cooperation with the authorities. It is noted that the number of convicting decisions for human trafficking cases is very small and that they are mainly first instance judgments.

Important has been the intervention of the NCHR with regards to the Civil Union Pact. Commenting on the draft bill of the Ministry of Justice, it noted that although the Pact clearly answers to social needs, the exclusion of homosexual couples from its scope constitutes, in principle, a weakness since it discriminates against homosexual couples. The Minister of Justice responded positively to the NCHR's recommendation for the establishment of a working group to study all aspects of the proposed expansion. The NCHR replied back by noting that a comprehensive regulation of all issues concerning civil union of both heterosexual and homosexual couples is much more preferable since it removes any discrimination and provides a positive answer to new social needs.

Lastly, another two important issues that the NCHR has also in the past dealt with are the environment and Roma rights. In order for the NCHR to adopt detailed recommendations, deliberations are in progress with specialized institutions.

In concrete terms the NCHR, considering that the tragic fires of the past summer have rendered necessary the shaping of its positions on environmental protection issues, decided to organize a round table with experts and competent institutions. During the discussion, emphasis was placed in the autonomous value of the environment, the importance and the priority that protection of the environment needs to be given, and the individual and collective responsibility resulting from the legal good of the environment. All the above points will constitute the main principles of the NCHR's position on the matter.

In addition, the NCHR, in 2007, held two round tables with the participation of institutions whose activities focus on (NGOs, collective bodies of Roma, academics, etc), or are directly involved (central and local administration, independent authorities etc) in Roma issues. Many of the participants submitted their views and positions on the three agenda items- accommodation, education, health. The aim is to draft concrete recommendations, addressed to competent State institutions, for a new comprehensive Roma integration policy, since the experience from the field has demonstrated that any State intervention so far has been insufficient and fragmentary. The NCHR ad hoc group on Roma issues, benefiting from the deliberation process, will submit its recommendations in the first semester of 2008.

Operational issues of the NCHR

The NCHR, during the 9 years of its operation, has attained its very own distinctive role in the area of human rights protection in Greece. Its representative membership allows for the fruitful co-existence of different actors: representatives of the Administration, experts, trade unionists, parties representatives, NGOs, independent authorities. Shaping its final positions it is not always easy, however, in any case the exchange of different views is based on mutual respect and an atmosphere of cooperation in order for broad consent or consensus to be reached. Besides, this is why the NCHR avoids taking decisions by marginal majority, taking also into account its institutional advisory role.

The visit of the Presidential Board and the former President of the NCHR Ms. Marangopoulos to the President of the Hellenic Republic and the presentation of the 2006 Annual Report indicates its increasing importance. Furthermore, two meetings with Ministers took place: the author and the 1st Vice-President visited the Minister of Interior, Public Administration and

Decentralisation Mr. Pavlopoulos and discussed migration policy issues as well as operational issues of the NCHR (02.03.07); the author also met with the Minister of Justice, Mr. Papaligouras (20.06.2007) to discuss matters falling under his competence.

The role of the Ministries' representatives is also significant, since they are burdened with informing the NCHR and vice-versa and facilitating its contacts with the Administration. Besides, this was the aim of the legislator. Thus, I need to note that those representatives should be officials of the Ministries. The participation of representatives who do not form part of the Ministries' organization honours the NCHR, however, it does not facilitate its work. Unfortunately, in those cases where our self-evident request has not been materialized, the impact is visible to the daily function of the NCHR, the communication and coordination with the Ministries and their reports, which are included in the present Annual Report. As far as the cooperation with the Ministries is concerned, it needs to be noted that although in general terms it is deemed quite satisfactory the fact of non –or timely- submission of bills for comments continues to constitute a major omission on their part. The role of the NCHR calls for the aforementioned procedure and the failure of the Ministries renders its work very difficult.

Moreover, the productive operation of the NCHR is conditioned upon its staffing with legal/research officers and secretariat personnel. Currently, all positions provided for by the founding Law are filled. However, this does not mean that the constantly increasing needs of the NCHR are sufficiently addressed.

Furthermore, the ad hoc approval of the NCHR's expenses from the budget of the General Secretariat of the Government operates satisfactorily thanks to good intentions and understanding. Nevertheless, this funding system creates inflexibility and limits the NCHR's capacity to plan ahead and materialize its activities. Besides, the funding issue was also raised by the ICC Sub-Committee on Accreditation of National Human Rights Institutions compliance with the Paris Principles; although it recommended the re-accreditation of status A of the Commission, it expressed its concern regarding adequate funding noting that the Commission's independence requires a funding scheme providing full autonomy. The said accreditation and the attached comments have particular both symbolic and substantive value. The degree of independence, functional autonomy and compliance of National Commissions with the Paris Principles is examined. This is why the accreditation procedure is done by the International Coordinating Committee on the basis of its Sub-Committee's recommendations (according to article 3 (c) Rules of Procedure).

Additionally, the NCHR has tried to establish relations which will allow it to sufficiently supervise, on a permanent basis, human rights issues and timely spot potentials of intervention. For that reason, it pursues to the greatest extent possible cooperation with civil society. A typical example of this effort, is the conference, co-organised by the NCHR and the National Confederation of Disabled Persons, whose aim was to illustrate the significance of the Convention on the Rights of Persons with Disabilities, the need for its ratification by Greece and the need for all political parties to commit in combating discrimination against disabled persons.

Finally, the NCHR has an important international presence. The NCHR has been elected –since 2002- as member of the European Coordinating Committee of National Human Rights Institutions and systematically takes part in the ECC meetings resulting in shaping common policies. Furthermore, the NCHR, having status A, cooperates closely with the International Coordinating Committee of National Institutions, whose President is the respective Commission of Canada, whereas it is administratively supported by the National Institutions Unit of the UN High Commission for Human Rights in Geneva. Moreover, the NCHR cooperates with the newly established Fundamental Rights Agency of the EU and the Office of the High Commissioner for Human Rights of the Council of Europe, which supports the work of the National Institutions by organizing educational/training seminars programs for their staff members and encourages their involvement with the execution of judgments of the European Court for Human Rights. I also need to note the active contribution of the NCHR to the Euro-Arab Dialogue for Human Rights, for almost one year now, in which six European and six Arabic commissions participate.

It is noteworthy, that the institutional maturity of the NCHR entails increasingly international cooperation and activities, which in their turn require extensive material and human resources for planning and organizational purposes. In other words, the NCHR has reached adultcy as an institution, both in domestic and international level and it has developed the capacity to acknowledge with greater precision its needs and consequently to submit proposals for their satisfaction.

Athens, April 2008

II. LEGAL FRAMEWORK AND ORGANISATIONAL STRUCTURE OF THE NCHR

a) Law No. 2667/1998 establishing the NCHR

LAW No. 2667/1998[1]
(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:
(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;

1 OJHR A' 281, 18.12.1998

(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 extra-ordinarily 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 ΠΕ, 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

Article 19
Final provision
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 the NCHR

The Greek National Commission for Human Rights (NCHR) 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.

NCHR 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 the NCHR 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 inspiration for the creation of the NCHR were the Paris Principles, adopted by the United Nations and the Council of Europe.

According to Law 2667/1998, by which the NCHR was established, the NCHR 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 NCHR 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 the NCHR 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 the NCHR

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

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 the NCHR membership and the election of Members, of the President and the two Vice-Presidents. Each institution participating in the NCHR 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 the NCHR. This particular, liberal system ensures the NCHR's independence and impartiality.

d) The organisational structure of the NCHR

Since January the 10th 2000 (starting date of functions), and till October 2006, Emer. Professor Alice Yotopoulos-Marangopoulos was the President of the NCHR. Following her resignation in October 2006, Mr. Kostis Papaioannou (representing Amnesty International-Greek Section) has been elected President of the NCHR. Ms Angeliki Chryssohoidou-Argyropoulou is the 1st Vice-President, and Ass. Prof. Linos-Alexandros Sicilianos is the 2nd Vice-President.

NCHR has established five Sub-Commissions:

1. The Sub-Commission for Civil and Political Rights (Head, Prof. Linos-Alexandros Sicilianos)
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 Chryssohoidou-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, Ass. Prof. Grigorios-Evangelos Kalavros)

According to the Rules of Procedure 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 NCHR (Plenary) for discussion and decision.

The NCHR employs three Legal/Research Officers (Ms Christina Papadopoulou, Ms Lydia-Maria Bolani and Ms Tina Stavrinaki and Mr. Vassilios Georgakopoulos till 06.05.2007); it also employs two Executive Secretaries (Ms Katerina Pantou and Ms Aggeliki Vassilaki).

In 2003 the NCHR acquired its own premises in Athens (Neofytou Vamva, 6, 10674 Athens); it also maintains its own website (www.nchr.gr).

III. RESOLUTIONS, DECISIONS AND OPINIONS FROM 2005 TO DATE (IN SUMMARY)

In the course of the meetings of the NCHR Plenary and Sub-Commissions since 2005 the following issues have been discussed and relevant action was taken, including notification of the NCHR resolutions and recommendations to all competent Greek authorities (also published in NCHR Annual Reports) [*]:

Resolutions, Decisions and Opinions Published in the 2005 Annual Report

Resolution on the abolition of the UN Commission on Human Rights (3 June 2005)

The NCHR: (a) expressed its deep concern regarding the proposal made by UN officials (during the Commission's 61st Annual Conference) to dismantle the UNCHR; (b) noted that it would be understandable if a process of reform were initiated with a view to improving the overall performance of the Commission; and (c) requested that the Commission be maintained and, in the event that steps are taken to improve its efficiency, representatives of NHRIs and NGOs' (holding consultative status with the UN) be included in the overall process.

Comments on the Draft National Plan for Social Inclusion (NPSI) 2005-2006 of the Ministry of Employment and Social Protection (14 June 2005)

Following a request by the above Ministry concerning the Plan in question, the Commission recommended the following: (a) In relation to NGOs' involvement in the preparation of the Plan, the participation of organisations representing the beneficiaries of the National Plan; (b) The inclusion of more vulnerable social groups, such as asylum seekers and refugees (taking into account the 1951 UN Refugee Convention and the 1967 Additional Protocol); (c) The need for greater emphasis to be given to the resolution of problems

[*] Resolutions adopted during 2000-2005 have been published in previous reports.

relating to migration; (d) The introduction of specialized provisions regarding vulnerable persons, in particular the disabled; (e) The strengthening of social sensitisation programmes (e.g. in primary and secondary education) and a more sensible human rights training; (f) The promotion of intercultural education through the use of "e-learning"; (g) The elaboration of a plan for a Minimum Guaranteed Income (MGI) according to EU standards; (h) The expansion of health care to asylum seekers and residents under "humanitarian status" as well as to the elderly and the establishment of regular health control for the aforementioned.

The Commission noted that more attention should also be given to the promotion of the concepts of "Local Employment Pacts" and "Corporate Social Responsibility", as well as to the development of an advisory network for aliens. Finally, as far as the implementation of "best practices" is concerned, these could well include: (a) the creation of "Aliens Service Centres" and an advisory network for them, as stated above; (b) the provision of "Health Care at Home" as part of the programme "Help at Home"; and (c) the implementation of a Programme for Teaching Human Rights in Primary and Secondary Education.

Comments on the Bill of the Ministry of Justice re "The Protection of Personal Data and Privacy in the Electronic Communications Sector (Incorporation of Directive 2002/58/EC)" (10 November 2005)

The Bill aims at incorporating into national law, the Directive 2002/58/EC on privacy and electronic communications; the deadline for the incorporation of which expired on October 31st, 2003. The Directive refers to the wide use of the newly advanced digital technologies by the public communication networks, thus generating particular need for the protection of personal data and privacy in general. From the Commission's perspective, the Bill's major issues are the privacy of communications and the protection of personal data. Non-reference to other provisions, due to lack of competence and technical expertise, should not be interpreted as consenting to them. The Bill combines in one text – and this is considered to be of paramount importance – provisions concerning the protection of privacy (the legal basis for which are Art. 19 of the Greek Constitution, Art. 8 of the ECHR, Art. 17 of the ICCPR and Art. 12 of the UDHR), as well as the protection of the individual from the processing of personal data, which is based on different legal grounds (Art. 5A and 9A of the Constitution, the European Convention 108/1981). Thus, the examination of the Bill's provisions requires the distinction between these two aspects, which is not always feasible, given that the 'boundaries' between the protection of privacy and personal data are not always clearly drawn, especially in the rapidly changing field of communications technology.

Finally, the Commission seizes the opportunity to underline, also in the light of the recent terrorist incidents, the harm that might be caused to human rights by the use of surveillance cameras (especially the so-called "smart cameras").

Comments on Law 3386/2005 entitled "Entry and Residence of Third Country Nationals on Greek Territory" (10 November 2005)

The Commission's concluding observations were presented by its President before the competent Parliamentary committee (06.07.2005). The Commission (which deliberated on this issue on several occasions) expressed its disappointment regarding the procedures followed during the formulation of the Bill. In particular, it stressed that, when it comes to such important enactments (the Law under discussion regulates the status of about one tenth of the country's population), wider consultations should take place with the bodies concerned, such as NGOs, representatives of immigrants' associations and the civil society in general. Moreover, the limited time granted did not allow for all the Commission's observations to be taken into account in the final stages of the Bill's discussion in the Parliament. The deficiencies in many of the Law's provisions give the impression that it is repressive and anti-integrative in character. It was further suggested that the Greek legislation should be harmonized both with EC Law and its international obligations regarding the protection of vulnerable groups (especially children). Considering that the Bill aimed at amending Law 2910/2001 by incorporating EU Directives 86/2003, 109/2003 and 81/2004, thus simplifying and updating current procedures, the Commission is concerned regarding the issues of working permits, family reunion, human trafficking, residence permits for exceptional or humanitarian reasons, administrative expulsion, protection of minors, second-generation immigrants, civil rights, penalties (Art. 82 par. 4, Art. 83, Art. 86 par. 2, 3, 5, 6, Art. 84, par. 4, Art. 87 par. 3, Art. 88) and interim provisions.

Recommendations regarding para 5, art. 64 of the Bill entitled "Enlistment in the Greek Armed Forces and Other Provisions" (25 November 2005)

The paragraph in question provides that those who take active part in the union movement or go on strike during their alternative service are deprived of their right to serve unarmed military service or alternative social service. The Commission agreed with the Greek General Confederation of Labour that the provision runs contrary to articles 22 par. 2 (the right to syndicalism) and 23 par. 2 (the right to participate in a strike) of the Constitution, as well as to

the provision establishing the right to conscientious objection (interpretative statement of art. 6 par. 4 of the Constitution). With the exception of two members suggesting the re-examination of the aforementioned provision as to its constitutionality, the others present agreed that it should be removed from the text.

Resolution regarding flights –in and out of Greece- performed by foreign secret services, and the abduction and interrogation of Pakistani immigrants (19 December 2005)

The NCHR expressed its concern regarding the activities of foreign secret services on Greek soil and the human rights-related implications. In particular, it observed that the alleged abduction and interrogation of a number of immigrants of Pakistani origin in July 2005 necessitated a thorough inquiry, while expressing its satisfaction with the course of the investigation so far. The issue is of major importance for the peaceful coexistence with the immigrant population in Greece. Moreover, information about secret flights performed by the CIA from and over EU soil, as reported by human rights organisations, by which individuals are transferred to secret CIA detention centres in Europe and/or elsewhere, without following due legal process, should be scrupulously investigated by all the authorities concerned, including those of Greece.

Resolution regarding the new EU Directive for the processing of personal data – new measures for the suppression of terrorism (19 December 2005)

The NCHR expressed its deepest concern regarding the forthcoming EU Directive abolishing the protection of privacy and subjecting all European residents to constant surveillance and monitoring of all their communications through all technical means available - while these same residents are going to bear the extravagant cost involved – and making these data accessible to European and non-European state authorities. Furthermore, the affirmation that secret services will refrain from recording the content of the communication and confine themselves to keeping track only of the duration, place and names involved appears quite absurd. Consequently, the NCHR urgently requested that the adoption of the new Directive be stopped, considering that an adequate number of relevant and binding European instruments are already into force. Both the very essence of human dignity and the "acquis communautaire" are at stake.

Resolution regarding the Council of Europe's proposal for a Resolution on the "Need for international condemnation of the crimes committed by totalitarian communist regimes" (19 January 2006)

The NCHR expressed its deepest concern regarding the above proposal to be discussed by the Council of Europe's (CoE) Parliamentary Assembly (23-27 January 2006). The Resolution's sponsor, Mr Lindblad, a Swedish MP, proposed to the CoE's Committee of Ministers the adoption of measures, such as the formation of investigative –both European and national- committees to look into communist "crimes" which are considered by the NCHR as non democratic. The NCHR is of the conviction that if this draft resolution were adopted, not only would the principle of peoples' sovereignty be harmed, but divisive political enmities would also be revived. It therefore invited all members of the Parliamentary Assembly to vote against it.

Proposals on State-Church relations (19 January 2006)

Following receipt of the proposal for a Bill on the above mentioned issue drafted by the Greek League for Human Rights, the Commission deliberated on it during two Plenary sessions (15.12.2005 and 19.01.2006). The Bill was approved by majority vote, while some of the Commission's members submitted their separate observations or abstained from voting. The Bill includes the following articles: (1) religious freedom and equality; (2) religious associations; (3) taxation of religious communities; (4) the Church of Greece and other public law religious entities (The Commission proposed a few amendments); (5) temples and places of worship; (6) religious education in primary and secondary education (the Commission proposed a few amendments); (7) religious education; (8) abolition of the religious oath before state courts (including witness's oath, expert's oath, interpreter's oath and jury's oath); (9) civil marriage (10) issuance of registrar's certificates; (11) abolition of the special treatment of clergymen before the law; (12) abolition of any reference to the individual's religious beliefs in legal documents; (13) the prohibition of proselytism; (14) regulations concerning cemeteries; (15) cremation of the dead; (16) clergymen's remuneration; (17) the return to the Church of any land property ceded by it to the Greek State; (18) social security for clergymen (the Commission proposed a few amendments); (19) the Ministry of Education; (20) religious departments in government ministries; (21) other legal provisions to be abolished; and (22) entry into force. As stated in the preamble, the Bill aims both to safeguard religious freedom and equality and to create the necessary conditions for the Church Institutions to develop independently of the State. Finally, it should be noted

that, following a NCHR reminder of its positions on "the cremation of the dead" (Commission's Report 2000) addressed to the President of the Greek Parliament and the competent Parliamentary Committee (21.12.2005), a new law has been introduced (3448/2006) dealing, among others, with the above mentioned issue (art. 35).

Resolution concerning reconciliation between professional and family life, in view of the incorporation of EU Directive 73/2002 into Greek legislation (9 March 2006)

Following a proposal by its President, the Commission's 2nd Sub-Commission convened twice to discuss the above issue (on 27.06.2005 and 02.11.2005) before referring it to the Plenary session. The latter (on 09.03.2006), considering (a) that the general principle of EC Law regarding reconciliation ("harmonisation") of professional and family life concerns both parents, if reconciliation is perceived in its broader sense, (b) that parental leave is not the only means to facilitate "harmonisation", and (c) that neither "harmonisation" nor maternity should constitute exceptions to the principle of equality between the sexes, recommended: (a) The adoption of a concrete definition of the term "family"; (b) The adoption of specific proposals-regulations regarding parental leave (such as providing for both male and female judges' right to parental leave); (c) The general granting of paid parental leave to persons working both in the public and private sector, especially to single-parent families; (d) That the father's parental leave constitutes an individual and non-transferable right; (e) That, as far as working hours are concerned, workers' rights be secured either through collective negotiations or other consultations; (f) That variations of working hours, particularly flexible working hours (part-time employment etc.) be always promoted on a voluntary basis, with respect to workers' rights; (g) That women's right of return to the same or similar position they occupied before childbirth be secured after childbirth; and (h) That support mechanisms be strengthened to cover workers' needs. Finally, the Commission expressed its satisfaction regarding the provision, under Law 3386/2005, regarding family reunion of third country nationals, as well as the granting of family allowances, while reserving the right to express its specific positions when notified of the relevant Bill.

Decision regarding medical care and hospitalisation of stateless persons, members of the minority of Thrace and other categories of aliens (9 February 2006)

Following the receipt of a Commission Member's note addressed to the President, the NCHR's 2nd Sub-Commission convened on 02.11.2005, before

referring the issue to the Plenary Session (on 09.02.2006). The issue in question is the loss of Greek nationality, on the basis of artcle 19 (now repealed) of the Greek Nationality Code. Although a solution was provided through naturalisation, the Thrace minority's non-nationals were only granted a non-national's pass without provision for medical care. This also applies to other vulnerable groups, such as asylum-seekers, uninsured recognised refugees and some other particular categories of immigrants. The NCHR, considering, among others, article 27 of the ICESCR, recommended that a new Ministry Resolution be adopted broadening the ratione personae of the competent Ministry's previous one (48566), which will provide for: (a) the issuing of a health booklet or a "non-insured person's" booklet (as the case may be), when the non-nationality certificate is issued, for non-nationals (members of the minority of Thrace) who do not opt for the process of naturalisation and those regaining Greek nationality through it; (b) free medical care and hospitalisation, to aliens who do not have asylum seeker's identity card (their application being at the first stage of registration), though providing evidence of their application for asylum, (c) other specific categories of migrants, and (d) specific categories of nationals and non-nationals suffering from infectious diseases. It should be noted that only those recognised refugees desiring a "non-insured person's" health booklet should be granted one, given that they have the same rights as Greek citizens.

Observations on the Bill entitled "Dealing with Domestic Violence"
(9 February 2006)

The Commission's Plenary deliberated on the matter, in the light of the recommendations submitted by its President, by the Greek League for Women's Rights, by the Greek Section of Amnesty International and by the General Secretariat for Equality. Its observations were the following: (a) The Bill does not deal with the essence of the problem, i.e. the violence against women, nor with its root causes, the persisting roles of "man-master" and "woman-servant"; (b) The acts it purports to penalise are those already covered by the Penal Code, except for the case of rape within marriage. Moreover, confusion will be created as to which acts will continue to be regulated by the Penal Code or by the new law; (c) The relevant legislation is neutral from the point of view of gender, covering perpetrators and victims of both genders. However, it fails to address the reasons why in practice the perpetrator-husband or companion is left unpunished when the victim is the wife; (d) The establishment of ad hoc institutions to deal with the issue is not provided for; (e) The institution of mediation in criminal issues, as provided for in the Bill, raises doubts regarding its constitutionality and efficiency; (f) The police and the Prosecutor remain the main actors of the

pro-judicial phase, although they have already been proven to be unsuitable for the task, while the establishment of an ad hoc institution to deal with the problem, such as a special body of family social workers, is not provided for; (g) The recommendation (23.06.2005) addressed to the General Secretariat for Equality by the Greek League for Women's Rights, has obviously not received the necessary attention. In the Commission's view, a Bill addressing an issue of concern to a considerable number of families should be the product of a participatory process.

Decision regarding the proposal to the competent Greek authorities to ratify: a) the CoE Convention on Action against Trafficking in Human Beings, and b) the Additional Protocol to the UN Convention on the Rights of the Child, on the Sale of Children, Children's Prostitution and Children's Pornography (9 March 2006)

Although the aforementioned instruments originate from different international organisations, they, nonetheless, attempt to subject the alarming phenomenon of "human trafficking" to a stricter framework of legal regulations and sanctions. While the first addresses human trafficking in general, mainly on the European continent and in Southeastern Europe in particular, the second focuses on children's trafficking, the sale of children's organs, child prostitution, pornography and sex tourism. Both instruments complement pre-existing international and European legal texts and include monitoring mechanisms necessary for reaching the goals they set. Greece has already signed both conventions (on 17.11.2005 and on 07.09.2000, respectively), but has not yet ratified them. It is to be noted that a Memorandum of Co-operation regarding the distribution of roles and the co-ordination of action between state bodies and NGOs against human trafficking, was concluded among the Secretary-Generals of the Ministries of Health, Justice and Foreign Affairs. The NCHR recommends the ratification of the two conventions by Greece.

Resolutions, Decisions and Opinions Published in the 2006 Annual Report

Observations-proposals on the issue of the "Syngros Forest" in Attica (20 June 2006)

Following an appeal by the "Friends of the Syngros Forest" citizens' union (07.04.06) to the NCHR, regarding a series of actions or omissions leading to the degradation of the forest, the Commission, considering the imperative

need for the protection of the environment, submitted the following proposals and recommendations to the Ministry of Agriculture (Institute of Agronomic Sciences) and particularly to the bodies responsible for the said forest: (a) the need to fully respect the non-commercial character of the land in question; (b) the importance of safeguarding, protecting, renewing and enriching the flora – in one word, preserving it; (c) the necessity of restoring its two (and wildly vandalised) buildings, the "Villa Syngros" and the St. Andreas church; (d) the urgency of demolishing any illegal construction and addressing any other illegal uses or acts; (e) the exclusion of any use of the forest for illegal or commercial reasons, which would lead to its degradation, as has been the case on many similar occasions; (f) the implementation of the rule of preserving forestall and agricultural areas in a state of fertility; (g) the participation of representatives of the "Friends of the Syngros Forest" union and other environmental groups in the body in charge of the forest, as provided by the Aarhus Treaty (ratified by Greece by Law 3422/2005).

Observations on the Bill "Implementation of the Principle of Equal Treatment for Men and Women As Regards Access to Employment, Vocational Training and Promotion, and Working Conditions" (22 June 2006)

The NCHR recognizing the importance of incorporating EU Directive 2002/73 into the Greek legal order and taking into account EC Law and the Greek Constitution underlined the following: (a) The importance of viewing the EU Directive as a means for achieving substantial gender equality and introducing positive measures, mainly in favour of women; (b) The fact that gender equality is a non-negotiable matter; (c) The significance of the choice of terms used in the text; (d) The Bill's framework of implementation; (e) The careful examination of the provisions to be abolished; (f) The date of entry into force; (g) The urgency of the provisions pertaining to the equal treatment principle and the prohibition of discrimination (access to employment and relevant terms and conditions; professional orientation, formation and further training; equality of pay; professional advancement; prohibition of any unfavourable treatment; obligation to inform and supply evidence; legal protection; sanctions; burden of proof; and a body to be established to supervise the implementation of the equal treatment principle of men and women). In its proposals, the Commission stresses the need to take effective measures in line with the harmonization of professional and family life, inter alia: parental leave as an individual, personal and non-transferable right; the grant of benefits to parents who make use of parental leave; the establishment of paternity leave with benefits, as an individual, personal and non-transferable right; the inclusion of adoptive parents in the abovementioned benefits, especially single-parent families; the determination of working hours through collective

negotiations or other forms of agreement; the regulation of matters pertaining to work, in particular the promotion of flexible terms of employment; the qualitative and quantitative strengthening of support structures in order to cover the needs of all workers. The President of the Commission (A. Yotopoulos-Marangopoulos) as well as a number of its members (N. Theodoridis, P. Fountedakis, K. Botopoulos and A. Takis) submitted additional proposals.

Resolution regarding the establishment of a Committee to study and address the issue of bullying at schools (13 June 2006)

On the sad occasion of a tragic incident involving child abuse in the area of Veria (Northern Greece), the President of NCHR invited representatives from a number of specialised organisations (including, inter alia, the Marangopoulos Foundation for Human Rights, federations of school teachers, the Hellenic Society of Criminology, the Greek Ombudsman, the Athens University and Panteion University,) to study the problem. Taking into account the alarming and complicated nature of violent conduct by groups of students towards school-mates of theirs- in breach of the provisions of the Convention on the Rights of the Child –, it was decided that cooperation among the above parties –and primarily, between parents and teachers - be instituted to study the issue from sociological, psychological and criminal perspective. The aim is to create an informal Committee which will formulate a series of preventive measures. The Committee will be divided into 4 Sub-Committees: (a) 1st Sub-Committee for the investigation of the phenomenological nature of the problem, (b) 2nd Sub-Committee for the investigation of the social, parental and individual causes of the problem, (c) 3rd Sub-Committee for the study of the ways teachers, parents, children and relevant authorities can better deal with the victims and perpetrators, and (d), 4rth Sub-Committee for the study of best practices and design of prevention programmes.

Commission's views regarding the revision of the Greek Constitution (31 January 2007)

Following the hearing of recommendations by the Commission's members P. Fountedakis (30.11.2006), K. Botopoulos, I. Ktistakis (18.01.2007, 25.01.2007) and others, its Plenary Session, in view of the impending revision of a number of articles of the Greek Constitution, submitted its positions to the government and parliament with regards to: (a) The establishment of Constitutional Court (Art. 100); (b) The protection of the environment, particularly forestall areas (Art. 24 and 117); (c) Matters relating to religious freedom (Art. 3, 13, 33, 59); (d) The development of the personality, the avoidance of discrimination and the minimum guaranteed standards of decent living (Art. 5); (e) The abolition of the death penalty (Art. 7.3. b); (f) The issue of "property-indemnisation"

(Art. 17); (f) The so-called "professional" incompatibility (Art. 57); and (g) parliamentary immunity (Art. 62).

Observations regarding the issue of unaccompanied minors (15 February 2007)

Following a Plan of Action proposed by the Greek Council for Refugees (a NCHR member) as well as a Special Report by the Ombudsman for Children (the Greek Ombudsman is a NCHR member) regarding the aforementioned issue, NCHR recommended: (a) the abolition of police detention of alien minors for illegal entry in the country and its replacement by alternative measures of hospitality and/or protective custody in suitable facilities; (b) the abolition of deportation of alien minors who are subject to international protection, and its replacement by the return and repatriation procedure, when possible; (c) the enactment of measures of systematic registration, identification, information, legal representation and custody of alien minors; (d) the enactment of official and explicit procedures for the verification of the age of alien minors, assisted by independent experts combined with relevant medical and psychological examinations; (e) the appointment of an advisor or of a person responsible for looking after each minor, especially in the field of childcare, who will safeguard the child's rights; (f) the direct notification of the Public Prosecutor in charge of minors by the police authorities for arranging the former's custody; (g) conducting more than one interviews with each minor separately in view of safeguarding the child's interest; (h) that minors be fully informed of their rights; (i) the establishment of a judicial social protection system, as proposed by UNHCR and the Children's Ombudsman; (j) the establishment of proper reception and residence centers for unaccompanied minors; (k) the need to understand that alien unaccompanied minors/asylum seekers constitute a particularly vulnerable group in need of expert assistance; (l) specialised access to education; (m) ensuring all the legal conditions for employment and insurance for minors above the age of 15, by the competent state body; and (n) that the GCR and the Ombudsman's abovementioned reports be examined and acted upon by the competent authorities.

Observations and proposals regarding the implementation of Law 3251/2004 entitled "European Arrest Warrant, Amendment to Law 2928/2001 Concerning Criminal Organisations and Other Provisions" (22 March 2007)

Following a recommendation by Prof. P. Stangos (26.11.2006), the Commission's First Sub-Commission submitted a number of observations/proposals to the Plenary Session, which were unanimously approved (22.3.2007). The issues on which the Sub-Commission focused in particular were: (a) The ban of a national's extradition; (b) The issue of the abolition of the double

criminality principle; (c) Pending trial as a condition for the non-execution of the European arrest warrant; (d) Injustice as a condition for the non-execution of the European arrest warrant; (e) Mental inability of the wanted person as a reason for the non-execution of the European arrest warrant; (f) Discrimination on the basis of nationality in relation to the non-execution of the European arrest warrant in case of pending trial; (g) The cases in which criminal prosecution is stalled as a discretional reason for refusing to execute the European arrest warrant; (h) The relation of the procedures of the European arrest warrant with the Schengen Information System (SIS); (i) The provisional transfer of the wanted person; and (j) The restriction of the rule of specialty. In conclusion, the Sub-Commission recommended: (a) The need for Greek Public prosecutors and judges to interpret Law 3251/2004 within the limits prescribed by fundamental human rights; (b) The need to prioritise an interpretation of the abovementioned law in favour of the accused; (c) That the jurisprudence of the ECtHR be respected in relation to the SIS; and (d) The need for amending Law 5231/2004 in view of improving the protection of fundamental civil rights of the persons for whom the European arrest warrant is issued. In addition, the Commission congratulated the Supreme Court (Areios Pagos) for its 2005 decision by which the execution of the European arrest warrant for a Greek citizen, in order to stand trial in Germany, may not be carried out in Greece.

The dissemination of the European Convention for Human Rights and the interpretation thereof by the European Court of Human Rights into the Greek judicial system (25 January 2007)

Following the submission of Prof. P. Stangos' proposals concerning the abovementioned issue, NCHR's 1st Sub-Commission recommended that: (a) the judgments of the Grand Chamber be translated into Greek and then, distributed to Greek judges; (b) NCHR may only supervise the proposed task, given its limited means and human resources; (c) a 3-member committee be established by NCHR which will be in charge of: (i) preparing a detailed organisational plan of the project, including its budget; (ii) initiating contacts with publishing houses and coordinating the project with them.

Observations on the Presidential Decree of the Ministry of Public Order entitled "Reception of Asylum Seekers, Process of Examination, Conditions of Admission, Revocation of the Status of International Protection and Deportation. Rights-Obligations. Family Reunification of Refugees" (27 March 2007)

Following the submission of the draft of the abovementioned presidential decree by the Ministry in charge, relating to the incorporation of EC

Directives 55/2001, 9/2003, 86/2003, 83/2004 and 85/2005 into Greek legislation, the Commission's Third Sub-Commission in association with the Greek Ombudsman, the Greek Council for Refugees (both members of the Commission) and UNHCR, taking into consideration the Greek Constitution, the European Convention for Human Rights and the 1951 Geneva Convention, submitted their observations in relation to: (a) The presence in person of the asylum seeker to the competent authorities; (b) The freedom of movement of persons in need of international protection in the country of reception; (c) The fingerprint identification; (d) Reception and healthcare facilities; (e) Access to reception centres by UNHCR representatives and legal representatives of the asylum-seekers; (f) The referral of victims of torture, rape etc. to a "specialised state unit" responsible for certifying and providing the necessary support; (g) The delayed submission of the asylum request; (h) The detention of asylum-seekers; (i) The right of residence of aliens in need of international protection; (j) Issues pertaining to legal service or notification of decisions; (k) Issues concerning the International Convention for the Rights of the Child; (l) Legal aid and representation; (m) The concept of "safe third country"; (n) The composition of the Appeals Commission; (o) The determination of the person entitled to subsidiary protection; (p) The period of subsidiary protection; (q) "Temporary employment" to provide for basic human needs; and (r) Additional elements pertaining to the exclusion clauses.

Resolution regarding human rights violations committed during the students' rally on the 8th of March 2007 (4 April 2007)

NCHR expressed its profound disaffection with regards to the above events, particularly the violation of the citizens' constitutional right to assemble and demonstrate peacefully. In particular, small groups committed violent acts causing damages, practices obviously condemned by all. Nonetheless, the excessive use of force and chemicals by police forces endangered considerably public's life, particularly of persons not belonging to the above groups. Appeals lodged by lawyers, academics and relatives of the individuals arrested regarding conditions of detention and potential infringement of procedural rights, constituted additional reasons of concern.

Resolutions, Decisions and Opinions Published in the 2007 Annual Report *

Comments on Law 3536/2007 entitled "Special Provisions regarding Migration Policy and Other Issues Falling Under the Competence of the Ministry of Interior, Public Administration and Decentralisation (3 May 2007)

Law 3536/2007 is based on the premise that immigration constitutes a dynamic, multifaceted, unavoidable phenomenon. The aforementioned Law, which amends Law 3386/2005, provides for the legalization of certain categories of third country nationals and aims at simplifying and accelerating the procedures of issuing and renewing residence permits in order for the aliens' integration to be promoted.

However, some provisions of the new law are not compatible with the set goals and raise several concerns. In particular:

1. The establishment of a National Committee for the Social Integration of Immigrants demonstrates the need to plan, organize and coordinate policies and actions of integration. Nevertheless, the fact that that both the immigrants themselves via their unions and NGOs are not represented in the Committee is surprising, to say the least. Article 1(2) provides that the representation of immigrants will be taking place via the mediation of the President of the Institute of Migration Policy. This provision is not appropriate for a modern European policy towards immigration and immigrants.

2. In some cases the new law makes dysfunctional choices along the lines of the previous Law 2910/2001. A typical example is the permit granted on 'humanitarian grounds'. Article 44 of Law 3386/2005 provided for the issuing of residence permits on humanitarian grounds without requiring possession of passport with visa, thus improving considerably the legal framework of Law 2910/2001. In practice, the chance was given to people, who had no legalizing documents due to negligence of the Administration or whose deportation was objectively impossible (e.g. spouses or children of nationals, people born in Greece, trafficking victims) to obtain residence permits. Unfortunately, the new law (article 11(1)) sets as a precondition for granting residence permit on humanitarian grounds the possession of visa, thus taking a step back.

3. In order for applicants to benefit from the 'legalization' process they need to prove, by submitting certain certificates, that they have been

* Resolutions, decisions and opinions will be hereinafter published in extensive summaries.

residing in Greece before the 31st of December 2004. The fact that the asylum application is not included in the enumerated certificates which can be used in order to prove the time period of residence raises serious concerns. This omission results in a large group of aliens, whose deportation is not possible, continue living in a state of insecurity and uncertainty.

4. The Law lacks amendments regarding the procedure and terms of administrative deportation and detention of aliens, despite comments and recommendations submitted by numerous institutions. The issues concerning the complete and sufficient protection of alien minors from deportation; the consecutive orders of administrative deportation; repeated detention for three months imposed against the same person, although the deportation is not feasible; the exhaustion, in any case, of the time limit of administrative detention and the residence status of aliens whose deportation is not possible have not been touched upon. Problems also raises the continued limitation of movement of documented immigrants (article 6(3), (4), 9(2), (3)) whether it concerns the choice of profession, the location of providing services, or the investment for exercising independent economic activities.

5. The varied migration waves combined with consecutive legislative changes and bureaucratic impediments while implementing them has created groups of aliens with different levels of integration into domestic social life. Nowadays, an increasingly percentage of migrants calls for not just integration but also further rights (e.g. the right to vote in local elections). Thus, the inclusion of migrants' organization in the National Committee for the Social Integration of Migrants is deemed imperative. A different approach is required towards those immigrants who face severe problems regarding their integration, despite the quite long duration of residence in Greece. Those problems, although vary on a case-by-case basis, are partially due to the lack of legalizing documents. A flexible policy is required which will aim at the integration of the specific groups of migrants, by resolving firstly, in cases of long-term residents, the issue of the legality of their stay.

In concluding we would like to draw the Administration's attention to the following:

a) Given the nature of the Law, the numerous executive acts and circulars to be issued should try to interpret the provisions as broadly as possible, so as to ensure the integration and not the exclusion of those who fulfill the requirements.

b) On the contrary, the provisions containing sanctions should be interpreted narrowly. However, it needs to be noted that such an interpretation is problematic due to the phrasing of several provisions having a sanctioning character (e.g. article 3 which does not define nor how the sanction is imposed nor the type of crime that the refusal of the administration to grant or renew residence permit may entail).

Decision regarding the potential Greek involvement in CIA's illegal flights (3 May 2007)

According to many reliable surveys the Greek air space as well as certain airports and/or military bases in Greece have been used, during the past two years, by USA's Central Intelligence Service in relation to practices known as 'rendition'.

Those practices consist of transferring individuals from one country to another, usually without any previous judicial or administrative procedure, such as extradition.

Those practices include:

- Transfer of detainees, in the context of 'war against terror', and their delivery to other States' authorities;
- Arrest and detention of individuals by foreign authorities;
- Abduction of suspects abroad.

It is well known that most States, to which the USA transfers the victims of 'rendition', exercise torture and other forms of ill-treatment during interrogation. There have been grievances that States which exercise torture have been for that purpose chosen to interrogate detainees, and that US interrogators have threatened detainees with transfer to these States.

In other cases, victims of 'rendition', who were brought under US jurisdiction by other States, have been kept in extraterritorial secret detention centres directed by the US (these centres are sometimes called 'black sites').

The NCHR considers those practices as being in breach of international law since they by-pass any judicial or administrative procedure, such as extradition as well as the special legislation on combating terrorism. Furthermore, 'rendition' entails multiple human rights violations, such as abduction, arbitrary arrest, and detention and illegal transfer without observing the prescribed procedures.

Both the arrest and detention of the majority of 'rendition' victims were illegal from the outset; some of them were abducted while some others had no access to any judicial authority. 'Rendition' also violates a number of guarantees with regards to the safety and freedom of the individual; for example 'rendition' victims cannot question the legality of their detention or the arbitrary decision of their transfer to another country.

'Rendition' constitutes an elementary feature of the international system of secret transfer and arbitrary detention. The aim of this system is the detention of individuals so as to extract information without any limitations

or judicial supervision. Many of the victims have been detained or continue to be detained completely arbitrarily in terms of 'enforced disappearance'. Most of the detainees in secret detention centres (in the so-called black sites) have been victims of 'rendition'.

According to international law, States are under the obligation to prohibit the transfer and delivery of an individual to another State, where he faces the risk to be tortured or otherwise maltreated, as well as to prevent, penalize, investigate and punish acts of torture or other forms of ill-treatment, co-perpetration, complicity or instigation of torture.

A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible if it does so with knowledge of the circumstances of the internationally wrongful act. In other words, States which knowingly facilitate torture and ill-treatment, enforced disappearances and secret detention are also responsible for those violations.

The final report of the European Parliament's Committee for CIA's activities in Europe, despite the general lack of cooperation by European governments, affirms the European countries' complicity in illegal transfers by the CIA in Europe.

As far as Greece is concerned, the European Parliament notes that aircrafts, used by the CIA, have carried out 64 stops in Greek airports, and expresses its concern regarding the purpose of the said flights, which are related to rendition and detainees' transfer networks. Furthermore, it expresses its discontent with regards to stops taking place in Greece by aircrafts, for which there is proof that they were used by the CIA in other instances for rendition of named individuals.

Recommendations:

The National Commission for Human Rights,

a) affirming that the fight against organized crime and armed violence needs to be conducted in respect of international law and human rights;

b) evaluating the material in its possession and taking into account the reports and observations of both the Council of Europe and the European Parliament,

Proposes to the Greek Government to:

1) Request from the US government to declare whether it has used airports or military bases in Greece or the Greek air space for rendition purposes.

2) To publicize whether the US government has ever requested from Greek officials diplomatic approval for conducting rendition flights or

whether Greek officials had any information from the US regarding rendition flights using airports in Greek territory. If that was the case, what was the Greek government's response? Does the Greek government request or receive confirmation regarding the purpose or mission of flights run by other countries' security services? If yes, to publicize the kind of information requested, and the procedures followed in case of non-compliance. It is also recommended to publicize any incidents involving CIA flights, where these questions remained unanswered or necessary information was provided.

3) To take the appropriate measures in order to prevent any future use of Greek airspace and airports in Greece by aircrafts used for illegal activities, requesting, inter alia, adequate information from aircrafts which wish to transit through the Greek airspace.
4) To examine whether national legislation enables Greek officials to force an aircraft, for which there are suspicions that is on 'rendition mission', to land in Greek airport and under which circumstances Greek security forces are allowed or compelled to board and control the aircraft.
5) To clarify whether the US had or have any detention or interrogation facility in Greece, or any other facility whose purpose is unknown. It is also recommended to state the actions taken in order to investigate these allegations and to ascertain the existence or not of such facilities.
6) To declare that illegal transfers and related flights are not permitted and to take effective measures so as to prevent illegal transfers via Greek territory and related flights via Greek air space.
7) To initiate or continue judicial and parliamentary investigations regarding the practice of illegal transfers and to cooperate fully for their completion. To evaluate the practices that might facilitate illegal transfers. To fully cooperate with the ongoing international and regional investigations regarding illegal transfer and secret detention, providing inter alia access to all related information and officials.
8) To ensure that no person is secretly or otherwise arbitrarily detained.
9) To enforce the prohibition of persons' transfer from Greek soil to any other State, when there are valid suspicions that the person involved would face serious human rights violations or the death penalty and not to seek or accept diplomatic assurances or conclude bilateral agreements in those cases.

10) To pursue the criminal prosecution by the competent judicial officials of those allegedly having committed human rights violations in relation to illegal transfers.

11) To investigate where the victims of the 64 instances involving Greece are located and take the necessary steps so as the latter receive just satisfaction for any material and moral damage.

Decision regarding the control of independent authorities and human rights protection institutions (3 May 2007)

The issue of regulating anew the control of Independent Authorities affirms that the precondition for the smooth operation and evolution of these institutions is that they be tolerated by any given political power, even when these Authorities decide differently than the government.

The raison d'être of the Independent Authorities is the regulation of several situations, the control of administrative measures and their implementation without the political power's involvement. The political power itself has assigned the management of certain issues, extremely delicate and complicated –because of the technological advancement- and also interwoven with great economical interests, to personalities with expertise and career beyond any political party's agenda.

The recommended measures put forward by the government entail the shrinking of the Authorities' independence. The Authorities' members are currently appointed by a unanimous decision of the Conference of Parliamentary Chairmen or in any case by an increased majority of four fifths of the members of the latter. This system allows for the selection of personalities of general acceptance. It needs to be noted that the Conference of Parliamentary Chairmen is very prestigious and has the largest possible parties' representativeness. On the contrary, the appointment of the Authorities' members by simple majority, if suggested by the government, would allow appointing personalities of governmental approval alone.

The parliamentary control, provided for in article 101A of the Constitution and clearly regulated by article 138A of the Parliament's Regulation, sufficiently ensures a kind of control above parties since it is conducted by all the competent parliamentary committees who inform the competent Minister. The parliamentary control concerns the Authorities' compliance with the principle of legality. On the contrary, control of expediency and correctness of their decisions is precluded.

The proposal to establish a Special Parliamentary Committee which will be constantly monitoring the Authorities and to which the Presidents of the Authorities will report five times per session amounts to continuous tutelage. This is not in compliance with the required feature of these Authorities which is independence.

It is also notable that control of legality by the Conseil d'Etat after the competent Minister or an individual has recourse to the latter is today provided for.

Our experience so far has shown that it is necessary to provide these Authorities with every support and to let them fulfill their mission unhindered. Besides, the term of office of the Authorities' members is not that long and the appointment of new members by the Conference of Parliamentary Chairmen –by the majority of four fifths- is easy.

Resolution on terminating the operation of the detention camp in Guantanamo (03.05.2007)

The NCHR, reaffirming that the fight against organized crime and armed violence needs to respect international law and human rights, expresses its firm opposition to criminal acts of massive attacks against civilians, such as those, of September 11th in New York, July 7th in London and March 11th in Madrid.

Irrespective of its firm opposition, seized by the completion of five years of Guantanamo detention camp's operation, which has become the symbol of lawlessness of the 'war against terror', the NCHR addresses to the Greek Government a series of proposals, in order for the latter to act in every possible way, both politically and diplomatically, towards shutting down Guantanamo. The responsibility of finding a solution in compliance with international law for the detainees held in Guantanamo lies with the USA. The proposals are the following:

1. The detainees in Guantanamo need to be released immediately, unless they are charged and brought before justice to have a fair trial.
2. The released detainees must not be forcibly sent to any country, where they might endure serious human rights violations.
3. There must be a fair and transparent procedure to evaluate the situation of each detainee to be released, so as to be established whether he can return safely to his country of origin or whether another solution needs to be found.
4. Those who will face trial need to be charged with known criminal offences and have a fair trial by an independent and impartial tribunal, e.g. federal US court. Death penalty should be excluded from the penalties to be imposed.
5. Any evidentiary material obtained via torture or any other form of cruel, inhuman or degrading treatment or punishment must be dismissed.
6. All US officials must abstain from undermining the detainees' presumption of innocence.
7. The 2006 Military Commissions Act must be abolished, since it does not guarantee the right to a fair trial, deprives the right of questioning the legality of detention and ensures no punishment for human rights violations.
8. The US authorities must invite the five UN experts to visit Guantanamo without the restrictions that forced the latter to reject the previous invitation. The experts must be able to address unhindered the detainees in private.

9. Similar access needs to be given to international human rights organizations, including Amnesty International.
10. The US must provide the released detainees with immediate and adequate reparation, which will include restitution, reintegration and fair and sufficient compensation.

Furthermore, in order for the global network of secret detention, torture and rendition to be addressed:

11. Except Guantanamo, any other centre, where people are detained without the protection provided by international human rights and international humanitarian law, must be shut down.
12. Shutting down Guantanamo and the other centres must not entail moving the detainees in other locations where human rights violations take place.
13. President Bush must nullify the military order of November 13th, which allows preventive detention without charges or trial.

Position and recommendations regarding human trafficking- The situation in Greece (14 June 2007)

Human Trafficking constitutes a complicated phenomenon and the contemporary form of slavery. Greece, due to its geographic location, being a destination and transit country has taken a number of measures trying to address this problem. In Greece the major legal instruments regarding combating human trafficking are the following: a) Law 3064/2002 'Combating human trafficking, crimes against sexual freedom, child pornography and economic exploitation of sexual life and assistance to the victims of the aforementioned acts', which, inter alia, penalizes all forms of human trafficking; b) Presidential decree 233/2003 'Protection and assistance to the victims of the crimes prescribed in articles 323, 323A, 349, 351 and 351A of the Penal Code in accordance with article 12 of Law 3064/2002'; c) Law 3386/2005 'Entrance, residence, and social integration of third countries nationals in the Greek State', which in articles 46-52 incorporates the provisions of Directive 2004/81/EC.

Whereas the above legal framework is quite sufficient, the NCHR recommended the following: a) The one-month reflection period (article 48, Law 3386/2005) does not suffice for the victim to escape from the influence of his/her exploiters and to decide whether or not to cooperate with the authorities. Thus, it needs to be extended to three months; b) The residence permit (article 46 seq., Law 3386/2205) needs to be granted to all victims of human trafficking irrespective of whether they cooperate with the authorities or not; c) A comprehensive and functional referral system needs to be established separating clearly the competencies of the actors involved; d) Greece needs to ratify the UN Protocol and the CoE Convention on human trafficking.

The NCHR welcomed the establishment of an Inter-Ministerial Commission and the drafting by the latter of the National Action Plan regarding human trafficking. However, it noted the absence from the Commission of experts and members of the administration having gained experience on issues pertaining to human trafficking.

Regarding prosecution of human trafficking it needs to be noted that in 2001 the Combating Human Trafficking Unit was established with the Chief of the Greek Police Force presiding. Furthermore, the Action Plan 'ILAIRA' of the Ministry of Public Order has been put into force, whereas seminars on human trafficking are conducted for police officers, judges and public prosecutors. Although these steps are positive, the NCHR highlighted the following: a) Several NGOs have launched substantiated complaints

regarding the illegal issuing of travel documents to human trafficking victims by consulates in the countries of origin. The Greek authorities need to investigate these complaints and take accordingly the appropriate measures; b) The Combating Human Trafficking Unit has not been as active as necessary; c) The operational anti-trafficking units, which have been successful in Athens, need to develop further action in the province; d) Police escort needs to be ensured for all human trafficking victims during trial; e) Whenever there are suspicions that an individual who is detained pending deportation is a trafficking victim the public prosecutor and anti-trafficking units need to be notified without further due; f) During all stages of judicial proceedings it is necessary to provide psychological support to the victims; g) The witness protection system is activated only when there are indications of organized crime rings' involvement. Given the difficulty of proving this the witness protection system needs to be further enhanced; h) The lack of specialized interpreters needs to be addressed.

With regards to the protection and assistance to the trafficking victims we need to note that a number of measures have been taken, such as hot lines for supporting the victims, accommodation in guest houses run by NGOs or the State, psychological support, legal aid, medical care, residence permit, access to employment. Nevertheless, the NCHR would like to recommend the following improvements: a) Support to trafficking victims is limited only to women/children victims of sexual exploitation. The State needs to develop a support system covering also the other forms of human trafficking; b) Support via hotlines is provided only in Greek. The use of other languages is compelling; c) It would be very useful if persons who, due to their professional capacity, deal with trafficking victims, such as doctors, social workers, psychologists etc, received special training; d) Given that employment plays a vital role in the social integration of trafficking victims further initiatives are required to that direction, as for example providing incentives to employers.

In addition, the NCHR underlined the need for continuous sensitization of the Greek society. Campaigning against trafficking should emphasize on, inter alia, the living conditions of trafficking victims and the modus operandi of their exploiters. Furthermore, the NCHR while praising the various initiatives of cooperation among different actors, such as the Memorandum of Cooperation between state authorities, the International Organization of Migration and 12 specialized NGOS, it noted that further initiatives of cooperation need to be taken, especially on local administration level. It also recommended the establishment of a National Rapporteur on Human Trafficking and called for the immediate and full implementation of the National Action Plan.

Resolution on the issue of university asylum (October 2007)

University asylum constitutes the most fundamental guarantee of academic freedom which is interwoven with the existence and function of any university institution. University asylum was established by the very first universities in Italy and its purpose was to prevent any intervention in the freedom of thought, research and teaching, mostly by the church. For that reason it is considered to guarantee academic freedom.

Similar has been the history of university asylum in Greece. The period before and during the dictatorship of 21st April 1967 has been the most noteworthy. The massive student protests demanding democracy and freedom in November of 1973 in the Polytechnic School of Athens led to the fall of the regime and turned university facilities into protective shield of freedom.

Although university asylum is not expressly provided for in the Constitution, there is no doubt that it has the status of a constitutional guarantee interwoven with the freedom of academic research and teaching and, in general, with the free movements of ideas. University asylum is a constitutional and institutional guarantee of academic freedom and strengthens the self-regulation of university institutions.

It opposes State authority and precludes arbitrary - without prior permission - interventions or invasion of police authorities in university facilities. It also opposes any form of policing and any attempt to control or manipulate teaching, research and movement of ideas. It is protected from both state authority and privates (individuals, groups, enterprises). The beneficiaries of university asylum are university institutions and technological institutions of higher education regardless of whether they are public or private. The independence of professors' opinion, free research and movement of ideas of students and researchers is absolute and it may not depend on laws, ministerial decisions or approvals, or be manipulated by private interests.

All members of university community are entitled to the protection of university asylum, individually and as a whole. Subjects of university asylum are the subjects of academic freedom, all those who take part in teaching, research, and disseminating knowledge, professors and students. University authorities are responsible for both maintaining the peaceful and free enjoyment of university asylum and effectively protecting it. University self-regulation entails that university authorities are responsible for protecting university's facilities and safeguarding academic freedom. However, the responsibility to protect university's facilities from any kind of material damages lies, individually and collectively, with all members of the university community and every organized body of students or professors.

The areas that fall under the protection of university asylum are the facilities, as well as virtual spaces, such as auditoria, places of entertainment, accommodation, and open-air areas where teaching, research, movements of ideas and entertainment of students take place.

It is evident that university asylum cannot be used as a pretext for the perpetration of criminal acts and its invocation cannot preclude wrongfulness. University asylum does not provide criminal or civil immunity to those, members of the university or third persons, who destroy public goods and commit other offences. Besides, it is well known that the perpetration of flagrant felonies and the endangerment of life permit the entrance, without prior authorization given by the university authorities but with the request of the public prosecutor, of police officers in university facilities for protecting life and other important legal goods being in immediate danger.

The recent law on higher education amended the previous one with regards to university asylum's protection without rendering this protection any better. The prescription of criminal acts was broadened but their general and vague description is not in compliance with article 7 of the Constitution which imposes the nullum crimen sine lege certa principle.

University asylum, even today, faces the risk of being violated by public authorities, especially the police. However, third persons or groups who invade arbitrarily in university facilities do not violate university asylum but they abuse it by destroying facilities and committing other punishable acts. These acts will lead to the degeneration of university asylum and its moral status. The same impact is also produced by the prolonged, frequent and arbitrary sit-ins of students.

University asylum is an institutional guarantee for free and independent teaching and research. Professors have the moral responsibility to safeguard this good both from being violated and degenerated by decisions, practices or rivalries of political parties which move towards that direction.

Decision regarding the right to health of undocumented migrants (8 November 2007)

According to article 84 (1) of Law 3386/2005 (Entrance, residence and social integration of third countries' nationals in Greece) hospitals and clinics are allowed to provide their services to adults undocumented migrants only in cases of emergency. Furthermore, according to par. 4 of the said article the employees of the aforementioned services who violate the above provision are disciplinarily and criminally liable for having abrogated their duties. Moreover, according to circular OIK/EMP518 of the Ministry of Health medical care will be provided to adult undocumented migrants exclusively in cases of emergency and until their health has stabilized.

On the basis of all the above it is evident that Greece grants to undocumented migrants restrictive access to medical care and, by extension, an equally restricted right to health.

Article 5 (5) of the Greek Constitution provides that 'All persons are entitled to the protection of their health and of their genetic identity…', whereas according to article 21 (3): 'The State shall care for the health of citizens and shall adopt special measures for the protection of youth, old age, disability and for the relief of the needy'. Whereas subjects of the social right to health are Greek citizens, the legislator may extend those rights to foreigners. Furthermore, although article 5 (5) has status negativus, it has been argued that it expands effectively the ratione personae of Article 21 (3).

Apart from the above provisions the right to health of undocumented migrants may derive from Article 2 (1) of the Constitution according to which 'respect and protection of the value of the human being constitute the primary obligations of the State'. The protection of health by the State is rudimentary for fulfilling the content of the said principle. It can hardly be disputed that the right to health is one of the most important specializations of the principle, which renders undocumented migrants subjects of the right. The in effect restricted access to medical care means that someone's health needs to significantly deteriorate so as to qualify for emergency care. Certainly, this situation does not comply with the obligation to protect the human being's value. Elementary social rights, such as the right to health, are so much interwoven with the protection of human value that their denial to a person on the basis of the legality of his presence is unthinkable. On the basis of the aforementioned it is safe to conclude that the Constitution provides for a more expanded access to medical care for undocumented migrants.

The right to health for everyone is also provided for in article 12 of the International Covenant on Economic, Social and Cultural Rights. The right to health, like all human rights, imposes three types or levels of obligations on States parties: the obligations to respect, protect and fulfill. The obligation to respect constitutes the strict core and the minimum with which the State party needs to comply. The Commission has stated that 'States are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal immigrants, to preventive, curative and palliative health services.' Moreover, it has stated that 'these core obligations include at least the following obligations: (a) To ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups; […] (d) To provide essential drugs […]. On the basis of the above it is argued that there is a right to health for undocumented migrants, which even if it is not identical with the one of citizens, it is certainly broader than the one provided by the Law. Greece needs to comply with its obligations deriving from the content-core of the right to health which does not include solely emergency care.

The Law in force, apart from not complying with international obligations, has another problematic aspect. Emergency medical care cannot easily be defined. The European Commission for Social Rights in the case International Federation of Human Rights Leagues v. France, involving a similar law, underlined that 'cases of emergency' are not sufficiently defined, thus highlighting the problematic aspects of the law's implementation. The issue of the uniform definition of emergency medical care has also been noted by R. Cholewinski, Rapporteur of the Ad hoc Working Group for Undocumented Migrants of the Council of Europe.

With regards to women, the NCHR noted that according to article 24 (2) of the Convention on the Rights of the Child: 'States shall take appropriate measures […] to ensure appropriate pre-natal and post-natal health care for mothers. While the aim of the said provision is the protection of the child's health, the 'receiver' of medical services is the pregnant woman, since it is evident that the child's health depends on the mother's state of health. While the Law grants full access to medical services to minors, when it comes to women it allows only emergency care, thus covering only labour and some cases of complications. Pre-natal control which is necessary to ensure both the baby's and the mother's health is not covered, unless we are dealing with minors pregnant. Therefore, Greece needs to provide pregnant women with broader access to medical care, including pre-natal control.

Regarding migrants' deportation, according to article 44 (1)(e) of Law 3386/2005 residence permit can be provided for humanitarian reasons to third

countries nationals having serious health problems. However, precondition of the said issuing is the previous possession of residence permit. That means that an individual who suffers from serious health problems may be deported. The NCHR noted that this possibility, apart from potentially amounting to degrading treatment, in accordance with ECHR's jurisprudence, certainly does not comply with the obligation of human being's value protection.

Another aspect of the issue in question is the protection of public health. Limiting the access of undocumented migrants to medical care renders the timely diagnosis of transmittal diseases impossible. According to the aforementioned Circular of the Ministry of Health when undocumented migrants are apprehended while trying to enter Greece are given a medical check. However, there is a great number that manages to enter unnoticed. Those individuals are not medically checked. In case these people are already sick they would have to wait until their health deteriorates so as to qualify for emergency care while possibly endangering public health. The protection of public health constitutes another reason for establishing a broader access to medical care for undocumented migrants.

The NCHR on the basis of all the above and after having praised those members of medical personnel who provide medical care to undocumented migrants beyond the law's limits risking to face disciplinary and penal sanctions, recommended the following:

a) The abolition of article 84 (1) of Law 3386/2005 in so far it forbids medical care for undocumented migrants in cases of non-emergency;
b) In any case:
    1) The access to medical care in cases of emergency to cover both stabilization and rehabilitation of undocumented migrants' health;
    2) The access to medical care to cover preventive medical check;
    3) Establishment of pre-natal and post-natal health care for women;
    4) The issuing of residence permit for humanitarian reasons to persons who suffer from health problems irrespective of previous possession of residence permit.
    5) The abolishment of disciplinary and penal sanctions for medical personnel in case they provide medical care beyond the limits prescribed by Law.

Comments regarding asylum procedure and implementation of the respective legislation (17 January 2008)

The NCHR, closely following the developments regarding the interpretation and implementation of the legislation regulating asylum and taking into account studies of the Greek Ombudsman, the Greek Council for Refugees and the United Nations High Commissioner for Refugees proceeded to the following observations:

1. Pending applications: in 2006 the overall percentage of granting refugee status and subsidiary protection was 1,22%. Until September 2007, 20,052 asylum applications had been filed. So far asylum has been granted in 23 cases, whereas humanitarian status in 59 cases. It is noteworthy that in 2006 out of the 3,248 decisions concerning applicants from Iraq, Sudan, Afghanistan, Somalia and Sri Lanka subsidiary protection was granted only in 20 cases. Furthermore, during the first trimester of 2007 out of the 1,915 decisions regarding applicants from the abovementioned countries no one was granted asylum status or subsidiary protection. As a consequence of those low numbers almost 21,000 applications are pending, in second instance, before the Asylum Committee which meets twice a week and examines almost 150 applications per session. The NCHR recommended: a) granting asylum at the first instance in more cases if the minimum requirements are fulfilled; b) the modification of the composition of the Asylum Committee (from six members to three) and its daily sitting until all 21,000 applications are examined.

2. Interpreters: Whereas the law provides that in all procedural stages asylum seekers are to be assisted by interpreters, it has been noted that the number of interpreters is not sufficient so as to cover all the needs of asylum seekers. The Ministry of Public Order published a pamphlet in 5 languages with instructions for asylum seekers. However, this is not sufficient since a lot of asylum seekers are illiterate or speak dialects and they need oral clarifications. The NCHR considers the problem of interpreters to be fundamental and the Ministry needs to take the necessary measures to resolve it.

3. Access to asylum procedures: The NCHR would like to draw the competent authorities' attention to the following practices: a) There have been allegations concerning refoulement at the entrance points of Evros and Northern Aegean and rejection of registering asylum applications by police authorities; b) Delays in receiving applications at the entrance points invoking the implementation of Re-admission Protocol concluded by Greece and Turkey; c) Third countries nationals who apply for asylum are detained

for three months, whereas those who do not are released after ten days. This practice raises legality issues when the grounds for detention are not defined given that deportation is suspended pending examination of the asylum application; d) Several asylum applicants withdrew their applications so as to fall under the provisions of Law 3386/05 and acquire residence permits as immigrants. When they realized that they do not fulfill the requirements they requested to make use of asylum procedures. The Ministry has not resolved this issue comprehensively and examines the applications on a case-by-case basis.

4. Asylum Procedure: a) The Asylum Department of the Aliens Directorate while examining asylum applications applies the accelerated procedure. On the contrary, the normal procedure is applied at the entrance points, despite the opposite provision of presidential decree 61/1999. This practice combined with detention of asylum applicants constitutes a deterrent mechanism for applying for asylum. b) The decisions of the Ministry of Public Order rejecting asylum applications both at first and second instance do not contain facts and the reasoning is not sufficiently detailed. This practice is in violation of the Code of Administrative Procedure and Conseil d'Etat's jurisprudence which requires full registered evaluation of each case and transcripts of the hearing before the Committee. c) In the context of accelerated procedure it is not examined whether the applicants fall under the status of subsidiary protection. As far as normal procedure is concerned, the Ministry does not examine the fulfillment of the conditions for subsidiary protection at the first instance. It does so following recommendation of the Committee only after the application for asylum has been rejected at the second instance. Moreover, since 2002 no autonomous applications for subsidiary protection, after rejecting the asylum application, has been examined. d) Regarding non-state actors of persecution, Greece has adopted the non-prevailing view according to which State's participation in persecution is required. This position entails rejecting asylum applications when an individual risks persecution by non-state actors and the State is unable to provide protection. It needs to be noted that the Conseil d'Etat has held that persecution by non-state actors constitutes persecution for the Refugee Convention purposes. The review of the case files at second instance has demonstrated that in some cases non-state actors of persecution were recognized as such. However, in all those cases the representative of the Ministry in the Committee recommended granting humanitarian status arguing that the allegations of the applicant concerning his persecution do not establish refugee status. e) There have been allegations concerning omissions while notifying the applicants in relation to the rejection of their application, such as the absence of interpreter or non-notification regarding the possibility and the deadline to appeal. f) The applications of unaccompanied minors are

rarely examined by the Committee. This is due to the long duration of the procedure resulting in the fact that in the meantime the applicants become adults and, therefore their application is rejected. Furthermore, due to the fact that their detention is not permitted, they are released or referred to NGOs without keeping track of them. The establishment of a special Social Service the director of which would be responsible for the judicial protection of minors never came into force. This situation results in their becoming 'pray' for human traffickers. The NCHR recommends to the Ministry to issue clarifying orders to those officials dealing with asylum issues re-iterating the provisions they need to rigorously implement.

5. Aliens' detention centres: The detention conditions are appalling. The Ministry is about to create new detention centres and hire specialized personnel. However, the creation of new units will not resolve the problem given that the number of persons detained is constantly rising. The NCHR recommends the general study and re-consideration of asylum practices in a comprehensive manner and considers that the mentality surrounding asylum issues needs to be revisited.

Resolution on the function of Independent Authorities established by the Constitution (14 February 2008)

The Independent Authorities that have been established by the Constitution contribute to safeguarding fundamental rights and freedoms. Their establishment and function correspond to the difficulty which the existing administrative mechanisms face in addressing multifaceted human rights protection issues posed by the use of new technologies. The independent authorities are also competent to address issues related with market economy regulation, without which individual rights and collective goods of utmost importance might be threatened. The constitutionalisation of the Independent Authorities by the 2001 revision of the constitution expressed the will to strengthen their institutional role and function in support of human rights protection without interferences by any governmental power.

The work of the Independent Authorities is both necessary and irreplaceable because of the complicated technological advancement and chaotic market economy; furthermore, it is provided for and imposed by the Constitution, because only in this way may certain rights be effectively protected and the guarantees for the rule of law preserved.

The NCHR follows closely the operation of the Independent Authorities touching upon human rights issues, on the basis of article 1 of Law 2667/1998 establishing the Commission. The importance of their role in protecting human rights is also reflected by the fact that three out of five constitutionally established Independent Authorities, i.e. the Ombudsman, the Data Protection Authority and the National Council for Radio and Television, are members of the NCHR while the remaining two, i.e., Authority for the Information and Communication Security and Privacy and High Council for Personnel Selection, safeguard certain human rights with aspects of which the Commission has repeatedly dealt.

On the basis of the non-compliance of the Administration with decision No 58/2005 of the Data Protection Authority, on November 17th 2007, which had expressly prohibited the operation of security cameras, already placed in junctions and central roads, during demonstrations, the NCHR expresses its concern for the weakening of the said Authority's competence, which is provided for by the Constitution. It also emphasizes the need for the decisions of the Authority to be respected by all State organs.

All constitutionally established Independent Authorities eventually come across human rights protection issues and challenges of similar difficulty. The unswerving respect of the authorities' institutional independence constitutes a sine qua non condition for the effective protection of human

rights falling under their competence. Article 101A of the Constitution also provides for the personal and functional independence of the Authorities' members so as to exclude any interference of the Administration.

The NCHR has previously adopted a resolution on the matter, stressing that the selection of the Authorities' members by the unanimous decision of the Conference of Parliamentary Chairmen or in any case by the increased majority of four fifths results in selecting personalities of high esteem to all parties, thus reinforcing the independence of the Authorities. Moreover, article 3 (2) of Law 3051/2002 provides for the renewal of the members' term in a manner which ensures the continuation of the Authorities' function.

On the basis of the aforementioned, the NCHR underlines that the smooth function of the Authorities requires consensual solutions combined with the selection of individuals with the necessary knowledge, skills, reputation and democratic ethos. Furthermore, in order for the Authorities to fulfill their constitutional role they need the appropriate infrastructure and human resources.

Any act against those Authorities' decisions, irrespective of origin, undermines their role and jeopardizes human rights respect and protection.

For those reasons, the NCHR:

1. Welcomes the renewal of the term of the Ombudsman and the members of ESR and calls upon the parliamentary parties to come to an agreement regarding the selection of the members of the other Independent Authorities.

2. Appeals to the executive and the judiciary to safeguard by all means the institutional role of the Independent Authorities in the framework of human rights protection.

Comments on the Report to be submitted by Greece under article 9 paragraph 1 of the International Convention for the Elimination of All Forms of Racial Discrimination (ICERD) (14 February 2008)

The report is well substantiated and drafted in accordance with the guidelines issued by CERD. The Report illustrates, as expected, the important positive steps that Greece has taken the past few years to combat racial discrimination. The NCHR has repeatedly dealt with questions falling within the scope of the UN Convention by submitting recommendations to the Government. The NCHR based on its previous decisions and factual information, taking also into consideration the practice of the Committee, drafted several comments which could be used to enrich the Greek Report.

The comments of the NCHR focused on the following issues: a) the demographic composition of Greece; b) the new anti-discriminatory legislation (the NCHR underlined the weaknesses of the new legislation and repeated the measures that need to be taken to strengthen the legal framework); c) minority issues, especially in the light of judgments of the ECtHR versus Greece; d) Roma issues (current problems and required initiatives); e) rights of immigrants (weaknesses of the new immigration law, political rights); f) questions of human trafficking; g) refugees and asylum seekers issues (significant problems in the asylum procedure; h) police brutality; i) detention conditions; j) religious freedom; k) right to citizenship (problems arising from the abrogation of former article 19 of the Code of Citizenship); l) freedom to assembly; m) right to education (in relation to refugees and immigrants); n) implementation mechanisms of the new anti-discriminatory legislation (weaknesses of the system, insufficient dissemination); o) media (prejudice against certain vulnerable groups).

The situation of aliens trying to enter Greece via the Aegean and the practices of the Greek Coast Guard

I. Introduction

The NCHR acknowledges that the obligations of Greece towards the EU are particularly extended regarding both the guarding of the EU's external borders and the implementation of the Dublin II Regulation. Greece should co-operate with the other Member-States of the South in order to pursue a better burden-sharing in relation to asylum and migration. Nevertheless, NCHR notes that Greece's obligations in the framework of the EU do not absolve it from other international obligations deriving from human rights instruments.

The past few months several reports (ProAsyl, Amnesty International-Greek Section, Greek Ombudsman) have focused on allegations concerning ill-treatment of aliens trying to illegally enter Greece via the Aegean by the Greek Coast Guard. Although, the NCHR is not in a position to check the veracity of the allegations contained in the reports, the latter raise serious and mostly worrying concerns.

The reports focus mainly on three issues that call for our attention: a) treatment of aliens by the Greek Coast Guard; b) obligation of rescue; c) informal refoulement.

It needs to be clarified that the use of the term 'aliens' is preferred over the terms 'immigrants' or 'refugees' because it is not possible to distinguish between the two in abstracto, due to mixed flows, and due to the conditions of operation of the Coast Guard. Furthermore, we need to note that while the treatment question involves both categories of aliens, the question of refoulement concerns mostly those in need of international protection.

II. Treatment of aliens by the Coast Guard

Several complaints concern aliens' ill-treatment (beating, submarino, mock executions, life threats) by the Coast Guard after the former's apprehension and during their on board interrogation. This kind of practices violate provisions both of the Greek Constitution (articles 2, 5 (1), 7 (2), 25 (1-2)) and international conventions (article 3 ECHR, article 7 ICCPR, articles 2 and 16 of the UN Convention against Torture). Furthermore, they entail individual criminal responsibility of the perpetrators, since they constitute criminal offences (such as body injuries articles 308 seq CC, illegal threat article 333 CC etc).

These practices are illegal even if they take place on the high seas based on the principle of active personality and the principle of the flag State. Moreover, the aforementioned international conventions are applicable extra-territorially, that is also on the high seas, resulting in the State being held internationally responsible. The ECtHR has held that a State has extra-territorial jurisdiction when through the effective control of the relevant territory and its inhabitants, as a consequence of military occupation, or through the consent, invitation or acquiescence of the authorities of that territory, exercises all or some of the public powers exercised by the latter. Given that the ECtHR recognizes extra-territorial jurisdiction over territories of other States, a fortiori there is such jurisdiction over the high seas. The crucial criterion is whether an individual in relation to the conduct in question falls under the effective control of those acting on behalf of the State. Moreover, according to the Human Rights Committee "a State Party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party".

On the basis of the above it can be safely argued that when officers of the Coast Guard board on the boats carrying aliens or when the latter are boarded on the Coast Guard boats, located on the high seas, the control exercised over those persons is such as to be deemed sufficiently effective. Thus, they fall under their jurisdiction and the above conventions apply extra-territorially. Therefore, officers of the Coast Guard must abstain, while dealing with aliens, from any conduct which may constitute torture, inhuman or degrading treatment whether they are located on territorial waters or the high seas.

Furthermore, we need to note that on the basis of article 3 ECHR, States need to conduct official, serious and effective investigations in cases where there are complaints alleging ill-treatment by State officials.

III. Search and rescue obligation

Aliens trying to enter Greece illegally in order to avoid being located by the Coast Guard usually use small non seaworthy boats, thus facing the risk of drowning. On the basis of article 98 (1) of UNCLOS, chapter 5, regulation 7 (1) of SOLAS and chapter 2, 2.1.10 of SAR States are obliged to rescue persons being in danger at sea. The rescue obligation is applicable in all maritime zones and it covers not just cases where a boat transmits SOS signal, but also cases where individuals or boats in danger are accidentally encountered.

Therefore, the Coast Guard is obliged to rescue aliens being in danger at sea, irrespective of the maritime zone in which they are located even if the aliens themselves have caused the danger either by jumping at

sea or by damaging their boats in order to be assisted by the Coast Guard. Furthermore, these practices should not be used as a pretext to cut down on rescue operations.

The rescue obligation also entails the abstention from acts, on the part of State officials, which may cause danger to life at sea. It has been alleged that officers of the Coast Guard damage the aliens' boats or cause big waves in order to repel them and force them to return to the Turkish coasts. Those practices, insofar they are true, do not comply with the rescue obligation. On the contrary, they entail such a great risk to life that their compliance with the right to life as it is provided for by the Constitution (article 5 (2)) and international conventions (article 2 ECHR, article 6 (1) ICCPR) is in doubt. Furthermore, they entail individual criminal responsibility of Coast Guard officers for crimes, such as manslaughter (articles 299 and 302 CC), omission to rescue (article 307 CC) etc.

The ECtHR has noted the positive obligation deriving from article 2 by stating that: "the first sentence of Article 2§1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps within its internal legal order to safeguard the lives of those within its jurisdiction". By extension, the coast guard needs to be extra careful while trying to repel aliens trying to enter Greece in order to minimize any danger to their life. Besides, according to the ECtHR, even when death has not occurred the examination of the applicant's complaint under Article 2 is not excluded, since "if read as a whole, it demonstrates that it covers not only intentional killing but also situations where it is permitted to use force which may result, as an unintended outcome, in the deprivation of life". The ECtHR held that "the degree and type of force used and the intention or aim behind the use of force may, among other factors, be relevant in assessing whether in a particular case the State agents' actions in inflicting injury short of death are such as to bring the facts within the scope of the safeguard afforded by Article 2 of the Convention, having regard to the object and purpose pursued by that Article". Therefore, the methods used by the Coast Guard in order to obstruct aliens from entering Greece need to based on their safety and respect to human life and integrity.

IV. Obligation of non-refoulement

During repel operations it is not possible to distinguish between immigrants and asylum seekers. Due to mixed flows the latter are assimilated with the former. In the case of asylum seekers the compliance of repel methods with the principle of non-refoulement is in doubt. Article 33 of the Refugee Convention establishes the principle of non-refoulement which is the essence of refugee protection. The said principle is also incorporated in article 21 of the Qualification Directive 2004/83/EC.

Non-refoulement is equally applicable to refugees who seek to enter a country and to those who have already entered one. Non-refoulement is activated the minute refugees leave their country of origin. The prohibition of refoulement applies to any form of forced return, including deportation, extradition, transfer and non-admission at the border. Furthermore, non-refoulement encompasses return to any territory where there is a serious risk for the asylum seeker, irrespective of whether that territory is his country of origin or not.

The principle of non-refoulement does not fall under any territorial restrictions. It applies wherever the State exercises its jurisdiction, even de facto, irrespective of how and where State organs act in their official capacity, including on the high seas, if their conduct constitutes effective control. It is safe to argue that any act which results in repelling or returning asylum seekers will fulfill the above conditions. The established State practice to intercept boats in great distance from their territories would render international refugee protection ineffective if State organs were to act outside the borders in breach of their international obligations. According to the Executive Committee of the UNHCR "interception must not result in denial of access to international protection or direct or indirect return to territories where there is risk of persecution".

Although non-refoulement does not entail a right to enter a State, the principle of non-rejection at the border – encompassed in the principle of non-refoulement - entails temporary admission in order for the individual's status to be determined. If a State returns a boat, on board of which there are asylum seekers, without first determining whether someone falls under the refugee definition, it violates the non-refoulement principle, if there were indeed refugees on board. Repels and other forms of rejection, before asylum seekers reach the border, constitute refoulement. Otherwise, the principle would be illusory since the State would be able to bypass it by obstructing asylum seekers to reach the borders. Without determining the status of the persons in question is impossible to know whether a State simply prevents violation of its migration legislation (article 19 (2)(vii) of UNCLOS) or it violates the non-refoulement principle.

Furthermore, repel on the high seas constitutes de facto refoulement if asylum seekers are forced to return to their country of origin or chain refoulement in case they are forced to go to a country which will send them back to the country of origin.

VI. Conclusions-Recommendations

The UNHCR has repeatedly noted that asylum seekers do not lose their protection rights because they are part of mixed flows nor because

they are forced to use smugglers in order to leave their country. It has also expressed its concern regarding the increasing non-compatibility of EU procedures and regulations for entry with refugee protection. We need to note that Regulation 2007/2004 establishing FRONTEX does not refer to the international obligations of Member-States deriving from the Refugee Convention.

The NCHR realizes the complexity of the matter, both on domestic and European level, however, this does not absolve anyone from the obligation to respect the value, life and integrity of every human being and does not excuse any kind of inhuman or degrading treatment. For these reasons the NCHR expresses its concern for the aforementioned allegations regarding ill-treatment of aliens by the Coast Guard and repelling practices and underlines the following:

1) The phenomenon of mass immigration and large waves of asylum seekers trying to enter Greece and by extension the EU has attained large dimensions in the past few years. This situation cannot be properly addressed by the activities of the Greek Coast Guard aiming at preventing aliens to access Greek territory or arresting them. Greece needs to cooperate with its European partners so as to eradicate the generating factors of this phenomenon, i.e. the deplorable social and economical conditions that prevail in the countries of origin. The Greek Ministry of Foreign Affairs via its services for international co-operation and development and in co-operation with their European homologues need to develop and implement projects and actions in the countries of origin so as to improve the living conditions of the domestic population, thus providing them with incentives not to immigrate.

2) The Greek Coast Guard must treat the persons who attempt to enter Greece without legal documents with respect and abstain from any conduct which may constitute torture, inhuman or degrading treatment.

3) It is necessary to train and educate the Coast Guard personnel in human rights protection.

4) The NCHR notes that the Greek State is obliged, in cases of complaints alleging misconduct of Coast Guard personnel, to conduct immediate, thorough and effective investigations and impose disciplinary and penal sanctions insofar State officials are liable for any misconduct.

5) Greek Coast Guard needs to comply with the rescue obligation of persons being in danger at sea irrespective of the maritime zone where the latter are located and of the causes of the danger generated. It must also abstain from any practices which might endanger the aliens' life and safety.

6) Greek State needs to fully comply with the obligation of non-refoulement of persons in need of international protection.

7) In order to increase the effectiveness of the compliance with the obligation of non-refoulement, the Greek State needs to co-operate with its European partners and the UNHCR so as to develop and implement measures and modus operandi for guarding its borders which will ensure that immigrants and persons in need of international protection are not assimilated and treated as one and the same in terms of international protection needed.
8) Greek State needs to take effective measures against human traffickers.

Decision regarding detainees' rights and detention conditions in Greek prisons (10 April 2008)

A. Introduction

In September 2007, the NCHR decided to establish a working group on detainees' rights and detention conditions. The members of the working group presented their recommendations to the First Sub-Commission on 18.10.2007 and they held a meeting with representatives of the 'Initiative for Detainees' Rights on 5.3.2008. They also decided to give priority to questions of penal detention and address issues of administrative detention on a second round of deliberations. It needs to be noted that the estimates-observations of the NCHR are based on secondary sources. The NCHR holds the view that although the law of its establishment does not expressly grant it the right to access detention centres such a right derives from its competence to monitor the respect of the whole spectrum of human rights in Greece. For the past few years the Ministry of Justice has systematically denied access to prisons to authoritative institutions, such as the Ombudsman. The Ministry claims several reasons for this denial inter alia, the sufficient role of the prosecutors assigned to supervise correctional facilities and the Prison Inspection and Control Body, which is created by and operates within the framework of the Ministry of Justice.

B. International and domestic legal framework

A number of international instruments protect detainees' rights (such as the Universal Declaration for Human Rights, ECHR, ICCPR, UN Convention against Torture, and the European Convention for the Prevention of Torture). Furthermore, soft law instruments refer to the said question, such as the 1977 UN Standard Minimum Rules for the Treatment of Prisoners, and the revised (in 2006) European Prison Rules by the CoE Committee of Ministers.

As far as domestic law is concerned, articles 2, 5, 6, 7 and 25 of the Constitution, articles 137A, 137B, 137C and 137D of the Penal Code and article 172 of the Penal Procedure Code are relevant.

The Correctional Code, currently in force, regulates the organization and operation of the correctional system as well as the rights and obligations of the detainees. It is quite liberal and perceives the detainee as subject of law. It declares that a detainee is deprived only of the right to liberty, whereas it does not set out a specific goal for the correctional procedure (article 4 paras 1-2). It has been drafted on the basis of a non-compulsory correctional treatment of detainees. It considers that the reintegration into

society upon release goes through the improvement not of the detainee himself but rather of his living conditions within and outside prison.

Law 1941/1991 introduced innovative non-institutional measures, such as probationary parole, community service, the Body of Social Aid Workers etc.

Presidential decree 300/2003 established 'EPANODOS' -legal person of private law- which aims at the post-correctional care of former detainees. Presidential decree 195/2006 provides for the 'Organisation and Operation of Social Aid Workers services'. In 2007, 56 social aid workers were hired. They counsel and supervise convicted individuals whose sentence has been suspended and have been placed under parole (article 100^{A} PC), those whose penalty has been converted into community service (article 82 PC), and those who are subject to conditional release (articles 105 seq PC).

Law 3387/2005 established the 'Security Studies Centre' which seeks for citizen's participation in combating local criminality and regulates the operation of Local Councils for the Prevention of Criminality.

C. Statistics

In Greece detainees number 10.113, whereas the capacity of the existing correctional facilities (24 prisons, 3 special prison hospital facilities, and 3 special correctional facilities for juveniles) is for 6.019 individuals. Within the total of 10.113 detainees there are: 371 minors, 46 held in a special facility for drug addicts, 257 mentally ill and detained in psychiatric hospitals, 48 asylum seekers or illegal immigrants held under administrative detention, 579 women, and 5.902 aliens' whereas 4.439 have been convicted for drug related offences. Correctional personnel numbers 4.260 persons. (2006 data).

D. Observations by International Organs and Organisations

a. European Committee for the Prevention of Torture (CPT)

On 8.2.2008, CPT released its Report regarding its visit in Greece (20-27.02.2007) along with the Greek government's reply. The Report contains substantiated accusations for incidents involving torture, inhuman treatment, threats against detainees' life in prisons and police stations and it ascertains multiple violations regarding detention conditions, ineffective investigations on allegations and/or reported incidents and punishing those responsible, cover ups of violent incidents by medical and correctional personnel, unacceptable conditions of medical treatment etc. It needs to be noted that in the 2005 Report the CPT had expressed serious concerns for the fact that it is compelled to repeat the same recommendations every time. The Report underlines the continuous inability of the Greek authorities to address structural deficiencies of detention facilities and the ineffective handling of

ill-treatment reports. The Report also notes the lack of cooperation on the part of the former Ministry of Public Order officials, the lack of coordination and cooperation among the services visited by CPT and the obstruction of its mission due to the constant surveillance of its meetings by 'security escort'.

In its recommendations the CPT repeats the need for the Greek authorities to make abundantly clear that any ill-treatment will not be tolerated and will entail serious sanctions for the perpetrators. It recommends specific measures for the reduction of overpopulation in Korydallos prison, the improvement of activities programmes and medical treatment provided, the hiring of specialized medical and correctional personnel, the improvement of living conditions in isolation units. The CPT also considers the supervision of prisons by the aforementioned Body to be insufficient and recommends the involvement of other institutions, such as the Ombudsman.

The Report concludes by reminding to the Greek authorities that CPT has the right to make a public statement, in accordance with article 10 (2) of the Convention, if the former does not take all necessary measures to implement its recommendations.

b. UN Committee against Torture

The UN Committee against Torture examined the 4th periodic report of Greece in 2004. The main positive aspects of its concluding observations were the following: the sufficient - in general terms - legal framework, the new Correctional Code, the new immigration law, the new law concerning trafficking, the ratification of the ICC Statute, the establishment of Children's Ombudsman, the disclosure of the CPT Reports, the contribution of Greece to the UN Torture Victims Fund. The main negative points were the following: the gap between legislation and practice, the inexistence of specific information and evaluation regarding the implementation of the legislation, deportation procedures, low percentage in granting asylum status, insufficient training of correctional officers, unjustified and often extreme use of force by police officers especially towards aliens and vulnerable social groups, overpopulation in prisons and bad detention conditions, no access to detention facilities and prisons by independent supervisory organs, insufficient investigation of complaints regarding torture and ill-treatment, unwillingness of public prosecutors to initiate prosecution according to article 137 PC, insufficient available remedies. The main recommendations of the Committee concerned: effective investigation of torture allegations and proper sanction, improvement of detention facilities, ratification of OPCAT.

c. Council of Europe Human Rights Commissioner

The CoE Human Rights Commissioner has visited Greece several times and has drafted two reports (in 2002 and in 2005). In his first report he put emphasis on the issues of overpopulation and bad detention conditions, reports for excessive use of force and the unacceptable detention conditions of aliens pending deportation. In his second report, the Commissioner underlined the fact that despite the reassurances he was given the construction of new prisons has been considerably delayed while the overpopulation has further increased. In his recommendations the Commissioner insisted on the completion of the construction programme.

d. European Court for Human Rights and Committee of Ministers

The European Court for Human Rights has convicted Greece several times for violations of article 3 or/and other rights of detainees by correctional or police officers. Moreover, the Committee of Ministers adopted ResDH(2005) regarding detention conditions in Greece on the basis of cases Dougoz & Peers, asking the Ministries of Public Order and Justice to intensify their efforts so as the detention conditions to comply with the prescriptions of the Convention and the ECHR judgments and to look into the question of ensuring the availability of effective domestic remedies.

E. Special Issues:

a. Drug addicted detainees

In Greece the penalization of drug use was introduced in 1919 and drug user was perceived as being a menace to society and prone to the commission of crimes. Law 3084/1954 expressed the view that the user is a patient and not a common criminal and introduced detention in special facility instead of penalty. Law 1729/1987 distinguished traffickers and users between those being addicted and not. For the former it provided for reduced penalties and special therapeutic treatment prior to serving time in detention centre.

A recent Law codified the whole legislation regarding drugs, whereas the UN Convention on Drugs was ratified. Drug trafficking by users has constituted in the past felony or misdemeanor. The therapeutic treatment of addicted criminals balances between the perception of the addiction as a disease of a moral rather than biological nature and a mixed treatment of the individual as victim and criminal.

According to rough estimates 2/3 of the detainees, i.e. more than 7,000 are detained because of their drug use, thus converting prisons into a peculiar centre for addicts. Furthermore, the number of drug related deaths in prison has increased the past few years.

In Greece physical and emotional rehabilitation is provided by KETHEA. It provides counselling in 7 correctional facilities whereas additional 7 are under way.

According to the National Centre for Drug Related Information, health services of all types in correctional facilities are basic despite the general principle according to which detainees must have access to the same health care as the rest of the society.

It is safe to argue that penal suppression has not been successful in controlling the drugs issue. On the contrary, it may be argued that on the one hand it contributes to its basic consequences (criminality, illegal rigs) and on the other the user's implication in the penal mechanism creates the conditions for the continuation and not the cessation of drug use. Therefore, our approach needs to be based on the direction of addicts' 'de-institulisation' and establishment of services of open pedagogical and therapeutic care for a successful rehabilitation via the reconstruction of their personality.

b. Aliens under deportation

A quite large percentage of alien detainees are under judicial deportation. Deportation in penal law constitutes subsequent penalty (article 74) or security measure imposed by the court, whereas as administrative measure is imposed by the Administration aiming at the protection of society. It is to be reminded that in 2001 the NCHR had dealt extensively with the question of long-term detention of aliens under judicial or administrative deportation.

F. General concerns regarding detention and human rights

The compatibility of detention with the enjoyment of human rights has been examined by both constitutional and criminal law theorists. Those who have knowledge of prisons 'from within' due to their profession or their experiences agree that detention goes hand-in-hand with several rights violations even though correctional legislation has a different approach. Society likes to think that prisons protect it from those who threaten it. It perceives criminality as pathology of certain individuals and groups who endanger its socio-political status and thus they need to be put away. Public opinion is ready to accept that bad living conditions in prison are tolerable. This mentality affects, by extension, the political will towards the correctional system. "We" are the victims and we have the right to protect ourselves. In this atmosphere of consent towards reinforcing suppression any recommendation for reducing prisons' population via measures that shrink the penal intervention itself seems rather difficult.

G. Recommendations to the Ministry of Justice

The NCHR as an advisory body to the State on human rights issues takes the initiative to formulate a series of proposals for the amelioration of the correctional system on both institutional and organizational level. Furthermore, the NCHR will examine the potential of cooperation with the 'Parliamentary Commission for the Examination of the Greek Correctional System' whose establishment constitutes a positive development.

Prior to any specialized recommendation, the NCHR underlines categorically the following:

- Granting to independent institutions supervisory and controlling role over prisons constitutes sine qua non for both the smooth operation of correctional facilities in all levels and as a whole and the effectiveness and credibility of the said control. In particular, the Ombudsman should fulfill unhindered his mandate in correctional facilities. The NCHR repeats its request to be granted unconditional access to prisons in order to perform its role as supervisory institutional human rights organ.
- It is imperative for the Ministry to alter the way it perceives and corresponds to the repeated recommendations of CPT and other international organs and the recommendations of the NCHR itself, many of which had already been formulated in its 2001 and 2002 Reports on detention conditions. Furthermore, due to the nature of the questions posed to the Ministry by international organs, it is necessary to cooperate with other ministries in order for its replies to be comprehensive and lucid. International institutions must not be perceived as 'opponents' and their findings as suspicious. Greece will not resolve any of the problems if it does not recognize their proper dimensions. If CPT makes use of public statement, Greece will be internationally disgraced since she will be put on the same footing with Turkey and Russia, both States known for their bad record in human rights issues.

Furthermore, the NCHR would like draw the Ministry's attention to the following issues:

On the level of prevention:

1. It is necessary to develop a new and comprehensive correctional policy on the basis of substantiated scientific study emphasizing on prevention. Towards that direction the NCHR repeats its recommendation for the immediate ratification of OPCAT, whose major aim is the prevention of torture and ill-treatment in all detention facilities via the establishment of national prevention mechanisms.
2. Detainees' allegations concerning torture and ill-treatment must be fully and effectively investigated and the perpetrators must be punished. Impunity must decisively be dealt with.
3. In order for the said investigation to be more effective the adoption of the UN 'Istanbul Protocol' is recommended. All medical personnel and

those involved in the investigations need to be trained in the use of the Protocol.

Anticriminal policy:

4. NCHR recommends the limitation to the extent possible of the use of deprivation of liberty penalties. Imprisonment should be imposed only in cases of serious crimes and recidivists. Remand trial should be applied exceptionally. Furthermore, a re-evaluation of the penalties in force is required, at least for certain categories of crimes. The NCHR asks the State to take all necessary measures for the implementation of the existing legislation regarding alternative measures and penalties, whose use would contribute to the reduction of correctional population.
5. The construction of new prisons - and the improvement of the existing ones - is necessary and welcome, but it needs to be combined with substantive measures for the reduction of the population. International experience has demonstrated that the construction of new prisons by itself does not resolve the overpopulation problem, which is interwoven with detention conditions, but rather postpones its manifestation. The new prisons should be built near, as far as possible, urban areas, which is beneficial for the detainees and harmless for the society. The establishment of further women sections in prisons in order to facilitate their communication with their families is also recommended

Detention conditions in correctional facilities:

6. The fact that several provisions of the Correctional Code remain inoperative due to lack of infrastructure, human resources and proper administrative organization constitutes a major problem. The NCHR underlines the necessity of creating all the conditions – inside and outside prison - for the full implementation of the Correctional Code. The institutions of community service and services of social aid workers need to be strengthened.
7. The NCHR recommends the cautious but without prejudice implementation of all those beneficial for the detainees measures provided by the legislation. Leaves need to be granted when all conditions are met, whereas applications rejected need to be fully reasoned based on the special characteristics of each applicant. When courts examine applications for conditional release the applicant must be present at the hearing in order for the principle of equality of arms to be ensured given that the public prosecutor is always present. Moreover, since the various programmes (such as training, employment while in prison) are not sufficient for all detainees, the selection of the participants needs to be fully transparent. All kinds of detainees' communication (leaves, visiting rights, correspondence etc) must be fully respected and facilitated.
8. The same spirit needs to characterize detainees' transfer. Their applications need to be examined promptly, transparently and the

decisions to be reasoned. While being transferred the conditions need to be such that will safeguard detainees' dignity.

9. The NCHR emphasizes once more the need for further and continuous training of correctional personnel. In particular, prisons' administrative personnel should be trained in organizing programmes, whereas surveys on the spot so as to locate the needs to be addressed should take place before setting up programmes (employment schemes etc). Any initiative or/and intervention regarding prisons should take place in cooperation and coordination with professionals and services of the field.
10. Hospital of Korydallos 'Saint Paul' and the psychiatric hospital for detainees must come under the competence of the Ministry of Health. All correctional facilities which are located away from urban areas need to be staffed with medical personnel so as to provide primary medical care and address emergency cases. Measures need to be taken so as to facilitate detainees' access to state hospitals. As far as psychiatric care is concerned, regular visits by psychiatrists need to take place in prisons.

Regarding post-correctional care:

11. The organization, staffing and effective operation of 'EPANODOS" need to be substantially supported. Furthermore, any obstacles to social and professional reintegration of released detainees (such as granting anew driver's license to rehabilitated individuals) need to be lifted.

Regarding special categories of detainees:

12. As far as minors are concerned, including those having committed drug offences, deprivation of liberty should be the last resort and only for violent crimes or crimes committed by recidivists and not for common misdemeanors occasionally committed.
13. The NCHR recommends the expansion of KETHEA's programmes to more prisons, and the exploration of the possibility of involving rehabilitated detainees in those programmes. Moreover, the physical separation of drug addicted detainees and mental patients from the general population in prisons is imperative.
14. The requirement of additional conditions for granting conditional release and leaves in the case of detainees convicted for drug related offences–larger periods of time served in prison (Law 2943/2001), needs to be re-examined.
15. Long-term detention of convicted individuals in police stations pending judicial deportation is unacceptable and calls for legislative regulation of the maximum duration of pending deportation.

IV. NCHR'S ACTIVITIES AT THE EUROPEAN AND INTERNATIONAL LEVEL

1. Arab-European Human Rights Dialogue meeting for National Institutions for the Promotion and Protection of Human Rights

Cairo, January 13th-15th, 2008

Statement by Ms. Christina Papadopoulou, Human Rights Officer

ACCESS TO INFORMATION: THE CASE OF GREECE

1. Information on the Greek National Commission for Human Rights (GNCHR)

1.1 Name of NIHR law/decree etc. and year of establishment?

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

1.2 Legal foundation of NIHR? E.g. by constitution, by act of law/parliament or presidential decree or other? (please specify)

GNCHR is a statutory National Human Rights Institution having a consultative status with the Greek State on issues pertaining to human rights protection and promotion. The creation of GNCHR emanated from the need to monitor developments regarding human rights protection at the domestic and international levels, to inform Greek public opinion about human rights-related issues and, 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 the GNCHR were the Paris Principles, adopted by the United Nations and the Council of Europe.

2. Openness at national level and adoption of legal standards

2.1 Has your country ratified international and regional instruments obliging member states to respect freedom of information and data protection and to combat corruption? Please specify which conventions have been ratified.

A series of legal texts impacting on the access to information environment have been ratified by Greece. Other than the UDHR (Art. 19, on the right to freedom of opinion and expression), Greece_is a contracting party to a number of treaties related to freedom of expression and access to information: ECHR (art. 10, despite the fact that as to date, the question whether the freedom of expression set out in Art. 10 ECHR includes the right of access to public documents remains a hotly debated one), CERD, ICCPR (art. 19 & art. 17) and its Protocols, and the Aarhus UN Convention (1998) on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (ratified by Greece in January 2006), inter alia. Ratified international instruments take precedence over national law, and this is stipulated in art. 28, par. 1 of the Greek Constitution. Civil courts (and more rarely the penal ones) usually take into consideration the provisions of international law in cases where domestic law is inconsistent with the former. The Court of Cassation has recently started to take into consideration the provisions of conventions ratified by Greece, as a result of the convictions of Greece at the ECHR for violating international law. There have been cases where the European Commission of Human Rights has accepted applications for violations of art. 10 ECHR by Greece, although those cases have been dismissed by the European Court of HR on the grounds of lack of exhaustion of all domestic legal remedies.

Greece signed the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters in June 1998 and ratified it in January 2006. A 1995 joint ministerial decree implemented the 90/313/EEC Directive after the European Commission started an infringement proceeding against Greece[2]. In July 2005, the European Commission announced that it was taking legal action against Greece and six other countries for failing to implement the 2003 EU Directive on access to environmental information[3].

eCommerce Legislation

• Presidential Decree 131/2003 transposes the Directive 2000/31 of the EU (Directive on Electronic Commerce) on certain legal aspects of

[2] Joint Ministerial Decision 77921/1440 of 06.09.1995, Official Gazette 795 B' 14.9.1995 on the freedom of access of the citizens to the public authorities for information relating to the environment. See Hallo, Access to Environmental Information in Europe: Greece (Kluwer Law 1996). Also, see European Commission, Overview of Member States' National Legislation Concerning Access to Documents, SG.B.2/CD D (2000), 9 October 2000.

[3] European Commission, Public Access to Environmental Information: Commission Takes Legal Action against Seven Member States, 11 July 2005.

information society services, in particular electronic commerce, in the internal market.

eCommunication Legislation

- The transposition of the new EU Regulatory Framework for Electronic Communications has not yet taken place in Greece. eCommunications remain governed by the Telecommunications Law 2876/2000.

eSignatures/eIdentity Legislation

- The Presidential Decree 150/2001 implements the EU Directive 99/93/EC on a Community framework for electronic signatures.

eProcurement Legislation

- There is currently no legislation governing the use of electronic means in public procurement in Greece. The new EU relevant Directives are expected to be transposed ASAP.

Re-use of Public sector information

- A working Group was set up in Greece to prepare the transposition of the relevant EU Directive 2003/98/EC. This resulted in Law 3448/2006, which implements the Directive and addresses the conditions and requirements concerning sharing and re-use of public sector information by citizens and businesses. The Law targets prohibitions on exclusive rights, while providing safeguards for privacy, national security and intellectual (property) rights.

2.2 Does the Constitution of your country guaranty freedom of information?

The Greek Constitution provides for a general right of access. The Constitution[4] was substantially amended in 2001 to provide for a more extensive, but still, limited right of access. Article 5A (1 & 2) stipulates:
"All persons are entitled to information, as specified by law. Restrictions to this right may be imposed by law only insofar as they are absolutely necessary and justified for reasons of national security, of combating crime or of protecting rights and interests of third parties".
In addition, it specifies that:
"All persons are entitled to participate in the Information Society. Facilitation of access to electronically handled information, as well as of the production, exchange and diffusion thereof, constitutes an obligation of the State" (always in observance of the guarantees of articles 9, 9A and 19).

Furthermore, Article 10 (3), which gives a right of petition, now states:

[4] http://www.cecl.gr/rigasnetwork/databank/Constitutions/Greece.html

"The competent service or authority is obliged to reply to requests for information and for issuing documents, especially certificates, supporting documents and attestations within a set deadline not exceeding 60 days, as specified by law. In case this deadline elapses without action or in case of unlawful refusal, in addition to any other sanctions and consequences at law, special compensation is also paid to the applicant, as specified by law.

2.3 Has an Information Act been adopted in your country? If yes;

There is currently no specific or dedicated on freedom of information legislation in Greece, neither has an Information Act as such, been adopted so far.

2.3.1 Does the Act build on the principle of maximum disclosure?
2.3.2 Does the Act apply broadly to public bodies? (incl. to the legislature and the judiciary)
2.3.3 Does the Act include a general right of access to publicly held information?

While there is no specific legislation on AI, the right of access was first provided in Law 1599/1986 (on the relations between the citizen and the State, art. 16), that gave a right of access to administrative documents created by legal entities belonging to the public sector. The agency should reply within one month and the applicant should pay for costs. The right was read broadly by the Ombudsman and the Council of State to give a right of access to all persons. In 1999, the Ombudsman ruled that the 1986 Act allowed access to all administrative documents "without there being any condition of legitimate interest on part of the applicant" referencing a 1993 Council of State decision that a "reasonable interest" rather than a specific legal interest is an adequate reason[5]. In 1999, the law was supplanted by Article 5 of the Code of Administrative Procedure[6] which expanded the right of access. The law states that the "interested persons" may request in writing administrative documents which are defined as "all documents produced by public authorities such as reports, studies, minutes, statistics, administrative circulars, responses opinions and decisions." Persons with a "special legitimate interest" can obtain documents created by third parties that relate to a case involving the person. Documents pertaining to the personal life of an individual are not subject to the Act. Secrets defined by

[5] Decision no. 1397/1993. See The Greek Ombudsman, Annual Report 1999 §§ 2.2, 3.22, 3.9.
[6] Law 2690/1999 Ratification of the Administrative Procedure Code and other provisions.

law, including those relating to national defence, public order and taxation cannot be released. Documents may also be restricted if they relate to discussions of the Council of Ministers or if they could substantially obstruct judicial, military or administrative investigations of criminal or administrative offences.

In 2001, the Ombudsman affirmed that no interest is necessary for the 1999 law noting that following the adoption of the revised constitutional right of access "it is clearly the legislator's intent to expand and not restrict the application of the principle of transparency"[7].

Appeals are made internally. The Ombudsman[8] can receive complaints on violations of the right of access and mediate or issue opinions.

A law to implement the EU Directive[9] on the re-use and commercial exploitation of public sector information (2003/98/EC) was adopted in January 2006.

The Penal Code punishes the disclosure of state secrets. The Ombudsman has ruled in several cases that simply because a document is classified is not a ground for withholding it from access under the Code of Administrative Procedure. The files of the former military dictatorship were destroyed by the Socialist government in the mid 1980s.

2.3.4 Does the Act imply a duty for public authorities to actively inform the public about their activities?
2.3.5 Does the Act contain a limited and clearly formulated scope of exceptions?
2.3.6 Are there any costs for applicants under the law?
2.3.7 Does the law contain specific acts applying to some public bodies, e.g. the judiciary?
2.3.8 Has your country adopted an act on anti-corruption measures?

The Greek Ministry of Justice is currently processing a draft law on anti-corruption measures applying to the public sector.

2.3.8.1 Has an act on the protection of personal data been adopted in your country?

Yes: the Law 2472/1997 (official gazette A' 50) on the Protection of Individuals

[7] See The Greek Ombudsman, Annual Report 2001 §3.1.1.
[8] Ombudsman Homepage: http://www.synigoros.gr/en_index.htm
[9] No 3448-2006. http://www.poeota.gr/_download/N.3448-2006.pdf

with regard to Processing of Personal Data[10], as amended. It establishes the terms and conditions under which the procession of personal data is to be carried out so as to protect the fundamental rights and freedoms of natural persons and in particular their right to privacy. The law includes provisions on a special category of personal data, called "sensitive data", concerning racial or ethnic origin, and political or religious affiliation. In relation to that, mentioning the religious affiliation in the data included in the Greek identity card was prohibited, and this governmental decision caused a hot public debate back in 2000. (It is also worth noting that the GNCHR issued a resolution on that matter, advocating for non mentioning of the religious affiliation). Art. 7, par. 2g provides that the processing of sensitive data of public figures is permitted if the data concerns a public function and if it is absolutely necessary for the satisfaction of the right to get information on issues of public interest. It also allows any person to obtain their personal information held by government departments or private entities. The Law, which was amended in 2000 and 2001, is enforced by the Hellenic Data Protection Authority[11]. It is complemented by Law 2774/1999 on the Protection of Personal Data in Telecommunications and by Law 3115/2003 that establishes the Hellenic Authority for the Information and Communication Security and Privacy, in order to protect the secrecy of mailing, the free correspondence or communication in any possible way as well as the security of networks and information. The law has been revised in 2006 (3471/2006) and intends to the enactment of preconditions with regard to the personal data processing and for the assurance of the confidentiality in telecommunications.

Electronic Media

The National Radio and Television Council (ESR, established in 1995) carries out the State's constitutionally mandated control over the national and private electronic media (art. 15, par. 2 provides that the national radio and television are under the immediate control of the State). The ESR oversees the activities of the electronic media and sanctions the violations of codes of ethics or of other laws by the media. Its members are proposed by the political parties in the Parliament. Contrary to the absence of provisions for the printed media, art. 9 par. 1 of the Code of Ethics issued by the ESR deals with access to information by the broadcasting media. According to this provision, the journalists should not use "indirect" ways to access information except in cases where such ways are the only available and the information

[10] http://www.dpa.gr/Documents/Eng/2472engl_all2.doc
[11] http://www.dpa.gr/

in question concerns a special public interest.

2.3.8.2 Has an act on archives been adopted in your country?

The Law 1946/1991 (OG A' 69/14-5-1991) on the General Archives of the State.

2.3.8.3 Are there any national legislation or procedures obliging authorities of your country to involve the public actively in relation to specific activities, plans or the like (e.g. through public hearings or debates).

2.4 Is there any national legislation or procedures prescribing that the curriculum of relevant further and higher education must comprise introduction to good administration?
2.5 Is there a civil society in your country? Does it promote law reform where no legal framework exists?

There is a fairly active civil society in Greece and it does promote the establishment of a legal framework in case there is a legal vacuum or of law reform, when the existing framework is judged as insufficient or outdated.

3. Legal standards promoted in practice

3.1 Do the authorities make the public aware of the legal standards, including their right to access information? If so, how?
3.2 Do the civil society initiatives focus on creating public awareness of the right of access to information?
3.2.1 Does the public make use of the standards to get information from public authorities?
3.2.2 Are Public officials made aware of the standards (e.g. general education, specific training)?
3.2.3 Are Professionals and legal practitioners made aware of the standards?

There is no particular public action aiming at raising the understanding of and use of the public's right to access information. The civil society, as well as professionals and legal practitioners seem to prioritize other human rights protection and promotion issues than AI. Nevertheless, media seem to be more active in requesting access to information rights than the rest of the population. It seems that there is a lot to be done in terms of government engagement, infrastructure, creating an enabling environment, capacity building, and above all, building confidence and security in the use of

Information and Communication Technologies (ICTs), and training of public officials on procedures for releasing information guided by the principle of maximum disclosure.

From an overall perspective, Greece, in digital terms, lags behind many of its European partners. It experiences severe failures in adopting consistently and timely the EU Policy on the Information Society. At present, total expenditures in ICTs represent 5% of the GDP, which is below the EU average. The Greek IS presents many interesting and at the same time contradictory characteristics in comparison to other EU countries. Although substantial advances have been achieved over the last years, the Internet and ICTs have not yet penetrated substantially Greek citizens' everyday life settings. It should be noted, however, that all of the indicators (mobile phone, PC, Internet, bank cash machines, WAP services etc.) are on the increase.

More than one third of the civil servants in the Ministry of Finance, and in general in the public administration, do not use a PC. And according to a recent study of the Observatory for the Information Society, 46% of the Internet users still prefer to go in person to the public service office they need to interact with, than to do what they want to be done via the computer. The picture is worse when it comes to the "vulnerable and marginalized" groups of the society, be it migrants or refugees, women, the disabled or the elderly, Romas etc. According to a recent research paper of the Ministry of the Interior "there are many who treat the new technologies at best as a mystery and at worst as a danger for their future".

4. Legal standards applied in practice

4.1 Are public employees providing information upon request?
4.2 Are refusals justified with reference to law?
4.3 Will authorities mention the number of access to information requests granted and/or denied in annual reports or other publicly available material?
4.4 Please outline existing research/studies about national legislation and the application of it in practice.

There is no streamlined practice of the authorities on the above. Their attitudes on the matter vary significantly, and, to our knowledge, there is no available research on the application of national legislation in practice.

5. Relevant and independent review and control mechanisms in your countries

5.1 Are control bodies empowered to review decisions on openness and access to information (e.g. Ombudsman or Information Commissioner)?
5.2 Has the control body made decisions?
5.3 Are the decisions of the control body respected by public authorities?
5.3.1 Has a specific body been tasked with overseeing the respect for personal data protection regulation?
5.3.2 Does a National State Auditor institution exist and does it make institutional audits?
5.3.3 What type of audit is the National State Auditor empowered to undertake (financial, performance)?
5.3.4 Are courts competent to deal with issues of conduct of public authorities? If so, which courts (e.g. administrative courts or ordinary courts)?
5.3.5 Does case-law exist on issues relating to openness and access to information?

Other than the topics covered by the mandate of the Hellenic Data Protection Authority (see above in par 2.3.8.1), the Greek Ombudsman (founded in October 1998 and operating under the provisions of Law 3094/2003) is empowered to review decisions on openness and access to information. The Greek Ombudsman investigates individual administrative actions or omissions or material actions taken by government departments or public services that infringe upon the personal rights or violate the legal interests of individuals or legal entities. Before submitting a complaint to the Greek Ombudsman, the complainant should first come into contact with the public service involved with his or her case. Only if the problem is not resolved by the service concerned should a complaint be submitted to the Ombudsman. The Ombudsman does not have the power to impose sanctions or to annul the illegal actions of the public administration. As a mediator, the Greek Ombudsman makes recommendations and puts forward specific proposals towards the public administration.

The Ombudsman can intervene when, in dealing with the public administration, an individual or legal entity encounters: refusal to supply information or insufficient provision of information, unreasonable delay in processing applications, infringement of laws or violation of procedure, administrative irregularities or omissions, discrimination against individuals. The Ombudsman has jurisdiction over cases concerning disputes between citizens and public administration units, such as: government services, local and regional government (communities, municipalities, and prefectures), other public institutions, and private law entities of the public sector, corporations and

organizations that are under control either by the state or by legal entities of the public sector.

Administrative courts are dealing with issues of conduct of public authorities.

6. Monitoring of the level of openness

6.1 Do National NGOs and/or independent bodies monitor the level of openness and access to information?
6.2 Do International NGOs monitor the level of openness and access to information (e.g. Transparency International measuring corruption index)?
6.3 Do International Governmental Organizations carry out monitoring in your country?
6.4 Are monitoring recommendations respected by public institutions and implemented in practice in your country?
6.5 Has monitoring led to cooperation between civil society and state institutions, e.g. in terms of capacity building assistance?

According to Transparency International's Corruption Perception Index 2005 (CPI) (which relates to perceptions of the degree of corruption as seen by business people and country analysts and ranges between 10 - highly clean and 0 - highly corrupt). Greece's score is 4.3.

World Bank Data on Governance matters

1) Voice and Accountability: 0.91
2) Political Instability and Violence: 0.53
3) Government Effectiveness: 0.74
4) Regulatory Burden: 0.85
5) Rule of Law: 0.75
6) Control of Corruption: 0.56

Measuring Openness (Freedom House scale, Freedom in the World 2005)

(On scale of 1-7, with 1 representing the highest level of freedom and 7, the lowest)

Political Rights: 1
Civil Liberties: 2
Status: Free

7. Openness at your institution

Legal framework

7.1 Does a legal framework on openness apply to your institution?
7.2 Does staff at your institution have access to the legal framework?

There is no specific legal framework on openness applying to the GNCHR. The staff has access to all existing legal framework.

Procedures
7.3 Has a policy of openness/service been adopted by your institution (information strategy, service strategy) incorporating openness as a crosscutting element of all activities?
7.4 Have procedures been developed for provision of information upon request and at your institution's own initiative?
7.5 Has a procedure been developed for multimedia approach to information (meetings, e-government, TV, radio, local newspapers, news bulletin, letters) in order to optimize communication with the citizens?
7.6 Has an information support system been established for the staff (electronic) filing system, database, intranet) to enhance communication with the public?

There is no specific "policy" adopted. However, information is provided upon request within the limitations of the human resources of the Commission, within a reasonable timeframe (it may vary from one week to one month in average). There is a weekly news bulletin (which summarizes all HR related news of the week and all related activities of the GNCHR), prepared by the Commission's Secretariat and circulated to the members of the Commission. There is an electronic filing system, but no intranet and database.

Organization
7.7 Is the access/point of entry to your institution unified, e.g. supported by a one-stop shop, a homepage or a service handbook?
7.8 Is the staff at your institution responsible for handling public information and press relations professionals ?(press officers, service officers, webmaster)
7.9 Does your institution have an archive, which is maintained and being used?

There is an Internet site maintained on a regular basis, where all the activities, adopted opinions and projects to which the GNCHR is involved are presented in a comprehensive manner. The staff member responsible for information and communication is not a "trained" professional on these fields, but has an extensive ten-year experience on those matters. The site is maintained mainly by interns supervised by staff. The institution has an archive, updated and used on a regular basis.

Information provided at own initiative

7.10 Does your institution provide information about its activities and functions at its own initiative?

7.11 Does your institution have established a maximum response time for citizens'/media's enquiries (applications, enquiries, complaints, requests for/ access to documents) if this is not defined by law?

7.12 Are lists of daily mail sent to/from your institution made available to the public (preferably on a webpage or at a one stop shop desk)?

7.13 Does the library of your institution serve as information centre of the institution (service handbook, internet access, access to development plans etc.)?

7.14 Are evaluations of your institution made public?

Yes, it does provide information on its activities and functions at its own initiative, whenever it is considered beneficial for its work and/or expected by the circumstances. The GNCHR strives to respond to inquiries, applications, requests etc. within a reasonable timeframe, in average varying from a week to a month. Mail and evaluations are not made public. There is no extensive library so far, but the existing limited amount of documents is mainly used by the members of the Commission and by individual researchers upon request.

Public participation

7.15 Do public hearings take place prior to major decisions with implications at national or local level (town and country planning, budgeting, sector policies, education, environment, welfare) in your country?

7.16 Are key meetings, such as city council meetings, open to the public together with agendas and minutes of meetings?

7.17 Have user boards been established to enhance openness about - and participation in - service delivery?

7.18 Have Citizen Advisory Groups/Panels been established to discuss broader policy issues and to enhance communication with the institution on development and service delivery?

In some instances, prior to adopting for example new legislation whose impact is high, the public authorities engage in a process of public hearings with relevant stakeholders.

Openness capacity

7.19 Does the leadership of your institution demand or encourage the staff to upgrade their openness capacity?

7.20 Does your institution exchange experience with other institutions regarding best practices?

Yes, on both questions. The restrictions are due to the limited available financial and human resources of the GNCHR.

Accountability

7.21 Does your institution establish benchmarking or evaluation of its administration? And are findings reported to the public?

7.22 Does your institution provide information about its budgets and its accounts?

7.23 Does your institution have transparent action and tender procedures for public procurements?

7.24 Do mechanisms to review and control your institution exist?

7.25 Has your institution set up an internal complaints mechanism and/or does your institution allow its decisions to be appealed/does the complaints handling mechanism guarantee a right to lodge an appeal?

7.26 Does the public bodies review and control your institution?

7.27 Does your institution respect decisions and/or recommendations of review and control bodies?

N/A

Monitoring

7.28 Do NGOs monitor the information performance of your institution?

N/A

2. Reply of the NCHR to the Council of Europe Questionnaire regarding the acceleration of asylum procedures

1. ACCELERATED ASYLUM PROCEDURES – GENERAL ISSUES

1.1. Are accelerated asylum procedures used in your country? Since when?

The accelerated procedure is set by the Law 2452/1996 "Regulation of refugee issues". The Presidential Decree 61/1999 "refugee status recognition procedure» determines the procedure - regular and accelerated - of examination of asylum application.

1.2. Approximately what proportion of claims is examined in an accelerated asylum procedure as compared to claims examined by means of the regular procedure?

We estimate that since the last semester of 2006 at least 60% of asylum claims is examined in an accelerated procedure.

1.3. Is there an official definition of "accelerated asylum procedure" in your country? If so, what is the definition?

According to Law 2452, art. 2 par. 2, through the accelerated procedure is examined an asylum application which is manifestly unfounded or in case the applicant has arrived from a third safe host country, or the asylum application is submitted upon arrival at a point of entry of a port or airport. In this last case the applicant remains in the waiting zone for the whole period of examination of his application which cannot exceed fifteen days.

1.4 Do you distinguish between admissibility issues (e.g. whether another country is responsible for the asylum claim) and substantive issues (including relating to manifestly unfounded claims)? If so, how?

The Greek Law does not know the concept of inadmissible. All applications are examined in substance.

1.5 Is there a time-limit for the authorities to decide whether to process the asylum claim in an accelerated procedure or not?

The law provides that asylum claims submitted upon arrival at a port or airport entry points are always examined in an accelerated procedure. Such claims should be submitted by the police authorities within 24 hours and

directly to the competent Directorate of the Ministry of Public Order. (art. 2 par. 9 of PD 61/99)
In any other case, during the first examination of the claim and following the interview with the claimant- which is conducted within the regular procedure- it is assessed by the competent police authorities whether the claim falls under the categories of "manifestly unfounded applications" and "safe third country". In such cases the Police authorities that propose the application of the accelerated procedure should submit the file to the MPO within 10 days at the latest -presumably from the day of the interview (art. 2 par. 9 of PD 61/99). The Head of the Division for Police Security and Order decides whether to process the claim in an accelerated procedure or not.

1.6 Is prioritization of an asylum claim within the regular procedure possible in your country? If so, does this give rise to a special procedure?

Practically it is possible). The police authorities do not follow a calendar priority. There is no special procedure.

2. POSSIBLE USE OF ACCELERATED ASYLUM PROCEDURES

Please specify whether an accelerated asylum procedure may be used or not in the following situations:

	used	not used
2.1. Applicant coming from a safe country of origin	□	√
2.2. Application where no elements relating to the 1951 Convention definition or subsidiary protection are raised	√	□
2.3. Applicants whose need for protection is presumed given the seriousness of the situation in his/her country of origin	□	√
2.4. Applicant specifically known by the authorities to be at risk of undergoing torture or inhuman or degrading treatment if returned to his/her country of origin	□	√
2.5. Minor applicant whose parents or other family members were already given refugee status	□	√

2.6. Applicant representing a danger to national security or public order	□	√
2.7. Abusive Applications (Please provide examples)	√	□
2.8. Undocumented applicant or applicant with forged documentation	□	√
2.9. Applicant not complying with time-limit for lodging an asylum application	□	√
2.10. Applicant whose previous application for asylum has already been rejected and who has submitted a renewed application	□	√
2.11. Application lodged at a border, including airports	√	□
2.12. Application lodged in port areas or remote areas	√	□
2.13. Applicant with specific needs such as unaccompanied children or elderly or traumatized persons	□	√

3. SAFE THIRD COUNTRY - FIRST COUNTRY OF ASYLUM - SAFE COUNTRY OF ORIGIN

3.1. Does your country apply these concepts?[12] If so, on the basis of what criteria? How were such criteria determined? How are the concepts applied?

The national asylum law provides that an application is examined through an accelerated procedure when "the applicant has arrived from a third safe host country in the territory of which he is not in danger to be persecuted for some of the reason which are provided for in the Convention nor to be refouled to the country of his nationality or usual residence".
For the application of the concept the PD 61/99 refers to the Resolution of 30-11/1-12-1992 of the Ministers for Immigration of the members states of the EU, as well as the Conclusions No 30 and No 58 of the Executive Committee of the UNHCR.

[12] The Asylum Procedure Directive, 2005/85/EC (1 December 2005) distinguishes between the concept of "safe third country" (Art. 27) and "European safe third countries" (Art. 36). If your country applies different types of "safe third country" concept, please specify.

3.2. Are there lists of safe third countries/countries of origin? If so, how is the list established and modified?

No there is not.

3.3. Does the applicant have the possibility to rebut a presumption that a given country is safe?

There is no provision in the asylum law as there is no list of safe third countries.

3.4. Where applicable, how is the concept of safe country of origin applied to applicants having dual or multiple nationality?

4. PROCESSING OF ACCELERATED ASYLUM PROCEDURES

4.1 In addition to the examination of the facts of the case, is there an interview of the applicant for asylum?

Yes there is.

4.2 Are there cases where the applicant is automatically returned with no examination of its application for asylum?

No to our knowledge

4.3 Do the applicants under an accelerated procedure have access to effective legal aid, and, if need be, to the service of interpreters and/or other procedural safeguards?

The same as applicants under the regular procedure. As concerns the legal aid there is no institutionalized government funded legal aid to asylum seekers in any phase of the asylum procedure. NGOs have to assume the responsibility of providing free legal assistance.

4.4 Is there a right to "veto" the accelerated asylum procedure by UNHCR, NGOs or another specific body?

There is no provision in the national asylum law

4.5 Is there a distinction in the way an application for asylum is processed depending on how the applicant arrived and where the applicant is, be it at the border, including airports and transit zones, or within the country itself?

Yes

4.6 Is any person arriving at the border able to submit an application for asylum? Are all applicants who ask for asylum at the border registered?

Theoretically they are.

4.7 Are there any monitoring mechanisms? If so, which?

5. INFORMATION

5.1 In order to take a decision on whether to grant or not an asylum, do immigration authorities of your country have access to a documentation and/or research structure (electronic or other)?

5.2 What are the main sources of information about countries that immigration authorities use to decide on asylum applications? (e.g. UNHCR country of origin information, reports from diplomatic representations, reports by NGOs, reports by the US State Department, etc.). Which position prevails in cases of doubt?

6. RIGHT OF APPEAL

6.1 Is it possible to appeal against the decision to process an asylum claim under accelerated procedure?

No provision in the asylum law.

6.2 Is it possible to appeal against a negative asylum decision taken under accelerated procedure?

Yes. Note that the time limits for the lodgement of the appeal and the decision upon the appeal are shorter than in the regular procedure and reduced in half in case of applicants in the transit zone of ports or airports.

6.3 Does the appeal in both cases above have suspensive effect?

Yes

7. EXEMPTIONS

7.1 If your country has provisions excluding the use of accelerated procedure in respect of some categories of persons, please specify

of which. Among other possibilities, please specify, for instance whether the following categories are excluded: *

☐ unaccompanied minors;
☐ old people;
☐ victims of torture;
☐ victims of sexual violence;
☐ victims of trafficking;
☐ cases implying complex legal or factual issues.

7.2 Please specify if your country has provisions excluding the use of accelerated procedure in respect of applications which might fall under the "exclusion clauses" laid down in the 1951 Convention relating to the status of refugees (Article 1, F), notably in case of :*

☐ serious reasons for considering that the applicant has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
☐ serious reasons for considering that the applicant has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
☐ serious reasons for considering that the applicant has been guilty of acts contrary to the purposes and principles of the United Nations;
☐ persons accompanied by family members for whom an accelerated asylum procedure has not been applied.

There are no provisions in the national law. The Geneva Convention is directly applicable.

* Please tick the appropriate box.

3. Reply by the NCHR to the review of the implementation of two Committee of Ministers' Recommendations

The scope covered by the CM Rec (2004)5 and CM Rec (2004)6 is very relevant to the mandate of the NCHR. In order to complement the information contained in document CDDH (2006)008 Addendum III[1], compiling the information provided by member States, as well as to answer the request by the Office of the Commissioner, we would like to note the following:

Question 1:

Regarding the implementation of CM Recommendation (2004)5 on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the European Convention on Human Rights;

Is the compatibility of draft laws, existing laws and administrative practices with the European Convention on Human Rights (in the light of the case-law of the Court) systematically verified in your country? By whom, under which procedures? What is the role of your own institution in that context ? What procedures exist in your country to ensure that the results of such verification are taken into account?

Please highlight what seem to be the strengths and weaknesses of your domestic situation, in practice. Please do not hesitate to share with us ideas for improvement. We are also most interested in understanding what might be the reasons of difficulties!

- The Greek National Commission for Human Rights (hereinafter the GNCHR, established by Law 2667/1998 -OG A΄ 281- and operating since March 2000) has a range of functions including reviewing the adequacy and effectiveness of Greek law and practice relating to the protection of

[1] For the entry on Greece, see pp. 44-45. In replying to the CDDH DH-PR (2006)004 rev 3 Bil (Replies to the new questionnaire with regard to the five recommendations), Greece stated that "Previous information submitted (see CDDH (2006)008 Addendum II and Addendum III), provides up-to-date replies to all the questions", see p. 23 and p. 70 of the document.

human rights, advising on legislative and other measures which ought to be taken to protect and promote human rights, advising on whether a draft is compatible with human rights and promoting understanding and awareness of human rights. Monitoring the conformity of domestic legislation and practice with the standards laid down by the full range of international human rights legal instruments and bodies, as well as the non-binding 'soft law' standards developed by the human rights bodies, and rendering opinions to the competent Greek State authorities is, indeed, one of GNCHR's priority areas. In the context of its aforementioned competence, the Commission has repeatedly submitted observations on bills and draft presidential decrees touching upon human rights issues [2]. Furthermore, the Commission has issued comments regarding both the 2001 revision of the Greek Constitution and the forthcoming one, as well as proprio motu proposals for new legislative measures and the ratification of international human rights instruments. The Chairperson of the Commission has been repeatedly invited to address the Greek Parliament, especially on the occasion of the examination of important draft laws involving diverging approaches. The GNCHR systematically invokes the ECHR and the Strasbourg case-law in all its reports and proposals on draft laws which are submitted to it for comments or on proprio motu legislative proposals of the Commission.

- The information provided by Greece is formally correct. It should be noted, however, that in practice, the "special procedure" highlighted in the document which consists at submitting all draft laws to the GNCHR for screening as to the compliance with human rights standards and statutory obligations prior to presenting them before the Parliament, is less systematic than it ought to. The GNCHR has repeatedly underlined the importance of this procedure to all directions and it seems that, as time goes by, the authorities become increasingly convinced of the value and interest of observing it.
- Ways to promote deeper understanding of the ECHR should be seeked at all levels, as lack thereof seems to be among the reasons for the difficulties in observing the human rights standards laid down by the Convention. The potential of the GNCHR in "Strasbourg proofing" should also be further exploited.

Question 2:

Regarding the implementation of Committee of Ministers Recommendation (2004)6 on the improvement of domestic remedies:

Are there effective non-judicial and judicial remedies in all areas and all situations available to anyone with an arguable complaint of a violation of

[2] See relevant document sent separately.

the European Convention on Human Rights in your country? Which are the areas and situations where your institution does offer a remedy and which are those where it does not?

Again, please highlight what seem to be the strengths and weaknesses of your domestic situation, in practice. Please do not hesitate to share with us ideas for improvement. We are also most interested in understanding what might be the reasons of difficulties!

Areas of special attention for the Council of Europe are the remedies available in cases of excessive length of judicial proceedings and when there is non-execution of judgments or decisions from national courts. There is also the question if in your country there is a reflex to assess critically the effectiveness of the existing remedies whenever a judgment of the European Court of Human Rights points to structural deficiencies of your national law or practice.

- Already in 2003, the GNCHR had joined the European Group of NHRIs in the position the latter addressed to the CM within the framework of the discussions on the Preparation of Protocol 14 to the ECHR. The Group was in favour of a recommendation to member States aiming at improving domestic remedies. In an endeavour to act upon the CM's recommendations and on the European Group's position, in March 2005 the GNCHR adopted a report with a series of proposals aiming at promoting the implementation of the ECHR in the domestic law and order and at the improvement of domestic legal remedies, with special emphasis on the issue of the excessive length of proceedings [3]. As stated in A/SJur (2007) 35, 21 June 2007 ("The Effectiveness of the European Convention on Human Rights at the National Level"), Greece is among the countries where specific remedies in case of excessive length of proceedings still do not exist, even though the ECtHR has found a violation of Article 13 of the ECHR in dozens of cases. Two recent laws (3327/2005 and 3346/2007) provide with a number of measures aiming at addressing common causes for the delays in the proceedings, such as allowing only one postponement of the trial etc. In the information provided to the CDDH by Greece in June 2005 [4], it is stated that the Minister of Justice acting upon the GNCHR's proposal established in early 2005 a special committee composed by judges of the Supreme Court and university professors, which is perusing the Strasbourg case-law and makes proposals for legislative amendments aiming at ensuring compliance with it. It is also

[3] See GNCHR's Summary in English Report 2004, p. 59.
[4] CDDH(2006)008 Addendum III, p. 102.

stated that there exists a draft law on the matter, which, inter alia, provides for a tribunal of maladministration of justice (Dikastirio Agogon Kakodikias). To date, the aforementioned draft law has not made its way to the Parliament. The issue related to the length of proceedings remains important and there is a clear need to adopt further measures to address it.

- With regard to the non-execution of judgements or decisions from national courts, the available remedies are determined in art. 95 par 5 of the Greek Constitution, as amended in 2001 [5]. Further to this constitutional amendment, Law 3068/2002 (OG A' 274-14/1/2002, on the "Compliance of the Administration to judicial decisions, and other provisions") was adopted, implementing the aforementioned article. It establishes a "three-member council" of judges for each one of the higher courts (penal, civil, administrative and audit), which are responsible for ensuring the compliance of the Public Administration to the courts' decisions and judgements, and may also issue fines to non-compliant authorities.
- With regard to the question whether there is in Greece a reflex to assess critically the effectiveness of the existing remedies whenever a judgment of the ECtHR points to structural deficiencies of the national law or practice, the answer is rather not entirely on the affirmative. In spite of the fact that the authorities may be aware of the structural nature of the legal or administrative shortcomings, it seems difficult to include effective measures to address them in the overall planning and in a systematic way. In some cases this may be due to lack of political will, while in others it may reflect a certain difficulty of the Greek State to ensure continuity of action at the legislative or executive level. In some cases, and as in other countries, Greece seems to find it more "convenient" to carry the financial burden of the individual measures' part of the judgement, than to take all the appropriate steps in response to the judgements. In addition to the abovementioned problems related to the length of proceedings, another example could be highlighted: repetitive ECtHR's judgements for breaching Art. 3 of the ECHR, do not seem to have caused a comprehensive revisiting of the issue of the detention conditions in Greece and of the necessary legislative amendments in order to significantly modify the overall penitentiary system. Nevertheless, the GNCHR, in its reports on the detention conditions (currently under review, to be adopted by the Plenary in February 2007) systematically invokes the ECHR, the Court's law, as well as the CPT's recommendations as the main thread of its analysis.

[5] "The public administration shall be under the obligation to comply with judicial decisions. The breach of this obligation shall render liable any competent agent specified by law. The measures necessary for ensuring the compliance of the Public Administration shall be specified by law".

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