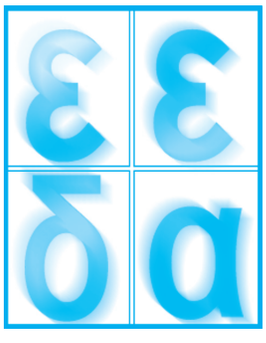
NATIONAL COMMISSION FOR HUMAN RIGHTS

ANNUAL REPORT 2009



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mr. Kostis Papaioannou

FOREWORD

by the NCHR President, Kostis A. Papaioannou

The foreword to this year's Annual Report of the Greek National Commission on Human Rights could not but start with a reflection on the economic crisis, a phenomenon with yet an unpredictable time span and severe sociopolitical dimensions.

In parallel with the financial crisis itself -which already has and will surely continue to have grave repercussions on the social fabric through the deterioration of the living standards and the dire threat of total social exclusion of the vulnerable groups of the population-, we are lately witnessing rapid changes in the field of social rights with an irreversible impact on social cohesion. It is quite obvious that human rights as a whole will be severely affected by the current socioeconomic conjuncture. The response of the Greek security forces to the social protests is potentially threatening to civil rights and, thus, particular vigilance is required on the part of institutions such as the NCHR. The Commission is particularly preoccupied by the current situation and as an expression of its concerns it adopted a position paper on the need for unrelenting respect of fundamental rights while undertaking an exit strategy from the financial crisis. The Commission took into account the overall aim of the fiscal measures adopted by the State, as well as the need to balance those measures with a human rights approach and the coherence and consistency required on the part of NHRIs response.

My second reflection concerns the migrants and refugees. The Commission has repeatedly underlined the importance of respecting the human rights of aliens in our country, and has pointed out the inadequacy of the integration policies in a context of large numbers of irregular migrants and an extremely problematic system of granting asylum. Two important developments have taken place on that track. The first one concerns the new Law on "Greek Citizenship and the Political Participation of Aliens of Greek Origin and of Regular Migrants". This legislative initiative constitutes a crucial step towards the effective integration of regular migrants living and working in Greece for several years and, in particular, that of their children who are born or grew up here. The second one is related to the still ongoing changes in the asylum system. The NCHR participates in the drafting of the new legislation and will continue to closely monitor both the emerging institutional framework and its implementation.

These introductory remarks being noted, it is useful to recall that the work of the NCHR covers a wide range of issues, and its decisions are adopted either in response to a specific request of the State authorities, or on its own initiative, as provided for by its statutory law. The Annual Report reviews the overall activities of the Commission from 03.2009 to 03.2010. An indicative summary of its activities follows hereinafter.

As regards employment related issues, the Commission adopted a series of recommendations on the Hazardous and Unhealthy Occupations System and Other Relevant Health and Safety Issues. The NCHR's approach identified the aspects having an impact on the protection of human rights, while noting that any substantive judgment on the qualification of occupations as hazardous or unhealthy would fall outside its mandate. Hence the Commission examined the review of the system on the basis of principles of the Welfare State and highlighted the fundamental principles which should govern the review process.

Furthermore, the NCHR dealt with the ever-increasing flexible forms of employment, a matter of concern previously raised by the Commission. All such types of employment have in common the absence of fair, healthy and safe working conditions combined with systematic violations of the social, work and insurance rights of the workers. The NCHR formulated a series of recommendations on the reinforcement of the legislative and institutional framework for the protection of workers' rights.

With reference to education, the NCHR submitted proposals regarding the implementation of Law 3699/2008 on "Special Education of

Persons with Disabilities or Special Educational Needs". The short time allocated (10 days) for consultation before initiating the passing procedure for the draft law, as well as the importance of the issues arising, led the Commission to organise a consultation with relevant actors in order to identify the issues that effectively hinder the access of persons with special educational needs to education. The consultation resulted in the formulation of a series of specific proposals and recommendations.

Regarding the correctional system, the Commission commented on the Bill of the Ministry of Justice titled: "Reform of the Forensic Service, the therapeutic treatment of drug users and other provisions". The Commission was concerned both with the content of the bill and the procedure which was followed before it was tabled in Parliament: the NCHR's comments were not requested, the themes of the provisions of the law in question lack coherence, and, at the very last moment, legislative provisions seriously amending the migration law were included in the Bill. The Commission welcomed the few positive measures improving the correctional system, while it expressed its concerns in relation to the establishment of the perpetration of certain crimes by individuals having their facial features covered as an aggravating circumstance. Furthermore, it strongly disagreed with the provisions regarding the administrative deportation and detention of aliens.

In addition, the NCHR addressed the question of the Administration's compliance with domestic judicial decisions in the light of a number of ECHR judgments. The Commission had previously dealt with this question, but as considerable time had passed since the adoption of Law 3068/2002 on the compliance of the Administration with domestic judgments, it decided to review its positions.

I have already referred to the Law on "Greek Citizenship and the Political Participation of Aliens of Greek Origin and of Regular Migrants". This initiative was based on two pillars: on the one hand, the respect of the human rights of all persons residing in Greece and on the other hand, the social cohesion of the population and the safety of the borders. The NCHR welcomed the new law taking the view that it aims at ensuring the full enjoyment of rights of the people who are part of the Greek society, while it clarifies the position of the Administration vis-à-vis irregular immigration. The NCHR pointed out that, while fully understanding of the need for setting the criterion of legal status as the main condition for the acquisition of the Greek citizenship, one has to take into consideration the practical problems in the system of acquiring legal status, due to the inadequacy of migratory measures and practices. It is worth noting that the Law provides for representatives of the NCHR as members of the Naturalization Committees to be established in the regions of the country. This demonstrates the recognition of the role of the Commission by the State.

Moreover, the Commission addressed the issue of the surveillance cameras in public areas, the image and sound recording, the DNA analysis in criminal proceedings and the national data base of DNA profiles. The NCHR shared the Hellenic Data Protection Authority's position for "security in a freedom context" rather than "freedom in a security context". The NCHR expressed its opposition to the procedure of adoption of the legislation in question, as not consistent with the requirements provided for in a democratic society. The NCHR invited the State to abrogate the law amendment concerning the DNA analysis and the DNA profiles data base, as contrary to the Constitution and the ECHR. It also submitted specific recommendations for the use of DNA fingertips in criminal proceedings, according to the principle of proportionality and only in execution of a judicial order; furthermore, it proposed that the genetic fingertips of an adult person should be retained after his/her conviction only for a precise period of time determined by the court on the basis of the gravity of the crime and the specifics of the convicted person.

Regarding the topic of discrimination, the NCHR commented extensively on Law 3304/2005 "Implementation of the principle of equal treatment irrespective of racial or ethnic origin, religious or other beliefs, disability, age or sexual preferences", and submitted recommendations for its amendment. The latter concerned the role of the Greek Ombudsman as an equality body and

the expansion of its mandate so as to cover both the public and the private sector, the address of multiple discrimination, the locus standi of NGOS, and the amendment of Law 3226/2004 on legal aid.

Furthermore, the NCHR commented on the draft reports of Greece regarding the implementation of: a) the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, and b) the Convention against Torture and Other Cruel, Inhumane, or Degrading Treatment of Punishment.

Moreover, the NCHR addressed a letter to the President of the Parliament and to the Heads of political parties regarding parliamentary immunity in the light of two judgments of the ECHR holding that Greece has violated the right to access to a court of the complainants because the parliamentary immunity of the adverse parties was not lifted.

The Committee for the Study of Bullying in School Context, set up in June of 2006 under the auspices of the NCHR, continued its work for the third year. It collected the studies which were drafted by experts, on the basis of which it started drafting its final report which will be published shortly.

The NCHR has completed 10 years of operations, within which it has acquired a distinct position in the context of human rights protection in Greece. Its distinctive feature is its composition, which includes, inter alia, representatives of the Administration, of labour unions, political parties, organizations of civil society, independent authorities, and academics. Over the years, a culture of dialogue, which is not common place in other sociopolitical contexts, has been established. The NCHR has performed its advisory role in a coherent manner. Furthermore, it has systematically seeked to co-operate and consult with the civil society so as to enrich its positions and to establish channels of communications with actors beyond those being part of the Commission. During the past year, such consultations took place when examining the issue of mental health, of the education for people with disabilities, and of HIV patients.

In the foreword to the 2008 Annual Report we were stressing the need for the full respect of the independence of statutory consultative bodies, such as the NCHR, on the part of the State. The channels of communication between the NCHR and the State have been significantly improved during the past year, yet there is room for further solidifying this constructive co-operation.

Finally, we need to note that the work of the NCHR is based on two pillars. The first one obviously lies with its members who demonstrate their commitment to the role of the NCHR and provide it with their recommendations and substantiated views. Both in Plenary and at the sessions of the Sub-Commissions, a very fruitful exchange of views takes place, often with the contribution of experts invited to attend. The Commission strives to adopt its decisions by consensus and this is in fact achieved more often than not. This practice corroborates the independent advisory role of the NCHR.

The second pillar on which the work of the Commission is based is its -small in number- staff. Their commitment, professionalism and ethos are reflected in the performance of their duties in more than ways; this is a token of the fact that working in the field of human rights encompasses both the occupation per se and the overall way of life beyond it.

Even before reaching the current stage of the financial crisis, the NCHR had considerably reduced its expenses. Before any further reductions are envisaged, it should be considered that the staff of the NCHR are already less in number than that required for performing its role in full. Furthermore, the interaction of the NCHR with other bodies and authorities in a number of international events is indispensable for performing its role as part of an international human rights protection and promotion system.

The wide range of partnerships and activities of the NCHR at the international level are presented in the respective part of the Annual Report. As an example we note its role in the framework of drafting the UN Declaration on Human Rights Education and Training within the European Group, as well as its coordinating role in the Working Group on Gender Equality in the framework of the Arab-European Human Rights dialogue. As per usual, the NCHR co-operates

with the Office of the UN High Commissioner for Human Rights, the Commissioner for Human Rights of the Council of Europe, the EU Fundamental Rights Agency etc.

The aforementioned activities demonstrate the substantive institutional role of the NCHR. Our objective is to strengthen this role in spite of the present difficulties and challenges.

Legal Framework and Organisational Structure of the NCHR

1. Law No. 2667/1998 establishing the NCHR [1]

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;

(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);

1. As amended by Law 2790/2000, Law 3051/2002 and Law 3156/2003.

(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
Final provision

Article 19

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

We hereby mandate the publication of the present law in the Official Journal of the Hellenic Republic and its execution as a law of the State.
Athens, 17 December 1998

CONSTANTINOS STEPHANOPOULOS
PRESIDENT OF THE REPUBLIC
CONSTANTINOS G. SIMITIS
PRIME MINISTER
THE MINISTERS (…)
Endorsed and the Great Seal of State affixed
Athens, 18 December 1998

2. Current Members of the NCHR

1. The President of the Special Parliamentary Commission for Institutions and Transparency, Mr. A. Stavrou and from 30.11.2009 Mr. M. Papaioannou.

2. A representative of the General Confederation of Greek Workers, Mr. I. Panagopoulos and Ms. E. Varhalama as his alternate.

3. A representative of the Supreme Administration of Civil Servants' Unions, Mr. D. Pappas and Mr. N. Hatzopoulos as his alternate.

4. Six representatives of Non-Governmental Organizations active in the field of human rights protection: for Amnesty International Greek Section, Mr. K. Papaioannou and Ms. G. Zervou as his alternate; for the Hellenic League for Human Rights, Mr. I. Ioannidis and Mr. K. Tsitselikis as his alternate; for the Marangopoulos Foundation for Human Rights, Mr. L.-A. Sicilianos and Ms. A. Yotopoulou-Marangopoulou as his alternate; for the Greek Council for Refugees, Ms. A. Chryssochoidou-Argyropoulou and Ms. I. Nikolakopoulou-Stefanou as her alternate; for the Greek League for Women's Rights, Ms. S. Koukouli-Spiliotopoulou and Ms. P. Petroglou as her alternate; and for the Panhellenic Federation of Greek Roma Associations, Mr. V. Dimitriou and Mr. E. Tsatsanis as his alternate.

5. Representatives of the political parties represented in the Greek Parliament: for New Democracy, Mr. C. Naoumis and Mr. G. Nikas as his alternate; for PASOK, Mr. A. Papaioannou until October 2009; for KKE Mr. I. Malagaris and Mr. D. Kaltsonis as his alternate; for SYRIZA, Mr. N. Theodoridis and Mr. S. Apergis as his alternate; for LAOS Ms. V. Tsabieri and Ms. E. Deska as her alternate.

6. The Greek Ombudsman, Mr. G. Kaminis and his alternate, Mr. A. Takis and from 18.2.2010 Mr. V. Karydis.

7. One member of the Authority for the Protection of Personal Data proposed by its President, Mr. A. Roupakiotis and Ms. P. Foundedaki as his alternate.

8. One member of the National Radio and Television Council proposed by its President, Ms. I. Avdi-Kalkani and Ms. E. Demiri as her alternate.

9. One member of the National Commission for Bioethics proposed by its President, Mr. G. Maniatis and Mr. T. Patargias as his alternate.

10. Two personalities widely recognized for their expertise in the field of human rights protection, designated by the Prime Minister: Mr. N. Klamaris (Ms. T. Antoniou as his alternate) and Mr. A. Makridimitris (Ms. A. Kaloudi, as his alternate) and from 31.12.2009 Mr. K. Remelis and Mr. S. Perrakis.

11. One representative of the: Ministry of Interior, Mr. I. Zannetopoulos and from 19.01.2010 Mr. A. Takis (Ms. A. Mpelia and from 19.01.2009 Mr. I. Zannetopoulos as alternates); Ministry of Foreign Affairs, Mr. P. Pararas, from 02.02.2010, Mr. I. Fotopoulos and from 01.03.2010, Ms. M. Telalian (Mr. I. Kastanas as her alternate); Ministry of Justice, Ms. E. Filippaki and from 07.01.2010 Ms. L. Pappa (Ms. K. Milioni and from 07.01.2010 Ms. K. Hatzi as alternates); Ministry of Citizen Protection, Mr. K. Kordatos and from 16.04.2009 Mr V. Koussoutis (Mr. S. Panoussis and from 05.01.2010 Ms. A. Al Salech as alternates); Ministry of National Education and Religious Affairs, Ms. Z. Tourali, from 13.05.2009 Mr. S. Vlastos and from 11.01.2010 Ms. T. Dragona (Ms. A. Ladopoulou, from 13.05.2009 Ms. V. Papassava and from 11.01.2010 Ms E. Petraki, as alternates); Ministry of Labour and Social Security, Mr. D. Kontos and from 07.01.2010 Mr. R. Spyropoulos (Ms. A. Kaza and from 07.01.2010 Mr. K. Koutsourelakis, as alternates); and Secretariat General of Communication and Information, Ms. M. Papada-Chimona and from 04.01.2010 Mr. G. Petroulakis (Mr. S. Anagnostou and from 04.01.2010 Ms. K. Kallimani as alternates).

12. From the Faculty of Law, National Kapodistrian University of Athens, Mr. P. Sourlas (Ms. I. Iliopoulou-Stragga and from 30.03.2009 Ms. E. Divani as alternates); Aristotle University of Thessaloniki, Mr. A. Manitakis (Mr. P. Stangos, as his alternate); Faculty of Political Science and History, Panteion University, Mr. D. Christopoulos (Ms. A. Anagnostopoulou as his alternate).

13. One member of the Athens Bar Association, Ms. M. Kouveli and Mr. T. Christopoulos as 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.

3. The organisational structure of the NCHR

Since October 2006, Mr. Kostis Papaioannou (representing Amnesty International-Greek Section) is the President of the NCHR. Ms. Angeliki Chryssohoidou-Argyropoulou is the 1st Vice-President, and Ass. Prof. Linos-Alexandros Sicilianos is the 2nd Vice-President. Their term of office has been renewed from the Commission's elections in March 2009 for a three year period.

NCHR has established five Sub-Commissions:

1. The Sub-Commission for Civil and Political Rights

2. The Sub-Commission for Social, Economic and Cultural Rights

3. The Sub-Commission for the Application of Human Rights to Aliens

4. The Sub-Commission for the Promotion of Human Rights

5. The Sub-Commission for International Communication and Co-operation

According to the Rules of Procedure the Plenary convenes every two months. In practice the Plenary meets every 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); it also employs two 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).

Resolusions, Decisions and Opinions of the NCHR

1. Proposals regarding the implementation of Law 3699/2008 "Special Education of Persons with Disabilities or Special Educational Needs"

Introduction

NCHR has organized a consultation with professionals, parents and academics in order to identify the most important issues arising as regards the effective access of persons with special educational needs to education. The proposals below do not attempt a complete and exhaustive approach of the organisation of special education. They aim to contribute to the more effective implementation of the provisions adopted in the context of the State obligations.

I. Proposals for the fulfilment of compulsory Special Education and Training

• NCHR stresses the importance of the immediate adoption of all the Presidential Decrees and Ministerial Decisions provided for in Article 34 (enabling provisions) in order to accelerate the implementation of the Law. NCHR formulates proposals for: a) local structures issues and b) addressing special educational needs.

A. Local structures issues

1. Early Intervention Centres

• All interested actors supported the dire need to establish Early/Timely Intervention Centres. These centres must be built beyond nursery schools for children aged 0-4 years, therefore at the crucial age for the diagnosis and development and for their parents as well as they should be appropriately manned with educational, medical and special teaching staff[1] (Article 34 paragraph 4).

2. Daily Life Training Centres

• They are essential to children with considerable special needs, intellectual disability, functional autism or multiple disabilities, who cannot attend vocational education programs, but are in need of training in everyday skills and creative activities (Article 34 paragraph 4).

3. Special Education and Training School Units

• Establishment of school buildings fulfilling the necessary accessibility and functionality specifications for all students with special educational needs (Article 34 paragraph 7a).

• Determination of analytical training program regarding Special Education and Training School Units in order to meet special educational needs of all students by appropriate teachers (Article 34 paragraph 6g).

• Monitoring of the implementation of the Individualized Education Program so as to ensure that every student is being properly educated (Article 34 paragraph 6g).

• Immediate recruitment and appointment of the needed personnel at the beginning of new school year (Article 34 paragraph 1b, 4, 6h and 7a).

• Immediate adoption of the Presidential Decrees and Ministerial Decisions referred to in Law 3699/2008 in order to regulate all issues concerning:

a) the selection procedure of Advisers to Special Teaching Staff (Article 34 paragraph 1) and every detail regarding their duties, competences and obligations, b) the definition of the typical qualifications for being appointed as Teaching Staff, Special Teaching Staff and Special Support Staff and every detail regarding the criteria, the requirements and the appointment procedure for Special Education and Training Personnel (Article 34 paragraph 1b).

4. Addressing deficiencies at General Schools Special Education and Training Classes

• It is recommended to create a Special Education and Training class in every three schools for students with marginal or normal IQ with severe behaviour problems as well as emotional fulfilment problems, language development problems, psychiatric or physical problems (epilepsy, serious illnesses) functional

1. 'Early/Timely Intervention Centres' differ from 'Early Intervention Centres' provided for in Article 8 paragraph 1 aa) of Law 3699/2008, which are erroneously called like that, since it is likely to offer pre-primary education services inside nursery schools.

autism or even a slight mental and cognitive immaturity and are incapable of keeping up with their classmates.

In so doing, students with these educational needs, which would be aggravated by attending Special Education and Training School Units, would essentially benefit from mainstream education (Article 34 paragraph 4).

Inclusive Classes

• In every school (at all levels) there should be an inclusive class manned by Special Education and Training teachers in order to address learning difficulties promptly and in a specialized way and to avoid deficiencies which render impossible some students' inclusion in the general program (Article 34 paragraph 4).

Incorporation of new specialties in teaching personnel (Article 34 paragraph 1b)

• Class enforcement with assistant teachers to facilitate permanent surveillance and to promote an enhanced learning pathway to students.

• Manning of nursery schools with speech therapists to promptly address language disorders or deficiencies which result in learning difficulties.

• Manning of general schools with psychologists and social workers to manage socioeconomic changes.

• To establish the Administrative Board of the Special Teaching Staff at the Central Body of the Ministry of Education and Religious Affairs (Article 24 paragraph 3), the following specialties are proposed: child psychiatrists, social workers, psychologists, speech therapists, occupational therapists, physical therapists, experts on matters concerning the blind and deaf as well as school nurses to be recruitment assessed almost exclusively by teachers.

5. Differential Diagnosis, Diagnosis and Special Education Requirements Support Centres (Diagnosis Centres)

• A proportion of one entirely diagnostic team per 5,000 of the school population is proposed (or four diagnostic teams per 20,000) in order to reduce waiting time for diagnosis/evaluation and planning and Diagnosis Centres personnel should come in touch and cooperate with a specific number of schools and teachers (Article 34 paragraph 7e).

• A physical therapist should be added to the inter-scientific team of Diagnosis Centres (Article 4 paragraph 1) to assess physical difficulties and to propose suitable technical requirements (Article 34 paragraph 6i).

• It would be useful to specialize Diagnosis Centres personnel in learning difficulties and not simply in Special Education (Article 34 paragraph 6i).

• For the efficient and appropriate manning of Diagnosis Centres, provision should be made for incentives in order to avoid manning with alternates, whose convention expires each year on the 30th of June and as a result they are becoming weak (Article 34 paragraph 6d).

• Coverage of transport expenditure of Diagnosis Centres personnel to schools, depending on the kilometric distance they have to cover (Article 34 paragraph 6d).

• Training seminars for all staff (Article 34 paragraph 6d).

• Library funding, suitable software, evaluation material as well as petty expenses not covered by the Prefecture.

• It is being proposed to avoid placing secondary school teachers in Diagnosis Centres and expanding to over 50 graduates of "Educational and Social Policy" classes having three-year experience in Special Education and Training School Units, who have only worked with students with deafness, blindness, mental disability, autism, physical disorders or multiple disabilities and lack of the specialized knowledge to assess students' learning difficulties (Article 34 h).

6. Cooperation framework and sharing of responsibilities between Children's Paediatric Centres (IPD) and Differential Diagnosis, Diagnosis and Special Education Requirements Support Centres

• Diagnosing students' special educational needs should be assigned to Diagnosis Centres. Students' psychological and psychiatric support as well as their families' should be also assigned to IPD.

• Parents are entitled to appeal in case of disagreement between Diagnosis Centres and IPD (Article 5 paragraphs 3 and 4): parents express their strong opposition to the degradation of their role as responsible for their children's education, as well as their hesitations against time-consuming bureaucratic procedures.

B. Issues of Special Educational Needs

Students with language disorders or neurological or psychiatric diseases

There is a gap for addressing difficulties not deriving from dyslexia.

• Regarding students with language disorders or neurological or psychiatric diseases, the examination method and conditions should be determined so as to respond to the needs of each case. These cases demand more time and a simpler way of exposing issues. Teachers also propose the possibility that students with these specific educational needs could use a dictionary during exams.

Students with hearing problems, students with vision problems and students on the autistic spectrum

The centrepiece is the need to face these specific needs, which differentiate according to the nature of the problem.

• Cases of children with cochlear implants have increased, which imposes reinforcing special education in converting sounds into words within special schools by a team consisting of a speech therapist, a headphone controller, a psychologist, a special teacher, a nursery school teacher etc. Insufficient and inappropriate school education leads children with cochlear implants in general schools to a system where they do not manage to transpose properly in the absence of inclusion classes.

• Lack of special education for students on the autistic spectrum results in attending general schools and mental disability schools, where no special education -which is what they do need- is being provided.

If competent bodies ascertain that accompanying support should be made available to students on the autistic spectrum (Article 7 paragraph 4c) by a special assistant introduced by the student's family on the favourable opinion of the Headmaster of the School Unit and the Teachers Board, then this burden must be obligatorily placed on and covered by the State.

Certification body of the Greek Sign Language and Braille Writing (Article 7 paragraph 3 and article 47 paragraph 7c)

What is especially welcomed is the recognition of the Greek Sign Language and the Braille Writing as first language for children with hearing problems and visually disabled children, and also as a prerequisite of efficient knowledge for the recruitment of teaching personnel at schools with students having these problems.

• However, it is essential that the National Certification Body of Efficient Knowledge of the Greek Sign Language and the Braille Writing ("ENORASIS") benefit from, especially given its limited composition (seven members), the experience of the Hellenic Federation of the Deaf and the Centre of Education and Rehabilitation of the Blind (KEAT), the competent bodies hitherto.

Publication of books and material and technical infrastructure suitably adapted to students' hearing and vision problems (Article 34 paragraph 3)

• Immediate adoption of the Presidential Decree for establishing a department of adapting teaching books to the needs of students with hearing and vision problems.

• Provide special Presidential Decree programs and digital recording depending on the books and writings taught in the educational system.

• Single curriculum and educational objectives design, so as not to depend only on the personal effort of the teachers.

2. Proposals on the review of the Hazardous and Unhealthy Occupations System and Other Related Health and Safety Issues at the Working Place

I. Introduction

Article 18 of Law 3483/2006 has established a special committee in order to review and submit its opinion on the regime of hazardous and unhealthy occupations. The committee evaluated the list of hazardous and unhealthy occupations according to the estimated hazard (graded from 1 to 4). The committee did not clarify the standards of classification and it did not conclude to specific consequences of each category.

II. The GNCHR approach

The GNCHR stressed that any substantive judgment would fall outside its mandate. However any review of the system in force should be based on general principles for the protection of social rights. The GNCHR considers that the main field of concern is the protection of the right to health. Any study about the hazardous and unhealthy occupations should pay attention to the closely linked regulations for occupational health and safety.

The establishment of a special system for the hazardous and unhealthy occupations originates from the acknowledgement of the particularly important risk for the health and the physical integrity of workers, the premature damage of health and the incapacity for any further occupation. In the light of the above, early retirement removes the workers away from the hazardous and unhealthy factor at an earlier age than the general age of retirement. At the same time, it should be stressed that the State has undertaken the obligation to protect workers' health by implementing effectively and constantly health and safety regulations and by preventing risks during the entire life of workers until the time of retirement.

The need to review the system of hazardous and unhealthy occupations could not be dissociated from relevant medical developments. Preventive legislation fulfils the obligation to eliminate occupational risks; where it has not yet been possible to eliminate or reduce sufficiently these risks, the States undertake the obligation to adopt measures such as the reduction of working hours or additional paid holidays for workers engaged in such occupations. Workers engaged in unhealthy occupations should rest away from the unhealthy element in order to re-establish their mental and physical health.

According to the NCHR, these fundamental principles constitute the starting point for the formulation of its proposals about the review of hazardous and unhealthy occupations.

III. Proposals

The NCHR has formulated proposals on the most fundamental aspects of the review as well as on its procedural aspects.

A. Fundamental principles

a) Respect of the welfare state principles

Occupational health and safety regulations should serve as a basis for the review of the system. Workers vulnerable to multiple discrimination and de facto victims of violations in cases of flexible work contracts should be given special attention.

b) Extent and methodology of the review

All pending applications by trade-unions or professional associations should be examined in order to establish the new list of unhealthy and hazardous occupations. As regards the already classified occupations as unhealthy or hazardous, it should be examined whether working conditions have improved so that their removal from the system would be justified.

The classification should be based on adequate epidemiological data, arising from special studies, on medical findings as well as other official sources such as the reports of labour Inspectorate. Morbidity (diseases types and frequency for every occupation under examination), accidents, mortality, and the influence of injurious agents should be taken into account. In any case, the rejection of the qualification of an occupation as unhealthy or hazardous should be accompanied by a justification based on scientific and clear documentation.

Elaborating a methodology for examining all relevant applications would contribute to the prevention of any discriminatory treatment. The

GNCHR considers that civil servants should not be excluded a priori from the system. It is difficult to accept that the same occupation and the same type of work would be considered unhealthy or hazardous as to workers in the private sector whereas the same ones would not be considered unhealthy or hazardous when exercised by civil servants. Besides the GNCHR considers that the same system should be applied as to occupations for which informal working relations prevail (such as self-employed, sub-contracting etc.)

c) Linking with the occupational diseases

The advancement of medicine and technology has contributed to the registration of occupational diseases that the current system does not take into account. Any review that would not take not of an updated list of occupational diseases would be incomplete. The GNCHR invites the Ministry to issue the legislation incorporating the European list of occupation diseases into the national system of health and safety at work.

B. Fundamental procedural principles

a) Composition of the competent review committee

The committee that will review the unhealthy or hazardous occupations should be composed of interdisciplinary professionals and specialized doctors that could evaluate the impact of the occupation on the physical and mental health of workers. Trade-unions should also be represented by the most representative organisation.

b) The need for review and rationalisation

Technological advancements could have an important impact on the evaluation of the unhealthy or hazardous character of the occupation. The periodical review of the list would allow taking account of any significant change provided that the opinion of the committee would be substantiated thoroughly.

IV. Occupational Health and Safety and Hazardous and Unhealthy Occupations System

The compliance with Occupational Health and Safety Regulations is indubitably associated with the system of unhealthy and hazardous occupations. The updating of the regulations according to technological and scientific findings constitutes an important tool for the evaluation of the hazard or the health risk. On the other hand, the compliance with the occupational health and safety regulations could in some case lead to the elimination of the risk and as a consequence to the modification of the list of unhealthy and hazardous occupations. On the contrary, if the implementation of occupational health and safety regulations is proved to be impossible in practice the occupation under examination should be considered unhealthy or hazardous irrespectively of technological achievements.

V. GNCHR's proposals

1. Occupational health and safety regulations should serve as a basis for the review of the unhealthy and hazardous occupations system.

2. Special care should be assured to vulnerable groups.

3. Pending applications should all be examined.

4. Implementation of same rules with regard to all flexible forms of occupation.

5. Full substantiation of every decision on the basis of epidemiological studies, updated list of occupational diseases and labour inspectorate's reports.

6. Pursuit of agreement with trade-unionists and full justification of any negative decision.

7. Assignment of epidemiological studies to the Hellenic Institute for Occupational Health and Safety.

8. Evaluation on the basis of identified injurious agents.

9. Issue the Presidential Decree about the occupational diseases list.

10. Respect of the equality principle, identical treatment of identical cases of workers.

11. Interdisciplinary committee for the review of the system composed also of work doctors.

12. Periodical review of the system with the above guarantees.

13. In case of doubt, it should be preferred to classify the occupation as hazardous or unhealthy.

14. Constant updating of the legislative framework related to occupational health and safety.

15. Full and effective implantation of occupational health and safety regulations for the

prevention of occupational risks and parallel effective inspections by adequately staffed inspectorate bodies.

16. Legislative measures for the adoption of work doctors and safety technicians.

17. Where it has not yet been possible to eliminate or reduce sufficiently risks in inherently dangerous or unhealthy occupations, reduction of working hours or additional paid holidays for workers.

18. Establishment of a special body for the evaluation of occupational risk.

19. Ratification of the Revised Social Charter of the Council of Europe and the ILO Occupational Safety and Health Convention (No. 155).

3.Comments on the draft Presidential Decree titled Amendment to PD 90/2008 "Adjustment of the Greek legislation to the provisions of the Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status".

The Ministry of Interior is promoting a Presidential Decree (hereafter PD) bringing major changes in the asylum procedure, as regulated by Presidential Decree 90/2008, which incorporates into Greek legislation Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status.

I. The abrogation of the examination of asylum applications at the 2nd instance

The GNCHR expressed its reservations as to the compatibility of the proposed legislation with EU Directive 2005/85/EC and in particular article 39 thereof which provides that "Member States shall ensure that applicants for asylum have the right to an effective remedy before a court or tribunal, against the following: (a) a decision taken on their application for asylum, [...]". The draft Presidential Decree provides for the abrogation of the examination of asylum application at the 2nd instance as provided for in Articles 25 and 26 of Presidential Decree 90/2008 and it also provides for the legal remedy of the annulment application before the *Conseil d'Etat* (the highest administrative court of Greece) against a negative decision on an asylum application (article 2 of draft PD). The GNCHR considers that the annulment application before the *Conseil d'Etat* does not meet the requirements of EU Directive for the following reasons:

a) The annulment application before the Conseil d' Etat involves solely the examination of legality of the administrative act issued and does not extend to the very content of that act. Therefore, the *Conseil d' Etat,* within the framework of an annulment application, will limit itself in examining any potential legal defects of the administrative act rejecting an asylum application. It will not examine whether the particular applicant is entitled to be granted the refugee status on the basis of his/her allegations and the evidence submitted. The lack of competence on the part of the *Conseil d'Etat* to examine the very essence of the asylum application does not seem to be compatible with the purposes of the right to an effective remedy provided for in article 39 especially if it is read in conjunction with paragraph 27 of the Preamble according to which: "[…] The effectiveness of the remedy, also with regard to the examination of the relevant facts, depends on the administrative and judicial system of each Member State seen as a whole." A remedy which will not examine the actual facts and the allegations of the asylum applicant as to whether his/her application for international protection is well founded may not be considered as an effective remedy.

b) The necessity to maintain the examination of asylum applications at the 2nd instance by the Appeals Committee is corroborated by the statistics for asylum as well as the examination of asylum applications itself. The figures are quite depicting. In 2008 out of 29.573 applications, refugee status was granted in 14 cases at the 1st instance, whereas at the 2nd instance in 344 cases out of 3.342.

According to the study of the UNHCR titled "Asylum in the European Union: A Study of the Implementation of the Qualification Directive" all 305 1st instance decisions reviewed –relating to applicants from Afghanistan, Iraq, Somalia, Sri Lanka and Sudan were negative. None of these decisions contained any reference to the facts and none contained any detailed legal reasoning. All contained the same standard paragraph according to which the asylum applicant abandoned his country in order to find a job and improve his living conditions.

Furthermore, according to the said study, which took place while the Asylum Committee's competence was advisory and the final decision regarding granting refugee status belonged to the Minister of Public Order, the review of the 2nd instance decisions found that the summary of facts normally did not exceed two lines and the standard grounds for a negative decision were stated in a few lines. The appellant's specific allegations were not stated and no other reasons were given for the negative decision. As a result of

this administrative practice, a considerable number of 2nd instance decisions have been annulled by the *Conseil d' Etat* on the grounds that the decision was not specifically motivated or the decision did not follow the recommendation of the Consultative Asylum Committee without any justification for the divergence from the recommendation.

c) An additional factor that needs to be taken into consideration with regard to the effectiveness of the annulment application before the *Conseil d'Etat* is the question of legal aid. Article 11, par. 2 of PD 90/2008 states that: "The asylum applicant who files an annulment application against the negative decision is provided with free legal aid in accordance with Law 3226/2004". Under article 1 of the said law (OJ A' 24), legal aid is provided for "low income persons of third countries and stateless persons, since they have legally domiciled or are habitually resident within the European Union". Since the asylum application is rejected, the asylum applicant deprived of any legal basis for residence in the country, the question of how the applicant will benefit from the legal aid scheme in order to file an annulment application before the *Conseil d'Etat* is reasonably raised.

Furthermore, the ECtHR has held that for the purposes of article 6 of the European Convention on Human Rights legal aid may constitute a precondition in order for the access to court to be considered effective when legal representation is compulsory or when it is rendered necessary because of the procedural complexity of the case.

d) Another problematic aspect of the ineffectiveness of the annulment application before the *Conseil d' Etat* is the fact that the annulment application does not have an automatic suspensive effect re the deportation order. Therefore, the applicant faces the daily risk of being deported before the annulment application is adjudicated. The applicant may submit a suspension application against the act of deportation, but he will probably need legal aid. Thus, the aforementioned problems come to the surface once more.

II. The transfer of the decisive competence over asylum applications to the Police Directors of the country

The GNCHR would like to reiterate its position regarding the need for the asylum procedure to be assigned to a civil service and not to the Police Force. The Police Force may not be in charge of both the suppression of illegal immigration and the asylum procedure. The assignment of decisive competence over asylum application at the 1st and last instance to the Police Directors jeopardizes the fairness and the effectiveness of the asylum procedure. The GNCHR considers this asylum procedure to be ineffective and quite dysfunctional for the following reasons:

a) In 2003, when the *Conseil d' Etat* was asked to process a draft presidential decree with a similar provision, it had taken the view that the transfer of the decisive competence from the Central Authority (the Directorate for Aliens of Headquarters of Hellenic Police) to the Police Directors of Greece would undermine the uniform interpretation and implementation of the Geneva Convention. The GNCHR shares the same view and concerns.

b) It is a fact that some kind of decentralization regarding the asylum procedures is necessary in order to facilitate the work of the Aliens Directorate of Attica, which is burdened with the vast majority of asylum applications. However, this draft provision does not provide the necessary substantive and procedural guarantees for the effective protection of asylum seekers. The assignment of the final decision over asylum applications to the Police Directors presupposes their proper and in depth training in refugee law and their continuous briefing on issues, such as political developments in the countries of origin, identification of groups facing fear of persecution etc, which are essential for the handling of asylum questions. This training is time consuming. Given that Police Directors are burdened with a large number of other duties, the appropriateness of their training is put into question.

Thus, the problems that the 1st instance asylum procedure was facing up to now due to structural deficiencies and those that may arise

should be taken into serious consideration, since the examination at the 2nd instance is to be abrogated and hence, the 1st instance examination should entail in practice all the procedural guarantees for a fair and efficient asylum procedure.

III. The establishment of Advisory Refugee Committees in the Police Directorates

According to article 3 of the draft PD an Advisory Refugee Committee will be established in each Police Directorate. The Committee will be conducting the interview of the asylum applicant and will be recording the allegations of the applicant rendering an opinion to the Police Director as to whether these allegations are well founded. This Committee consists of two Police Officers, a civil servant of the Bureau of the respective Prefecture and a representative of UNHCR as members. The GNCHR considers that this change renders the asylum procedure quite dysfunctional for the following reasons:

a) The issue of necessary qualifications and proper training of the police officers and civil servants comprising the Advisory Committees is once more raised, given that 54 Refugee Committees are to be established. The number of people that need intensive training is quite high.

b) Another crucial issue which casts doubts over the efficiency of the new asylum procedure is the one of interpreters -both in numbers and in languages spoken. Given that the Directorate of Aliens in Attica faces a lack of interpreters, the problem will only become even greater for the other Police Directorates which will have to secure the services of the necessary for their needs interpreters. The problems regarding interpreters have also been underlined by the Commissioner for Human Rights of the Council of Europe.

IV. The transfer of the decisive competence over submitted appeals by the Appeals Committees to the Deputy Minister of Public Order

The GNCHR without wishing to reiterate the aforementioned argumentation for preserving the examination of asylum applications at the 2nd instance, as provided for by the current PD 90/2008, but based on this, will merely observe that the Appeals Committees should maintain their its decisive competence and examine submitted appeals against negative decisions for international protection applications.

V. Recommendations

The GNCHR makes the following recommendations to assist in establishing a truly fair and efficient asylum procedure. Being fully aware of the fact that the Aliens and Immigration Directorate is under great pressure, the GNCHR stresses that this should not be an excuse for the establishment and mainly the implementation of a particularly non-fair and inefficient asylum procedure. In addition, the NCHR notes that, since the asylum procedure constitutes for many aliens the only basis for temporary legalization (which directly undermines the value and distorts the content of political asylum), any reform concerning asylum procedure will not be effective unless it is combined and coordinated with special immigration measures, such as the temporary legalization of aliens whose deportation is not feasible (for objective and/or subjective reasons).

A) The decentralisation of the asylum procedure

Amending the "determining authority" towards a decentralisation of the asylum procedure is a necessary and realistic approach of the current situation. Nevertheless, the effective decentralization of asylum procedure will meet the guarantees of an **accelerated and fair procedure,** as provided for in points 3 and 11 in the preamble of Council Directive 2005/85/EC **under the following conditions:**

The decentralisation should be done at a regional level and at the main points of entry rather than at the level of Police Directorates so as to ensure the necessary qualified human (interpreters, psychologists, etc.) and material resources.

A central authority should coordinate and guide the procedure by issuing directives, manuals or interpretative circulars in order to ensure the lawful interpretation and enforcement of existing legislation as well as the uniform practice, both in the procedure itself and the examination of the merits of the cases.

The regional organs with decisive

competence should be collective bodies composed by individuals with the necessary qualifications re asylum issues (such as UNHCR, judges, representatives of relevant bar associations, members of the diplomatic corps, officials of regional and Local Authorities, bodies of civil society organizations related to refugees) and guarantees of independence. Thus, if the Police is not completely excluded from the asylum procedure, at least it should not have the majority in the collective decisive organs. Furthermore, these collective organs should be chaired by a retired judge so as to ensure the proper implementation of existing legislation.

B) The abrogation of the examination of asylum applications at the 2nd instance

The NCHR takes the view that the examination of asylum applications at the 2nd instance is necessary. Therefore, it recommends the following alternatives:

If the decisive competence over asylum applications is assigned to the aforementioned recommended collective organs, the examination at the 2nd instance should be undertaken by the competent administrative courts, which will exercise judicial review of the legality and the substance of the decision on asylum applications. In so doing, the effective judicial protection referred to in article 39 of EU Directive will be ensured and the *Conseil d' Etat,* which will retain its annulment competence, will not be burdened with a large number of cases. It needs to be noted that this option is deemed as the most appropriate so as to ensure a fair, speedy, efficient and lawful asylum procedure.

If the decisive competence over asylum applications is to be assigned to a single person authority, especially a police officer as provided for by the draft PD, then it is necessary for the maintenance of the Appeals Committees' decisive competence. In addition, a larger number of Appeals Committees should be established in order for the rapid examination of asylum applications at the 2nd instance to be ensured. Moreover, their composition should be reconsidered by adding individuals such as judges, members of the Greek Ombudsman and university professors to ensure even further their independence. Against a decision by the Appeals Committee an annulment application may be filed before administrative courts of first or second instance -in an attempt not to overburden the *Conseil d' Etat*- or alternatively before the *Conseil d' Etat.*

If the decisive competence over asylum applications is to be assigned to a single person authority, especially a Police officer, and if the Appeals Committees are abrogated, it is imperative for administrative courts to be able to exert judicial review by examining both the legal issues and facts of each case in compliance with article 39 of EU Directive.

Finally, it should be noted that regardless of the selected alternative, the new PD should provide for the **automatic** suspensive effect of the legal remedies to be exercised. It should also ensure legal aid to persons lacking the necessary means in order for their judicial protection to be truly effective.

4. Comments on the bill of the Ministry of Justice titled: "Reform of the Forensic Service, the therapeutic treatment of drug users and other provisions"

I. Introduction

It needs to be noted that the title of the bill does not reflect its wide scope. The bill addresses issues regarding the correctional system, migration and the perpetration of crimes by drug users.

II. Chapter B – Measures for the improvement of the correctional system (articles 11-23)

The provisions of the bill under examination are in the right direction. However, additional measures need to be taken.

Article 11 provides for the establishment of a new Specialised Detoxication Center with drug replacement programs. The GNCHR disagrees with providing detainees with methadone considering that it might incite drug users to commit crimes so that they can be incarcerated and have access to free methadone dose.

Article 13 materializes NCHR's recommendation and provides for the integration of the Specialised Therapeutic Centers of the Ministry of Justice, namely the Psychiatric Hospital and the General Hospital of Korydallos, into the National Health System.

Article 14, par. 1 provides for the release of those who are not in a position to pay for their converted sentence into monetary penalty. Par. 2 amends article 16, par. 1 of Law 3727/2008, which provided for the conversion of up to 5 years imprisonment into monetary penalty so as to decrease prisons' overpopulation. These provisions concern convictions prior to Law 3727/2008. The NCHR takes the view that this provision provides for the differential treatment of detainees depending on the time they were convicted which contravenes the constitutional principle of equality.

According to the Explanatory Report of the bill article 14, par. 2 intends to clarify article 16, par. 1 of Law 3727/2008 which generated different interpretations by courts. However, the said provision does not limit itself in clarifications but it expands the scope of the emended article and deprives the convict, whose application for conversion of the penalty was accepted, from rights provided for by the Constitution and international human rights instruments. Whereas the amended provision concerned convictions in the last instance, the provision of the bill concerns convictions of all instances. Furthermore, it provides that while the conversion application is pending the deadline for all judicial measures is suspended, and if the application is accepted any judicial remedy which has already been filed is deemed as null and void. By consequence the convict, whose conversions applications has been accepted, is deprived of the right to file an appeal in order to prove its innocence and to clear its criminal record. Thus, the constitutional rules of equality before the law and judicial protection (article 20, par. 1 of the Constitution) as well as the presumption of innocence are violated (article 6, par. 2 ECHR, 14, par. 2 ICCPR). Furthermore, in the case of convictions in the first instance articles 2 of Protocol 7 of the ECHR and 14, par. 5 of the ICCPR are also violated.

Article 15 amends Law 3757/2008 concerning the presumption that the possession of certain quantities of substances are for personal use. The NCHR notes that various experts have expressed serious concerns regarding the presumption of personal use. The NCHR has already underlined that the penal treatment of drug users has not been successful. All measures need to be based on a 'de-institutionalization' approach of the addicts and on the establishment of services for therapeutic care for their successful rehabilitation.

Article 16 provides for the conversion of the incarceration sentence of mothers with children under the age of 5 into community service (excluding the ones convicted for certain grave felonies).

Article 20, par. 1 provides for a new -third- type of correctional facility for those who have been convicted with life sentence and the particularly dangerous criminals. Thus, the separation of detainees on the basis of the gravity of their crime is rendered feasible. Par. 2 provides for the visit of correctional facilities by the Greek Ombudsman and the competent Parliamentary Committee after previous notification, however, it excludes the NCHR. Par. 4 renders the

possession and use of mobile phones a disciplinary offence.

Article 21 provides for the obligation of correctional officers to submit annual statements regarding their financial assets.

The proposed measures will contribute to the decongestion of correctional facilities. However, other measures necessary for both the improvement of detention conditions and respect for the detainees' rights have yet to be taken. The NCHR reiterates some of its recommendations: penal suppression of detainees' ill-treatment, compliance with the recommendations of international bodies, implementation of the inactive provisions of the Correctional Code, implementation of alternative measures and penalties, measures for the post-correctional care of detainees.

III. Chapter C - Measures for ensuring social order

A) The perpetration of crimes provided for in articles 189, 308A, 310, 380 and 382 of the Penal Code by individuals with covered or altered facial features as aggravating circumstance

Article 25 of the Bill provides for stricter penalties for: the participation in a public assembly of a crowd committing acts of violence, for inciting or perpetrating assaults (article 189 PC), for committing body injury (article 308A PC), serious body injury (article 310 PC), robbery (article 380 PC) and excessive damages in property (article 382 PC). In the Explanatory Report it is stated that these measures are required by the frequency of the phenomena, the social devaluation of the act of one covering or altering his facial features and the obligation of the State to protect the right to assembly (article 11 of the Constitution).

The NCHR formulates its views by balancing the conflicting approaches of public security in a democratic society. The instances of violence taking place during demonstrations violate the right to life, bodily integrity, property, education (damages in university buildings), as well as the right to assemble peacefully.

However, the approach chosen by the State so as to curtail this phenomenon is deemed ineffective. Much stricter penalties for those perpetrating the offences enumerated in article 25 of the bill by covered or altered facial features do not guarantee the pursued result. On the contrary they entail problems for the exercise of certain rights. The inability of the State to implement the previous legislation is not due to the framework of the penalties and, therefore, the stricter provisions will not deter the potential perpetrators.

Apart from the ineffectiveness of the provisions, there is also the problem of the vagueness of the term "covered or altered facial features" in the context of criminal justice. The difficulty in classifying with certainty what constitutes covering or altering facial features does not comply with the required principle of certainty of law, especially when the precarious interpretation of the requirements of an offence entails grave penalties.

Particularly problematic is the interpretation of covered or altered facial features in the context of article 189, par. 1 PC, which as amended punishes with at least two years of imprisonment anyone who participates in a public assembly of a crowd committing acts of violence. This provision may be dangerous for those demonstrators who are, accidentally, in the middle of a crowd committing acts of violence and cover their faces so as to protect themselves from teargases used by police forces.

B) Ex officio prosecution for insult of public official by a person with covered or altered facial features

According to article 26, par. 3 of the bill insult (article 361 of PC)of a police officer, coast guard officer, or a fire brigade officer while in duty and perpetrated by a person with covered or altered facial features is persecuted ex officio. This provision is problematic in relation with the freedom of expression. The NCHR takes note of the jurisprudence of the criminal courts, according to which 'slogans' phrased in general terms in the context of a political event are protected as political statements and do not constitute insult of particular individuals. This view reflects and confirms the democratic character of Greek legal order, in which the protection of liberties and rights prevails over the criminalization of abstract ideas.

IV. Chapter F – Administrative deportation and detention of aliens (article 48 of the bill)

According to article 48 of the bill "an alien is considered dangerous for the public order or security especially when he is prosecuted for an offence punished with imprisonment of at least three months". This provision renders the criminal prosecution against an alien in presumption of dangerousness leading to his deportation.

However, the prosecution by the public prosecutor is based on indications for the perpetration of an offence and on the dangerousness of an individual. Furthermore, in order for an individual to be detained in remand in the context of a criminal prosecution an addition and separate estimation of his dangerousness or probable absconding is required. The indications for the perpetration of an offence do not ascertain its perpetration not its repetition in the future. Thus, the prosecution for an offence may not substitute the estimation of the police regarding the dangerousness of an individual which needs to be reasoned. Otherwise, the deportation of an alien on the basis of his prosecution for an offence would equate him with a convicted person, thus violating the presumption of innocence. Besides, according to an advisory opinion of the Legal Council of State "in the light of the presumption of innocence, the revocation of residence permits may not be based solely on the prosecution of aliens for an offence".

Moreover, it needs to be noted that the deportation of the accused abolishes the pending trial. Consequently, his right to judicial protection in order to be cleared via a fair trial as well as the right of the victim to judicial protection as a civil party in the trial is violated.

Furthermore, according to the provision in question, the deportation is feasible on the basis of prosecution for an offence which is punished with imprisonment of at least three months, i.e. for the vast majority of offences enumerated by criminal law, including for offences perpetrated due to negligence or offences prosecuted after a criminal complaint is filed (such as defamation). The broad spectrum of cases when deportation may be imposed in combination with the absence of prior estimation as to the dangerousness of the accused, violates the principle of proportionality as well. It needs to be noted that Law 3386/2005 provided for the deportation of an alien when he was convicted to imprisonment for over 1 year.

The right to private and family life of the alien under deportation needs also to be taken into account. The European Court for Human Rights even in cases when an alien has been convicted for particularly serious crimes has held that deportation violates the principle of proportionality when it endangers family unity and the very existence if the family life of the alien.

Apart from the non-compliance of the provision in question with the Constitution and international human rights law, it also creates systemic problems to the legal framework regarding migration. According to the Explanatory Report of the bill, the said provision aims at combating irregular migration. However, according to Law 3386/2005 (migration law) individuals who have entered or stay in the country irregularly are deportable for having violated the provisions of Law 3386/2005. Therefore, the *ratione personae* of the new provision is not the irregular migrants, but the regular ones and it does not contribute at all to curtailing irregular migration. On the contrary, it renders the rights granted to regular migrants by the State precarious, given that the slightest indication of criminal behavior on the basis of which a public prosecutor may initiate the procedure of prosecution will result in their deportation. This precarious situation generated by the presumption of dangerousness hinders the social inclusion process of third country nationals, a strategic goal of the relevant EU Directives and of the Greek migration law.

Par. 2 of article 48 of the bill amends article 76 of Law 3386/2005 in order to increase the maximum time limit for detention of aliens under deportation from three to six months with the possibility to be extended to up to 12 months if they refuse to cooperate or if the issue of the necessary documents is delayed in their country of origin.

It needs to be noted that the provision in question incorporates selectively the so-called 'Return Directive' (Directive 2008/115/EC). Although, the set maximum time limits set are in

compliance with the Directive, the required guarantees, such as the periodic review of the legality of the detention by judicial authorities, legal aid, suspension of the deportation decision, are completely ignored. These guarantees had to be provided for, also, due to the recent conviction of Greece by the European Court for Human Rights in the case S.D. because of the limited ability of detained aliens to question the legality of their detention before the courts.

Even if the provision in question complied with the Directive, the circumstances under which the extension of detention's time limit for aliens under deportation will be implemented needs to be taken into account, i.e. the detention conditions in Greece. Several reports of international and national bodies and NGOs have underlined: a) the large number of irregular migrants living in Greece under deplorable conditions whose deportation in the immediate future is not feasible, b) the lack of sufficient –both in quality and quantity- detention centres for long periods, c) the lack of access to services of interpretation and legal aid, and d) the particularly problematic asylum procedure.

Lastly, the same provision provides for stricter penal and administrative penalties for those who transfer or facilitate the transfer of irregular migrants, especially in the case of rigs. The setting of stricter penalties constitutes the traditional means of anti-criminality policy but at the same time it is traditionally debated as to its effectiveness, especially if one takes into account the limited capacity of border monitoring, the large number of persons involved in these activities, and their extreme profitability. The provision in question does not violate any rights, and therefore the evaluation of the aforementioned considerations is left to the discretion of the Parliament.

5. Workers' rights and working conditions in the context of contract works

I. Introduction

The GNCHR has already dealt with the issue of flexible types of work. The absence of just, healthy and safe conditions of work in conjunction with the systematic violation of social, work and insurance rights of workers basically prove the negative effect of flexibility.

Public opinion has been shocked by the outrageous murderous attack against the foreign trade unionist Konstantina Kouneva, employed by a contractor in the cleaning services that drew everyone's attention to the lack of insurance of working rights in the sector of contract works. Although the issue had already been addressed by trade unionists, the lack of any personal work relations in these cases made it difficult for the majority of contracting parties to identify the relevant violations.

The GNCHR, in the context of its competence to examine human rights violations, has formulated some propositions concerning the enforcement of the legislative and institutional framework in contract works.

II. Clarifications

A procurement contract is a frequent type of flexible and informal work of low cost. The frequency of its use reflects the unwillingness of the employer to employ (Public or private) as well as the getting round of legal wages and working terms, especially at the expense of workers. Procurement contracts function in the context of "outsourcing" (e.g. hospitals, universities etc.), where the contractor uses his own staff but they often coincide with employee borrowing. There are various kinds of procurement contracts but the most common types are: a) assignment of services to contractors who make use of their own staff without the assignor's direct supervision b) execution of activities having a direct bearing on the main activity of the company; in this case the company supervises to an extent the contractor's staff c) undertaking of a part of the contractor's work by subcontractors.

It is also reported that sometimes, the employees are forced to set up their own personal companies in order to be occupied as contractors after the suspension or dissolution of their contract, which leads to the violation of their rights to compensation as the dissolution constitutes renunciation of the right to compensation. However, procurement contracts in these cases are considered to be legal because of the principle of the liberty of contracts (Civil Code Article 361).

III. Labour legislation violations

Due to the lack of any explicit guarantees concerning labour and insurance rights in trilateral labour relations, especially during periods of high unemployment, many violations take place. The Ministry of Employment issued a circular in which it is urged to include an important condition in contracts between public services, security companies and cleaning services: "the duty of the contractor company concerning the strict compliance with the labour legislation, such as wages which must not be lower of the wages provided in the sectoral collective labour agreements, respect of legal work-hours, insurance, sanitary conditions etc". Additionally, the circular provided for the obligation of notice of termination in case of a violation of that condition. In spite of all that, according to all available data, not one contract has been terminated because of the violation of this condition.

Frequent violations:

- Wages in defiance of the collective labour agreements. The wages are usually lower of the corresponding augmentations for previous service, specialization, marital status, overtime work, and work during holidays, Sundays and idleness and, as a result, workers do not receive the legal wages.
- Unilateral change of basic working conditions at the expense of employees, such as the place, working hours, the total of daily or weekly hours, often without a previous agreement or even as a result of pressure. It's worthy mentioning that, under the pretext of information about the working conditions, and under the threat of being fired, the employees sign some "informative" documents which, in fact, modify their working conditions. In reality they sign a new masked individual labour agreement as contracting

parties. In this way, the employees consent to different and worse working conditions.

• Violation of health and safety conditions, especially, concerning the work doctors and safety technicians, the health booklets and the obligation of informing the employees about the dangers during their work. Unfortunately, these are all verified by the increase of labour accidents in contract companies.

• Increase of discriminations, especially multiple. It's true that foreign workers are more susceptible and insecure, and this is aggravated by the inadequate Greek language's knowledge, with regard to the conditions they sign. Additionally, the connection of the renewal of their license of residence with the condition of a minimum wages increases their inability of reaction. As reality proved tragically with the murderous attack against Konstantina Kuneva, more and more workers are victims of multiple discriminations on the ground of sex, national origin, and age etc, aggravated by their activities as trade unionists.

• Violation of right to intermission at work. According to workers' complaints, sometimes they are forced to a break without having the time and the ability to depart from their working place and in other cases they 'take a break' while they take care of their equipment. In this way, their official 'working hours' per day are reduced.

A usual effect of the impediment of trade union activity is the weakening of the right to free collective bargaining as well as the right to strike, of the right to consultation of delegates of workers. Moreover, the Greek State, by interpreting narrowly the law, does not provide trade unionists the access to the necessary documents for the supervision of labour legislation.

4. State obligations

The right to work (22 paras. 1 and 5 Constitution) includes a triple obligation upon the State: i) the conditions of full-time occupation for all citizens, ii) "moral and material uplift of working agrarian and urban people" and, iii) social security. As a result, these obligations constitute the foundation for the interpretation of relevant legislation, which should always aim at improving working conditions and facilitating work finding. Besides, the right to work is consolidated in article 6 of the UN International Covenant on Economic, Social and Cultural Rights and in article 1 of European Social Charter (ESC) of the Council of Europe. The obligations arising from these provisions must be accompanied by state supervision as well as legal remedies for the protection of the worker. Nevertheless, the procurement is so broad that various, multiple and systematic violations of working rights take place as a result. These violations neutralize the constitutionally consolidated moral and material uplift. It is worth mentioning that the International Labour Organization has declared respect for the core of working people's personality and human rights on the basis of the principle of equality. Besides, promotion of economic freedom must not lead the State to tolerate working conditions which are not compatible with the principle of human dignity. The article 106 par. 2 of the Constitution prescribes that the economic freedom is not allowed to act against liberty and human dignity. As a result, all relevant restrictions set a limit to employers' authority and regulate the responsibility for the compliance with the labour legislation in the trilateral relation among procurement contracting parties and workers that constitutes a state obligation. These obligations are regulated by the incorporated EC directives in the national law and by the international treaties. All these provisions specify the State's duty for ensuring the right to work, not only as a simple means of survival but, also, as a factor which leads to decent living conditions.

More specifically, the State must respect, protect and fulfil the right to work. Moreover, within the bounds of the obligation to protect the right to a fair remuneration (article 4 European Social Charter), the State must not allow violations concerning the wages and, in these cases, the assigning of work to companies which provide for wages lower than those of collective agreements. Additionally, the constitutional obligation to social security (article 22 par. 5 Constitution) includes the duty to take measures which allow to every worker, especially those who belong to a disadvantageous group, to have access to social security (article 9 ICESCR and article 12 European Social Charter). For that

reason, the fact that there are a huge number of not insured workers in procurement contracts, mainly foreign, constitutes a violation. As for the monitoring of labour legislation concerning health and safety, there is a state obligation not only when the assignor is the Public Sector but also when the assignor is a private individual (article 3 par. 2 European Social Charter). Unfortunately, it has already been ascertained non-compliance of Greece with regard to labour inspectorate organs (as to the number of the staff, the imposition of sanctions etc.) in conjunction with a number of fatal accidents. As a result, improvement of monitoring in combination with an establishment of effective and procedures of cooperation among the inspectorate and the assignors (e.g. facts' comparative examination from public services) is required.

The effective protection of the above mentioned rights is impossible without trade unions (articles 23 and 22 par. 2 Constitution, article 8 ICESCR). The State must take measures in order to guarantee the right of workers to information and consultation from the employer concerning the issues that affect their interests (article 4 Directive 2002/14 and article 2 Additional Protocol to European Social Charter) and in national law (P.D. 240/2006, article 8 provides the imposition of administrative sanctions by Labour Inspectorate for those who do not comply with the measures).

Finally, as regards the agreements between public sector and contractors, the GNCHR proposes the ratification of the Labour Clauses (Public Contracts) I.L.O. Convention No. 94 (1949), in combination with the relevant Recommendation No. 84. The above Convention provides for special clauses in all these contracts concerning wages, working hours and other working conditions which cannot be worse than those prescribed in collective agreements, arbitrators' decisions or national law. Moreover, it includes provisions concerning the sanctions in case of violations and measures for the guarantee of payment. According to the ILO Committee of Experts on the Application of Conventions and Recommendations, a State's labour legislation does not relieve states from putting Agreement into practice or from their duty to include clauses in their contracts with the public sector, as provisions in national legislation only set the minimum protection which can be improved by a collective agreement. Furthermore, the European Parliament's resolution outlines the necessity of ratification of Labour Clauses Convention no. 94 "so as to support the development of social clauses in regulations of public supplies, which is the main target of public supplies Directive. Besides, the Greek Ombudsman reminds the Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts and defines that the violations of labour and social security legislation as well as any discrimination are considered as serious offences which can give reasons for the denunciation of a contract or even for the exclusion of the contractor from future contracting procedures. In this context, the public sector should take into serious consideration the findings of the Labour Inspectorate and the Social Security Institute during the signing and the execution of a procurement contract.

5. Conclusions and suggestions from NCHR

The NCHR, taking into consideration the developments in international and national monetary environment, the influence of the actual, and sometimes fictitious, economic crisis, expresses its deep concern about the existent disturbance of balance between fundamental rights and economic freedom, which leads to the reversal of social balances to the detriment of workers, the increasing of unemployment's rate and to social turbulence. According to the GNCHR, measures should be taken immediately in order to respect the internationally consolidated principle of the respect of human dignity and ensure conditions of social trust and solidarity under just conditions of work, financial equality and social justice. More specifically, with regard to procurement contracts, in order to avoid the deterioration of working conditions, the NCHR, having taken into account the increasing number of contract works, even in cases there is a possibility of concluding a contract directly with the real employer, highlighting the importance of constant vigilance of contracting parties, and

emphasizing that decent work constitutes a fundamental element of policy concerning human rights, formulates the following propositions to the State:

1. Filling the existing legislative gaps by specific provisions which consolidate workers' rights in this trilateral relation, imposing financial and insurance guarantees for them under the threat of serious and direct sanctions for contractor and assignor concerning their responsibilities (Article 702 Civil Code and Articles 22-23 Law 2956/2001 are typical examples of national specific provisions).

2. Essential principle in procurement contracts should be the equal treatment between people who work for a "third" employer and the permanent staff that works for the same employer concerning their right to the same wages and the other conditions provided by the collective agreement or other legislative act or the usual practice of the company, under the condition, of course, that these conditions concerning the permanent staff are more favourable.

3. Adopting legislation about the public sector's obligation, in case of procurement contracts, to assure that the agreement between the contracting parties exceeds the total of gross wages of working people (salary and insurance) according to the equivalent collective agreements, as wells as the minimum of materials and supplies (e.g. in cleaning contract works).

4. Assure the effectiveness of the inspection mechanisms by increasing their resources. The Labour Inspectorate and the Social Security Institute should be strengthened, and improved as to their know-how. Moreover, the comparative monitoring of the findings among all the responsible services and the examination of the anonymous complaints would also contribute to the fulfilment of their obligations. Finally, the establishment of a special mixed committee with the participation of delegates of social actors would contribute to a great extent.

5. In the context of public contracts, there should be a denunciation and exclusion for the future of any contractor having, according to the inspectors' findings, committed serious offences of labour and social security legislation.

6. Ratification of the Labour Clauses (Public Contracts) I.L.O. Convention No. 94 (1949).

6. The compliance of the Public Administration with domestic judicial decisions

I. Introduction

In the light of the recent judgments of the European Court of Human Rights (ECtHR), [1] the National Commission for Human Rights (NCHR) decided to elaborate on the issue of Public Administration's proper compliance with domestic judgments. NCHR primarily dealt with this issue when it was requested by the Ministry of Justice to submit its observations on the draft law titled "Obligation of the Administration to implement the judicial decisions and other provisions". Given that considerable time has passed since Law 3068/2002 entered into force, so that conclusions may be drawn regarding its effectiveness, NCHR decided to reiterate its opinion on this issue. To this end, NCHR requested the three supreme courts -the Conseil d' Etat, the Supreme Court (Areios Pagos) and the Court of Audit- to communicate the special report drafted at the end of each year by their three-member councils responsible for supervising the Administration's compliance with domestic judgments.

II. Background

The Administration's compliance with domestic judgments constitutes the major aspect and manifestation of the principle of legality and the rule of law, as it is underlined by the relevant amendment of article 95, par. 5 of the Constitution. However, this self-evident obligation -notwithstanding article 20, par. 1 of the Constitution 1975/1986 providing for effective judicial protection on which the obligation of the Administration's compliance is reasonably based- did not materialise in practice, given that the Administration often failed or substantially delayed to comply with domestic judgments; a practice which, unfortunately, still persists today.

The problem of the Administration's non-compliance with domestic judgments came to light with the Hornsby case, where the ECtHR held: "To construe Article 6 [of the European Convention on Human Rights] as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law […]. Execution of a judgment given by any court must therefore be regarded as an integral part of the "trial" for the purposes of Article 6". Furthermore, as the Court stated: "Where administrative authorities refuse or fail to comply, or even delay doing so, the guarantees under Article 6 enjoyed by a litigant during the judicial phase of the proceedings are rendered devoid of purpose".

Hornsby case was followed by a number of ECtHR judgments convicting Greece for having violated Article 6 and in certain cases for having violated Article 1 of the First Additional Protocol in the event of the Administration's non-compliance with the relevant domestic judgments.[2]

In the light of the ECtHR judgments Greece adopted two measures to remedy this structural problem. The first one was to amend the relevant constitutional provisions. In accordance with article 94, par. 4 of the revised 2001 Constitution: *"Any other competence of administrative nature may be assigned to civil or administrative courts, as specified by law. These competences include the adoption of measures for compliance of the Public Administration with judicial decisions. Judicial decisions are subject to compulsory execution also against the Public Sector, local government agencies and legal entities of public law, as specified by law". Furthermore, under*

1. *Beka-Koulocheri v. Greece,* Judgment of 6 October 2006; *Pantaleon v. Greece,* Judgment of 10 May 2007; *Rompoti and Rompotis v. Greece*, Judgment of 9 July 2007; *Georgoulis and Others v. Greece,* Judgment of 21 September 2007; *Kanellopoulos v. Greece*, Judgment of 21 May 2008; *Panagiotis Gikas and Georgios Gikas v. Greece,* Judgment of 2 April 2009.

2. *Antonakopoulos, Vortsela and Antonakopoulou v. Greece,* Judgment of 14 December 1999; *Dimitrios Georgiadis v. Greece,* Judgment of 28 March 2000; *Logothetis v. Greece*, Judgment of 12 April 2001; *Pialopoulos and Others v. Greece,* Judgment of 15 February 2001; *Katsaros v. Greece,* Judgment of 6 June 2002; *Adamogiannis v. Greece,* Judgment of 14 June 2002.

article 95, par. 5 of the Constitution: "The Public Administration shall be obliged to comply with judicial decisions. The breach of this obligation shall render liable any competent agent, as specified by law. The measures necessary for ensuring the compliance of the Public Administration shall be specified by law".

The second measure was the enactment of Law 3068/2202 regarding the Administration's compliance with judicial decisions: it establishes a specific judicial monitoring system assigned to three-member councils of the three highest courts in order to ensure the Administration's compliance with domestic judicial decisions.

In view of the foregoing, the Committee of Ministers of the Council of Europe noted that Greece has adopted a number of comprehensive constitutional, statutory and regulatory reforms to remedy the structural problem of the Administration's non-enforcement of domestic judicial decisions and that consequently it has complied with the ECtHR judgments.

III. The problem today

A) The function of the councils

The aforementioned reforms constitute a very important development for ensuring Public Administration's proper compliance with judicial decisions, yet they have not managed to resolve the problem. For instance, despite the considerable number of decisions of the Conseil d' Etat's council ascertaining the Administration's non-compliance with administrative courts' judgments, it has imposed monetary sanctions only in 11 cases. Furthermore, the Council exhausts the time-limits provided to the Administration by Law 3068/2002 complemented by Presidential Degree 61/2004, considering that this specific set of arrangements which implement the constitutional guarantee of article 94, par. 4 and article 95, par. 5 of the Constitution, aim at encouraging Administration's compliance with the judicial decisions as part of the effective judicial protection and not at imposing monetary sanctions. Albeit lawful, this practice does not necessarily comply with the letter and spirit of article 6 of the ECHR, as the case of *Georgoulis and Others v. Greece* demonstrates.

In addition, the Council of the Court of Audit assesses its work positively, given that, despite an increase in the number of applications submitted to it, the Greek General Accounting Office complies with its decisions even after the second stage of the compliance procedure. This arises from the fact that the Council did not hitherto have to impose monetary sanctions. Nevertheless, the Council is concerned as to whether the enforcement of the monitoring system established by article 2 of Law 3068/2002 is perceived over time as a prerequisite without which the Administration would not comply with judicial decisions.

B) ECtHR judgements after the entry into force of Law 3068/2002

ECtHR has convicted Greece six times for violation of article 6 of ECHR or/and article 13 for the Administration's non-compliance with judicial decisions in cases where the facts took place after the entry into force of Law 3068/2002. Thus, two important issues arise from these judgments: a) the obligation of the Administration to **promptly** comply and b) the effectiveness of the procedure itself provided for in Law 3068/2002, so as to ensure the Administration's compliance with the judicial decisions.

a) Administration's prompt compliance

The first issue arises from Georgoulis and Others v. Greece case. In this case, although the applicant had filed an application to the Council of the Conseil d' Etat for the Administration's non-compliance with an administrative court's judgment -which was ultimately rejected because in the meantime the Administration had complied-, the ECtHR convicted Greece for non-compliance within reasonable time. Thus, this judgment highlights the need for amending Law 3068/2002, so as to accelerate the monitoring procedure of the compliance of the Administration and to exert greater pressure so that it does comply..

The necessity to accelerate the monitoring procedure also arises from the function of the Conseil d' Etat's Council, which according to its own reports is time-consuming.

b) The effectiveness of the procedure of Law 3068/2002

The second issue arises from the judgments of the ECtHR and is much more complex, as the Court calls in question the effectiveness of the procedure itself. In the cases of Georgoulis and Rompoti, Greece raised the objection of non-exhaustion of domestic remedies, since the applicants had not made use of the possibility to submit application to the Council of the Conseil d' Etat when they brought proceedings before the Court, where the latter held: "The mechanism set up by the Government is not likely to lead to a certain execution of a judgment since the Administration refused to comply. In fact, after the applicant had appealed before the competent committee of the highest jurisdiction, this committee could only note the administration's refusal to comply with a judgment and impose the payment of compensation to the applicant, if necessary. However, the execution of the judgment would not derive from the implementation of the mechanism set up by the Government, but it would be at the Administration's discretion with a view to avoiding paying compensation".

On the basis of the above, the ECtHR rejected the objections raised by Greece.

Therefore, the Court raises questions about the effectiveness of the procedure, since imposing a monetary sanction may exert some pressure to the Administration, but it does not guarantee its compliance with the judicial decisions, as envisaged.

IV. The need to ensure the Administration's obligation to comply with judicial decisions

A) Ensuring prompt compliance

In order to accelerate the whole monitoring procedure and consequently ensure the Administration's prompt compliance with judicial decisions, a number of improvements of the existing legislative framework need to be made.

First, according to article 2, par. 3 of Law 3068/2002 "[…] With the exception of judgments delivered by the Supreme Special Court and by the Plenary of the relevant Supreme Court, judges who delivered the decision for which the Administration's compliance procedure is initiated do not participate in the three-member council unless the formation of the latter by other judges is impossible". The participation of the judges who dealt with the case in the council will accelerate the procedure, given that they will be able to inform their colleagues about the case without the latter having to spend much time studying the case file.

The need for the adjudicating judge to participate in the council is made evident by article 3, par. 2 of Law 3068/2002 according to which: "The three-member council may appoint and authorise a judge [...], to submit, even ex officio, an opinion and to provide the authority under obligation of compliance with the necessary assistance regarding the most appropriate manner of compliance with the decision". The adjudicating judge is the most competent to fulfil this role, since he is aware of the details as well as the potential complexity of the case in question.

Moreover, in order to accelerate the monitoring procedure, it is essential to decentralise it, a view also taken by the Plenary of the Conseil d' Etat. Courts of all instances issue judgments with which the Administration must comply. Thus, three-member councils could be established at the level of courts of appeal -civil and administrative- which would be competent to ensure the Administration's compliance with the judgments issued by courts of their ratione loci competence. In so doing, the councils of the supreme courts will not be overburdened and at the same time the participation of the adjudicating judge to the council will be feasible in a larger number of cases.

B) Ensuring the Administration's compliance itself

In principle, it has to be noted that the Law in question refers to compliance and not to execution, which is a crucial distinction, as the concept of compliance is wider than this of execution.

The obligation to comply with -and not only to execute- the judgment raises questions as to what extent the Administration is also obliged to comply with dismissals of cases. The Council of the Conseil d' Etat has held that the obligation of

compliance does not derive from any dismissal, "because the request of compliance with a dismissal, aims not at the Administration's compliance with the judicial decision, but at the execution of its own actions". NCHR considers that this approach is not in line with the principle of legality.

Furthermore, ECtHR does not share the aforementioned view of the Council, as in the case of *Prophet Elias Monastery in Thera,* it held that "Article 6, paragraph 1 makes no distinction between decisions allowing or refusing the action brought before national courts. In fact, regardless of the result, a judicial decision must always be respected and implemented. The acts or omissions of the Administration following a judicial decision cannot therefore either prevent or even less challenge the merits of the case".

Moreover, according to the minority opinion of the Council: "the obligation to comply may result from any dismissal, i.e. the obligation to execute the administrative act against which the rejected appeal was lodged, since the legality of the contested administrative act is confirmed by the dismissal; in so doing the obligation to comply with the act is renewed after lis pendens and the dispute over its validity are lifted". NCHR endorses the above views holding that they respond better to the principle of legality and consequently to the effective compliance of the Administration. Therefore, three-member councils should also be competent to examine in merits applications for compliance with dismissals, where appropriate.

The Administration's obligation to comply with judicial decisions entails the adoption on its part of all necessary administrative acts. In case of refusal of the Administration to comply, various judges and scholars propose that a solution could be its "substitution" by the three-member councils, at least in those cases where the relevant court decisions leave no discretion, but provide for the exercise of circumscribed powers by the Administration. Moreover, it has been noted that "as provided for in the Constitution the possibility for taking administrative measures can be assigned to judicial bodies so as to ensure Administration's compliance with judicial decisions and it constitutes a deliberate by the constitutional legislator extension of the strict separation of powers".

On those grounds and given that in the exercise of circumscribed competence the Administration does not essentially have to opt between one alternative and another, a judicial body can adopt the necessary administrative act for the compliance with the judicial decision and ensuring the required efficiency of the monitoring procedure. Therefore, the NCHR recommends the enactment of a provision according to which the Appointed Judge -under article 3, par. 2 of Law 3068/2002- may issue the administrative act which is the subject of compliance in the case of circumscribed competence of the Administration. This recommendation is in line with the assignment of administrative competences to the judicial bodies under article 94, par. 4 of the Constitution.

Regarding the cases where the Administration has discretion, "judicial substitution" of the latter may also be recommended. This proposal, in fact, is consistent with the opinion expressed by the Conseil d' Etat *re* the revision of the constitutional provisions in 2001. In relation to the relevant constitutional provisions on the Administration's compliance with judicial decisions, the Conseil d' Etat: "In other legal orders courts themselves take administrative measures to ensure the Administration's compliance with judicial decisions. Such a measure is the substitution of administrative acts by court decisions etc. Taking such measures should be assigned by law in Greek courts."

Hence, the Conseil d' Etat proposed the solution of "judicial substitution" without making a distinction between circumscribed and discretionary competence. According to a provision of a previous draft law drawn up by a working group to study and propose legislation for the Administration's compliance with judicial decisions: "If the Administration has discretion to formulate the content of action of compliance, the Appointed Judge shall cooperate with the competent authority in order to find an appropriate solution. If this cooperation leads to a concrete solution which seems to be the most appropriate, the previous paragraph is applied. If

more than one solutions arise, the judge shall outline all possible solutions and set a reasonable time for the administration to adopt one. When the time-limit, which may be extended only once, expires the Appointed Judge shall select the most viable option and the previous paragraph is applied".

The NCHR recommends the adoption of the above draft provision.

Lastly, it is recommended to the councils to systematically impose monetary sanctions penalty when the conditions laid down in Law 3068/2002 are met.

V. The problematic addition to article 1 of Law 3068/2002

According to article 1 of Law 3068/2002 as amended by article 20 of Law 3301/2004: "Enforcement orders referred to elements c-g of paragraph 2, Article 904 of the Civil Procedure Code are not considered to be judicial decisions within the meaning of the present Law and shall not be executed except those declared as enforceable foreign judicial decisions". This amendment essentially excludes the enforcement of payment orders against the Administration.

A question that is raised is whether the payment order constitutes a judicial decision. On the basis of article 904, par. 2 (e) and article 631 of the Civil Procedure Code combined, it is argued that a payment order is an enforcement order and not a judicial decision since it is delivered by a judge, yet without the constitutional guarantees of the right to be heard and the principle of publicity. In 2008, the Plenary of the Court of Audit held by a majority that "payment orders or interim orders do not have the qualities of a judicial decision and consequently Public Authorities are not compelled to execute them".

Nevertheless, the minority took the view that "when the time-limit for stay of proceedings has expired, the payment order acquires the force of res *judicata* and is equated with a judicial decision. In addition, the decision issued after a stay of proceedings has been filed -under articles 632-633 of the Code of Civil Procedure meets the constitutional guarantees of the right to be heard as well as the principle of publicity and therefore constitutes a judicial decision within the meaning of article 93, par. 3 of the Constitution".

Members of the Special Highest Court have taken the view that the amendment to article 1 of Law 3068/2002 "restricts unacceptably the meaning of judicial decision under article 94, par. 4 of the Constitution. Judicial decisions under the Constitution are considered not only those delivered by courts in the strict sense, but also those which are functionally similar, because on the one hand, they resolve disputes, and on the other hand they produce the characteristic effects of judgments, which meet the basic functional features of judicial protection as provided for in article 20, par. 1 of the Constitution. A payment order is a judicial decision of this kind, since it is delivered by a judge and may under certain conditions acquire the force of res judicata".

Furthermore, it should be noted that the European Commission for Human Rights in the case of *Beis v. Greece* held that "if no objections are raised, the payment order acquires the force of res judicata" as well as that "the procedure for issuing a payment order concerned the determination of civil rights of the applicant". Therefore, the payment order having acquired the force of res judicata shall be essentially treated as a judicial decision and shall be enforced against the State. Consequently, the amendment to article 1 of Law 3068/2002 raises a constitutionality question.

The issue in question does not concern only the legal nature of the payment order, but also the actual content of the right to judicial protection, as enshrined in article 20, par. 1 of the Constitution and article 6, par. 1 of the ECHR. Areios Pagos has held, based on articles 2 and 14 of the ICCPR, article 6, par. 1 of the ECHR and article 20, par. 1 of the Constitution, that the right of compulsory execution is included in that of effective judicial protection and therefore the execution of judgments regarding financial debts as well as the execution of payment orders is permitted also against the State and local authorities.

The Plenary of the Court of Audit expressed a very interesting opinion in 2003, according to which: "... it is immaterial whether compulsory execution is conducted on the basis of a court

order or other enforcement orders provided for in articles 904-905 of the Code of Civil Procedure. Legal order needs not only to recognize rights, but also to ensure their materialization. [...] The obligation of the Administration to comply with the aforementioned enforcement orders, is guaranteed by article 20, par. 1 of the Constitution and article 6, par. 1 of the ECHR." This view was also shared by the Athens Court of Appeal in a recent ruling.

In accordance with the foregoing, article 20 of Law 3301/2004 is constitutionally problematic and therefore it should be abolished in respect of payment orders which have become final and in general regarding interim legal protection via enforcement orders.

NCHR, based on its 2002 recommendations and the results of Law 3068/2002 recommends the following proposals aimed at rendering the monitoring procedure of the Administration's compliance with the judicial decisions faster and more effective:

VI. Recommendations

1) Provision should be made for the participation of one of the adjudicating judges in the three-member council, where possible.

2) Three-member councils should be set up at every Court of Appeal -civil and administrative- in order to supervise the Administration's compliance with the judicial decisions delivered by courts of its region.

3) Provision should be made for the Administration to comply with the judicial decision within a reasonable deadline, which will commence from the notification of the decision to the authority to comply with.

4) The three-member councils should also examine in merits applications for non-compliance with dismissals, where appropriate.

5) The monetary sanction for non-compliance should be systematically imposed by the three-member councils when terms and conditions laid down in Law 3068/2002 are met.

6) Provision should be made for an appointed judge to issue the necessary act of compliance after prior communication with the Administration in cases where the latter exerts circumscribed competence.

7) Provision should be made for for an appointed judge to issue the relevant act of compliance after having extensively cooperated with the Administration, in case the latter exerts discretionary competence.

8) Payment orders having acquired the force of res judicata and remedies of interim legal protection recognized by law as enforceable should be reintegrated into the scope of Law 3068/2002.

The NCHR takes the view that if its recommendations are adopted and Law 3068/2002 is amended, the compliance of the Administration with the judicial decisions will improve. Furthermore, the monitoring procedure itself will fulfill the requirements provided for in article 13 of the ECHR, as they have been interpreted and developed by the ECtHR case-law, so as to constitute an effective legal remedy.

7. Observations of the NCHR on the Draft of the Greek Report concerning the implementation of the "Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict".

The Draft Report was sent to the NCHR by the Ministry of Foreign Affairs (Directorate of Human Rights), for observations according to art. 1, par. 6, case (e) of the law 2667/1998 establishing the Commission. It is reminded that the NCHR has systematically provided observations on all issues related to the scope of the implementation of the UN Convention on the Rights of the Child. The NCHR has recently provided comprehensive observations on the Draft of the 3rd Periodic Report of Greece concerning the implementation of the UN Convention on the Rights of the Child. Moreover, the Commission has formulated proposals concerning the field of protection of refugee and migrant unaccompanied minors. Based on the information provided by the members of the Commission and the Greek Council for Refugees, the NCHR has the following remarks aiming at complementing the Draft Report.

Structure of the Draft Report

The Draft is following the recommendations of the relevant UN Treaty Body, and this constitutes a positive starting point. Thus, the Draft includes chapters on the general measures of implementation, i.e. prevention, prohibition, protection, rehabilitation and re-integration of the victims, international cooperation and assistance and, in annexes, the domestic legal provisions on specific issues, such as provisions related to the military service in Greece, the special protective measures regarding unaccompanied minors seeking asylum in Greece, etc. The NCHR recognises the remarkable effort on the part of the relevant Greek authorities to prepare a complete report. However, it reiterates its standing observation, i.e. the need for the reports to all Treaty Bodies to go beyond the mere reference of the legislative framework, so as to present the challenges of the implementation of the legal provisions on the ground, which, eventually, hinder the application of the convention in full. The description of the challenges is a necessary part of the effort to achieve the resolution of the difficulties.

On the general measures of the implementation of the Convention

This is the initial (with three years of delay) Report of Greece to the Treaty Body. In spite of the relevant recommendation of the Treaty Body (n. I-10), the Report does not present the factors which prevent Greece from full compliance with the Convention. With reference to the institutional bodies which aim at the protection of the children, it has to be mentioned that, according to the NCHR's information, the established National Observatory for the Rights of the Child which is mentioned in the Draft Report, is currently inactive.

On the preventive measures

The description of the military legislation in force is complete and detailed enough as to the preventive character of the provisions.

On the measures of prohibition

From the information provided in this part of the Draft, there are no domestic penal provisions aiming at sanctioning the breach of the Optional Protocol, as should be the case according to the Protocol (obligation of result). The Treaty Body demands a legislative provision even if such legislation does not seem to be necessary according to the present context in the State Party. The NCHR recommends the compliance of Greece with this aspect of the Protocol.

On the measures of protection, rehabilitation and re-integration

Under the present context, the "group at risk" is that of the unaccompanied minors. Therefore, the information on that specific group should rather be included here, instead of being provided in annex. This part of the Draft includes only general information on the protective framework resulting from the Constitution and the Civil Code, as well as some brief reference of the welfare structures in support of children's needs, in general. In annex, reference is made on the provisions of a number of Presidential Decrees regulating the treatment of unaccompanied minors. It is stated that "there does not seem to exist

asylum applications by alien children involved in armed conflict". It is also stated that all personnel in contact with unaccompanied minors has received specialized training. This picture does not seem to reflect the reality, according to information from various credible sources, including the UNHCR, the Greek Council for Refugees and the Human Rights Watch. Unfortunately, the recommendations of the UNHCR of April 2008 have not been implemented so far. In spite of the claims of the competent Greek authorities, there are no specific procedures to met the special needs of those children. It has to be acknowledged that the number of arrivals is such, that it is difficult to always keep the period of detention short. The Concluding Observation n. 12 of the Committee on the Elimination of Racial Discrimination is demonstrative of the gravity of the situation: after the examination of the Greek Report to CERD, the Commission recommends to Greece to take more effective measures for the humane treatment of asylum seekers and for the reduction of the time of detention, especially of children. In addition, the UN Commission for the Rights of the Child, in its 2002 concluding observations on the Initial Greek Report, formulates a series of recommendations with regards to unaccompanied minors and the overall system of granting asylum in Greece. The information at the disposal of NCHR, concerning the performance of the system of "Epitropoi" (Guardians) for unaccompanied minors, demonstrates serious difficulties on the ground. This is mainly due to the large number of children in the responsibility of each Guardian. Moreover, the Guardian rarely accompanies the children to the interview for the examination of the asylum application, either because this takes place somewhere far from the place of residence of the Guardian or because of concurrent professional obligations of the Guardian. There seem to be problems regarding the places of temporary residence of the unaccompanied minors, and regarding the inadequacy of the special training of the staff in contact with the latter. The small number of affirmative response to the applications for asylum, by itself compromises the claim expressed in the Draft Report that "the overall system of asylum is respectful of the principle of protection of the child's best interest". Finally, concerning the claim in the Draft Report, according to which there are not any asylum applications from alien children involved in armed conflict, once more the NCHR notes that many credible sources and institutions (including the UNHCR, the Greek Ombudsman and the CoE Commissioner for Human Rights) express doubts about the validity of this assessment.

The NCHR has submitted to the Greek relevant authorities several proposals on unaccompanied minors, based on CRC's Recommendations, as developed in General Comment No. 6 (2005) concerning the "Treatment of Unaccompanied and Separated Children outside their Country of Origin", on : a) the residence of the unaccompanied children that have entered the country without legal documents, b) the procedure of repatriation, c) the custody of unaccompanied minors, d) the need for clear procedures for the verification of the age, e) the nomination of a specialised guardian, f) the need to explain to the children their rights concerning the procedure of asylum, g) the judicial social protection, h) the places of reception and residence the unaccompanied children and i) the provision of psychological, medical and legal support by the State.

On the International Assistance and Co-operation

The reference of the initiatives in the context of the international institutions aiming at the effective implementation of the Protocol, is useful. However, and in spite of the recommendations of the Treaty Body, there is no reference to the legislation concerning the trade and export of small arms, nor of the provision of military aid to countries where there are children involved in armed conflict. This constitutes an important omission of the Draft Report.

In conclusion, the Initial Report on the implementation of the Optional Protocol must dare to present the gap between legislation and practice, following the recommendation of the Treaty Body. Moreover, the Report should be completed according to the above remarks and, in particular, concerning the issue of unaccompanied minors.

8. Comments on the bill by the Ministry of Interior titled: "Political participation of non-citizens of Greek origin and third country nationals who reside legally and long-term in Greece".

I. Introduction

This legislative initiative constitutes a very important step for substantive inclusion of **documented migrants** living and working in Greece for several years, and in particular of their children who were born or raised in Greece. This initiative is based on two pillars which must characterize every measure and policy on migration: on the one hand, respect and promotion of human rights of everyone who resides in Greece, and on the other hand the guarantee of social cohesion of the whole population in combination with the guarantee of safety of the borders. This legislative initiative attempts to ensure the full enjoyment of rights of those people who constitute a part of Greek society, while it clarifies the position of the Administration towards irregular immigration. The said bill gives the right to acquire the Greek citizenship only to those who reside in Greece legally.

The NCHR would like to point out that it is fully aware of the fact that there must be a criterion, in this case the criterion of legal status, set as the main condition for the acquisition of the Greek citizenship. However, the NCHR expresses its concern for the fact that the acquisition of legal status has been problematic in practice, due to the inadequacy of measures and practices of migration policy that have been applied so far.

Citizenship signifies the bond between an individual and a particular country, based on the will of the former to be part of a specific State by accepting its laws and principles and by joining its political community. Therefore, the status of citizen is not related with his/her cultural or ethno-religious identity.

Furthermore, the NCHR notes that the title of the bill does not fully reflect its content, i.e. the acquisition of Greek citizenship by aliens residing legally and for a long period of time in Greece. Instead, it recommends the following bill title: "Acquisition of the Greek citizenship by aliens who reside legally and long term in Greece - Political participation of non-citizens of Greek origin and third country nationals residing legally and long term in Greece".

On the specific provisions of the bill, the NCHR notes the following:

II. Chapter A: Acquisition of Greek citizenship by third country nationals' children who were born or have attended school in Greece

Article 1 of the bill

Par. 1: According to this provision, aliens' children born in Greece, the so called "second generation of immigrants", may acquire the Greek citizenship under specific conditions. This evolution constitutes a very important step, since Greek citizenship law was based exclusively on the principle of *jus sanguinis.*

Par. 2: This provision concerns the so called "one and a half generation", i.e. the children of aliens who have not been born in Greece, but have come to the country at a very early age and have, therefore, been integrated into the Greek educational system. The NCHR considers that the distinction between the three first years of compulsory education and the other six is reasonable, due to the importance of the first years of education for the learning of the Greek language and the social integration of the child. Furthermore, it has to be noted that the provision is of relevance for children of aliens who, after reaching adulthood, have legal residence status in the country. If this is not the case, they do not have the right to file a statement in the Municipality of their domicile. This condition has to be clarified, at least in the **explanatory memorandum** of the bill, so that misinterpretations are avoided.

Common statement of parents: According to article 1 of the bill, an aliens' child may acquire the Greek citizenship under the specified conditions, if his/her parents file a common statement and an application for registration to the records of their Municipality. The wording of the provision does not clarify, though, whether the legal residence of both parents is a precondition, unless one of the parents resides abroad. It needs to be reminded that according to article 84, par 1 of Law

3386/2005, aliens who do not reside legally in the country do not have access to public services. Consequently, it is not possible to file a common statement in case one of the two parents is in irregular situation in terms of his residence status in the country. Therefore, it is needs to be clarified that par. 1 of article 1 of the bill concerns: a) alien parents who both reside legally in the country, while the condition of five years residence may be fulfilled by either one, and b) the case of one parent residing legally for five years in the country, while the other one resides abroad. In the second case the parent residing abroad may file the relevant statement to the competent Greek consulate.

Furthermore, the condition of common statement cannot be fulfilled in the case of single-parent families. Therefore, it needs to be provided that in case only one parent exercises the full custody of a child, the required statement may be filed by him/her.

Voluntary renunciation of citizenship: According to article 1 of the bill, aliens' children may acquire the Greek citizenship after submittal of a common statement by his/her parents. The bill should provide for the possibility of renunciation of the Greek citizenship by the child upon reaching adulthood, if he/she so wish. Therefore, it is recommended that article 19 of Law 3284/2004 "renunciation of Greek citizenship by children naturalized Greek", also applies to the cases of article 1 of the Bill.

The NCHR would like to point out that aliens' children who will acquire the Greek citizenship will have in many cases the citizenship of their parents as well. Dual citizenship may raise several issues that the Administration will have to address, such as the one of multiple military obligations. On this particular issue, the NCHR refers to article 21 of the European Convention on Nationality of 1997, which offers a fair and balanced solution, and calls upon the Greek Government to ratify it.

II. Chapter B: Harmonization of naturalization with the rule of law

A) Article 2 of the bill

Element (b): The NCHR considers that the wording of element (b) enumerating a large number of offences does not render clear the ratio of the provision, especially if one takes into account the fact that offences of different gravity – such as the one of treason and the one of theft – entail exactly the same consequences i.e. exclusion from the naturalisation process. The existence of a large number of offences, which, if perpetrated -regardless of the penalty imposed and the time of conviction-, block the access to the naturalization process, constitutes a non-proportionate "sanction".

The NCHR considers more suitable a general provision according to which the applicant must not have been convicted for a felony in the 20 years before the filing of the naturalization application. Furthermore, and in combination with its aforementioned recommendation, the NCHR calls upon the Government to review the list of offences under element (b), retaining only the most serious categories of offences, as those against the Greek State and international crimes, whose perpetration justifies the rejection *prima facie* of a naturalization application.

The NCHR takes the view that in this way the *ratio* of the provision will be clearer. Furthermore, it is noted that the competent public services request the criminal record of judicial use of the applicant, while examining an application for naturalization. Moreover, the obligation for stating the reason for the eventual rejection of the application of naturalization, allows the Administration to state the conviction for an offense as reason for refusing Greek citizenship to an applicant. The NCHR recommends the rewording of the provision.

In any case, the NCHR recommends the maintenance of the amendment to Law 3284/2004: the amendment was the result of article 41 of Law 3731/2008 that removed the violations of the legislation regarding entry of aliens in Greece from the list of offences blocking the naturalization process to applicants. In particular with regard to refugees – where no penalties for illegal entrance or residence in the country are permitted–, the abolishment of the aforementioned impediment was very important since they would not have to go through the costly and time-consuming procedure of

preclusion of convictions' consequences for illegal entry.

Element (d): The element (d) sets as a condition for naturalization the legal residence in Greece for a period of five years within the last decade prior to the submission of the naturalization application. It is advisable that a shorter period of time is required for refugees along the lines of Law 3284/2004. Regardless of the fact that Law 3284/2004 took into consideration the need for different treatment of refugees, according to article 34 of the Convention of Geneva relating to the status of refugee: "The Contracting States shall as far as possible facilitate the integration and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings". It is also noted that the same obligation of facilitation applies to stateless persons according to article 32 of the UN Convention Relating to the Status of Stateless Persons of 1954. Therefore regarding these two categories of aliens a more favorable time condition is required.

Furthermore, element (d) does not require the five years time condition for non-citizens of Greek origin and individuals having the citizenship of an EU member state. The different treatment between aliens and non-citizens of Greek origin constitutes a historic pillar of Greek citizenship law and the formation of the contemporary Greek society. However, this cannot lead to different regulations concerning the acquisition of citizenship. Besides, the differentiation between aliens and non-citizens of Greek origin has been criticized by the European Commission against Racism and Intolerance. Furthermore, and in spite of the fact that Greece has not so far ratified it, it should be noted that this provision is incompatible with article 5 of the European Convention on Nationality of 1997.

Moreover, the facilitation regarding individuals with an EU member state citizenship does not constitute an obligation of the State imposed by EU. Therefore, the NCHR calls upon the Government to reconsider the extent of differentiation and set the same time condition for non-citizens of Greek origin, EU member-states citizens, refugees and stateless persons.

B) Article 3 of the bill

Element (d): The exemption from the obligation to submit along with the application a birth certificate should also apply to stateless persons.

Furthermore, the NCHR recommends the inclusion of the social security number (SSN) to the necessary documents for the naturalization procedure. The SSN is the means of identification in terms of employment and social security of any person residing in Greece, and it is an indication of integration into the society.

C) Article 5 of the bill

Par. 2 provides for the "reasoned rejection of a naturalization application according to the Code of Administrative Procedure". The current Law on citizenship does not provide for the reasoning of affirmative decisions, -although in practice this does happen-, while it states that negative decisions are not reasoned. The Conseil d' Etat has ruled that "an alien's naturalization constitutes sovereign right of the State, which exercises it according to its volition. Besides, for this reason it is provided that the rejection of a naturalization application does not require reasoning [...]". However, it has also ruled that "when the negative decision or other document, which has been referred to by the decision, include specific reasons on the basis of which the Administration rejected the naturalization application, these reasons must be legal and are reviewed by judge".

The obligation for reasoning is a very important development for citizenship law; it constitutes a development that entails the modification of the nature of the act, since it will be subject to judicial review. The NCHR considers that this modification complies with the principles of legality and the rule of law, but also with article 11 of the 1997 European Convention on Nationality that provides for the obligation naturalization decisions to be reasoned. Furthermore, the NCHR takes the view that any second thoughts regarding the way judicial review will work in practice, especially when a negative decision is based on reasons of national security and the relevant information may not be rendered

public, can be overcome. According to the jurisprudence of the Conseil d' Etat "the fact that a document is classified may justify the restriction of the parties' access to the file, but not the access of the court to the relevant document [...]. Therefore, if the reasoning of the administrative act against which an annulment application has been filed is based on classified information, the Administration is not obliged to mention the facts that derive from that information in the administrative act, but it is obliged to bring it to the attention of the Court. Then the Court will review the reasoning of the administrative act without informing the parties of the classified information and without including it in its decision".

E) Article 19 of the bill

The Bill should also require the applicability of deadlines for the pending naturalization applications. Therefore, a deadline must be set, during which the examination of the pending applications will be concluded, e.g. within two or three years after the entry into force of the law.

III. Chapter C: Participation in the first degree of local administration election

The NCHR would like to express its satisfaction for this initiative, which constitutes an important step towards the social inclusion of third country nationals living in our country, although such an obligation does not derive from international law, but merely from EU law regarding the citizens of EU member-states. The NCHR, already in 2005, had recommended granting to third-country nationals - who live in Greece for a long period of time- the right to vote and be elected in the first degree of local administration elections.

However, the NCHR takes the view that the right to vote should be granted to all categories of aliens entitled to apply for naturalisation and not solely to holders of particular types of residence permits, provided they wish to enroll in the relevant election catalogues. The enrolment to the electoral catalogues might be perceived as an indication of their social inclusion and willingness to take part in the political life of Greece for naturalisation purposes.

9. Observations of the NCHR on the Draft of the Greek Report to the Committee against Torture of the United Nations concerning the implementation of the Convention against Torture and other cruel, inhuman or degrading treatment or punishment.

The NCHR studied the draft of the fifth and sixth Greek periodic reports concerning the implementation of the United Nations Convention Against Torture and other cruel, inhuman or degrading treatment or punishment. The draft was sent to NCHR by the Ministry of Justice, Transparency and Human Rights.

1. Remarks concerning the drafting and submittal procedure of the periodic reports to the competent UN Committee:

Until 2007, the procedure was the following: after the submittal of the periodic report and before its examination by the Committee, the latter was addressing a "list of issues" requiring a response by the State Party. The list contained questions arising from the State Report itself or from issues pointed out by national human rights institutions and/or NGOs. In the context of this procedure, the GNCHR was asked by the Committee to contribute to the composition of the list of issues prior to the examination of the 4th Greek Periodic Report in 2004. In the middle of 2007 the Committee adopted a new procedure, which started to be put into practice in 2009. From now on, the State Party's answers to the list of issues will constitute the Periodic Report itself. According to the new procedure, in February of 2009 the Committee addressed the list of issues to Greece and the draft report in question constitutes the combined 5th and 6th Greek periodic report. However, this time the GNCHR was not approached by the Committee to contribute to the composition of the list of issues to which Greece has to respond.

Following the examination of Greece's 4th Periodic Report, the Committee adopted its 'Concluding Observations' and for a number of issues of priority, it requested additional information on the part of Greece. In its response, and as is often the case, Greece did not go beyond the citation of the relevant legislative framework and did not provide answers to the questions of the Committee The GNCHR has on several occasions dealt with issues related to the implementation of the UNCAT, and has addressed opinions and recommendations to the competent Ministries. Moreover, the GNCHR is systematically called to meet with the European Committee for the Prevention of Torture (CPT), in the context of regular or ad hoc visits of the Committee to Greece. In January of 2004, the GNCHR submitted to the relevant Greek authorities a comprehensive proposal for the ratification of the Optional Protocol to the Convention against Torture (OPCAT), which enhances the effective implementation of the Convention.

With regards to the draft report, the GNCHR submits the following remarks, which are meant to enrich the content of the Greek Report.

2. The structure of the Draft Report

The draft in question is demonstrating a remarkable effort of the competent authorities to provide comprehensive responses to the Commission's questions. However, the fact that the answers are provided in a totally separated manner by the two ministries involved in the implementation of the provisions of the Convention, do not allow to the Committee to acquire a global picture on the application of the Convention. The current Draft Report does, indeed, include significantly more quantitative and qualitative information than the past reports. However, the GNCHR reiterates its recommendation that the citation of the legislative framework in place needs to be combined with the analytical description of the challenges in the implementation of the law on the ground.

3. On the part of the Draft Report which concerns the area of competence of the Ministry of Justice

a) Directorate of Legislation

The new legislative provision of art. 79 of the Penal Code, is correctly mentioned (on the commitment of a criminal act on racist motives, as aggravating circumstance). However, it does not fully respond to the relevant concluding observation of the Committee. Moreover, since

the Greek responses do not follow the order of the "list of issues", it is not possible to see whether all the issues have been addressed. Reference of the provisions of L. 3500/2006 (on addressing violence within the family), is of relevance. It is to be noted that the law in question takes into consideration the recommendation of the GNCHR, which had expressed the view that acts of violence within the family should be considered as aggravating circumstance for all types of criminal offenses. Concerning the effectiveness of the penal mediation stipulated by L. 3500/2006, it is reminded that the Committee on the Elimination of Discrimination Against Women had recommended to Greece to implement the institution of penal mediation, in particular in the cases of violence within the family, so as to address the impunity of the perpetrators. It had also recommended that the Greek judges receive special training on considering the gender dimension when judging cases. The GNCHR had proposed the creation of a specialized body of social workers, which would contribute to the process of penal mediation. It had also recommended the introduction of the relevant legal provisions in all Codes (Penal Code, Civil Code, Code of Civil Procedure, and Code of Penal Procedure). The Greek Report is wisely noting the law 3727/2008, ratifying the CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. On the issue of trafficking in human beings, it is reminded that the GNCHR has formulated detailed recommendations/observations on both the legislative and policy frameworks back in 2007, which could be consulted in order to enrich the Greek Report on that specific matter. The GNCHR has identified some problematic areas with regards of the framework to address trafficking, such as the inefficiency of the system of witness protection and the need for extension of the period of one month of deliberation provided to the victim in order to decide whether or not they want to collaborate with the authorities for the prosecution of the perpetrator. It is reminded that the GNCHR has (in 2005) proposed to the Greek State the ratification of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organized Crime, and the CoE Convention against Trafficking in Human Beings. The Draft Report states that Greece has addressed the terrorist threat by adopting a series of legislative and administrative measures (L. 3251/2004, L. 3691/2008, inter alia) that do not affect the protection of human rights. The GNCHR considers that the Report should rather allow for the reflection of the difficulties Greece is having when aiming at the desired balance between protecting human rights and, simultaneously, addressing security concerns. These difficulties are common to all States and should rather be expressed in a report, rather than omitted. The GNCHR has, on several occasions, issued reports and recommendations on the topic of combating terrorism in Greece and abroad.

b) General Directorate of Correctional Policy

The Draft Report states a series of statistical data on the detainees held in the correctional institutions. However, the answers to the rest of the issues of the list are inadequate. Once more, the Report is phrased as if the provisions of the Correctional Code were implemented without any difficulty. Nevertheless, the Committee is in a position to be aware of the reality on the ground, as it collects information from various sources, including the reports of other treaty bodies. The GNCHR has submitted an extensive report on "the rights of the detainees and the detention conditions in prisons", which includes a series of recommendations for the improvement of the correctional system both institutionally and administratively. In the above mentioned report, and in the issues of top priority the GNCHR has included the need for the establishment of an independent supervisory body for the prisons and the other detention facilities. This is an issue systematically raised by the Committee, but it is left without adequate response. The GNCHR has, in addition, highlighted the need for the Greek administration to change its way of responding to the recommendations of treaty bodies, as well as to those of the GNCHR itself. It has also proposed that the answers be co-ordinated

between the relevant ministries, so that a complete and clear image of the situation on the ground be reflected in the Greek Reports. Furthermore, the GNCHR had expressed the opinion that the fundamental problem concerning the conditions of detention is that the majority of the provisions of the Correctional Code are not implemented in reality, either due to the lack of the necessary infrastructure, or due to inadequate staffing, material resources and administration. The Draft Report accurately states L. 3727/2008, harmonizing the Greek legislation with the framework decision 2004/757 of the Council of the EU, on measures for the decongestion of prisons. The Report omits reference of L. 3772/2009 (on reform of the forensic service and the therapeutic treatment of drug-addicts) and of L. 3811/2009 (on the compensation of victims of acts of violence), which include a series of correctional provisions lying in the right direction. In the overall context related to the correctional system and the detention conditions, the GNCHR has already proposed the ratification of the Optional Protocol to the UN Convention Against Torture, which establishes National Preventive Mechanisms (NPMs). Concerning the construction of new prisons, the GNCHR believes that this should be combined with measures for reducing the number of detainees. The Draft Report refers in detail to the functions of «EPANODOS», an institution aiming at the reintegration of the ex-detainees in the society. While it is obvious that such an institution is indispensable, it seems that the functioning of this body so far is far from being adequate.

Finally, the GNCHR notes that the Draft Report does not include any information on the filed complaints of ill-treatment in prisons, the procedure of investigating those complaints, and on the disciplinary and/or penal prosecution of the perpetrators, as it is requested in the list of issues. Given the convictions of Greece by the European Court of Human Rights for cases of ill-treatment of detainees in prisons or in police detention centres (violation of article 3 of ECHR), the Committee surely expects to be informed on the efforts of the State Party towards prevention and punishment of the perpetrators of such acts.

4. Remarks on the part of the Draft Report which concerns the area of competence of the Ministry of Citizen Protection (priorly known as the Ministry of Public Order)

The Draft Report refers in detail to the legislative and administrative provisions on the prevention and punishment of cases of use of brutal force by policemen on citizens. The provisions of Presidential Decree 120/2008 (modifying the disciplinary measures of the Police force) are described in great detail. Furthermore, the Draft informs about the production of a leaflet on the rights of the detainees, which also includes a form for filing a complaint. It also refers to a series of orders and circulars on the police rules of conduct, following the conviction of Greece (Celniku v. Greece) by the ECHR, and other convictions for cases of use of brutal force by police. The GNCHR notes its 2001 report on the use of force and weapons by State authorities, as well as its observations on the relevant bill of the Ministry of Public Order in 2002. Although the Draft Report states that the Greek Police pays great attention to the respect of the rights of the detained, the observations of many national and international competent bodies seem to present a different reality on the ground. The GNCHR reminds of the two recent (2009) convictions by the ECHR for the violation of the article 3 ECHR (prohibition of torture). The Draft Report does not provide any answer to the Committee's question regarding measures meant to prevent the ill-treatment of Roma by police during the operations of forced evictions, nor on the eventual punishment of those responsible. Police conduct vis-à-vis Roma has systematically been criticized by several local and international bodies of human rights protection; besides, the country is more than once convicted for use of brutal force by police against Roma. It is reminded that the GNCHR has highlighted the issue of police misconduct in its 2008 extensive report on the situation of Roma is Greece.

The Draft Report includes some statistical data (as requested by the Committee) on cases of use of fire weapons by the police, on filed cases for ill-treatment of detainees or of citizens by police, and on the eventual disciplinary or penal sanctions. The GNCHR underlines that the Greek

Police has the obligation to exhaustively investigate all the complaints against police and impose the necessary sanctions to those responsible; in this context, it reminds of the recent 'Opinion' of Thomas Hammarberg, the Commissioner for Human Rights of the CoE, 'concerning the independent and effective determination of complaints against the Police'. The GNCHR draws the attention of the Ministry to the need for a reform of the training of the police. In 2008, the GNCHR has submitted to the then Ministry of Public Order, a proposal for the elaboration of a comprehensive educational program of the police on human rights protection in policing.

The Draft Report provides detailed description of the procedures of reception of illegal immigrants. In the description of the situation regarding unaccompanied minors, the Draft Report states that the Police take into serious consideration the relevant recommendations of the GNCHR. However, as it is stated in the recent remarks of the GNCHR on the Draft Initial Report of Greece concerning the implementation of the Optional Protocol to the *Convention on the Rights of the Child on the involvement of children in armed conflict,* several trustworthy sources, such as the UN High Commissioner for Refugees, the Greek Council for Refugees and the Human Rights Watch, present a situation on the ground that is far from being ideal and that requires serious improvements. This concerns the situation of unaccompanied minors, but also the situation of all migrants and refugees in general. One of the Concluding Observations of the Committee on the Elimination of Racial Discrimination, after the examination of the most recent Greek Report, is actually recommending that Greece adopts effective measures towards a more humane treatment of asylum seekers and immigrants, and that the duration of detention of asylum seekers - and of minors, in particular- be reduced. Moreover, the Committee on the rights of the Child, after the examination of the Greek Report in 2002, addresses many recommendations on the treatment of unaccompanied minors and the overall system on the granting of asylum status.

On the issue of the appointment by the State of a "guardian" for the unaccompanied minors (according to PD 220/2007), the information that the GNCHR disposes of, demonstrate significant difficulties on the ground, mainly due to the big number of children placed under the responsibility of each guardian.

The GNCHR reminds the long list (more than twenty, so far) of its reports and recommendations touching upon different aspects of the protection of the rights of immigrants and refugees.

The absence of statistical date concerning the asylum seekers who are victims of torture, is mentioned in the Draft Report. In this context, the GNCHR wants to remind that the Medical Centre for the Rehabilitation of Victims of Torture, which used to be the specialized body for the identification and the therapeutic treatment of victims of torture, has been forced to suspend its operation in 2009 due to the lack of financial resources.

Recapitulation of the GNCHR's observations on the Draft Report

a) The GNCHR notes the significant improvement of the overall Report compared to previous State Reports submitted to the Committee.

b) It considers that it would be preferable to draft combined responses by the two Ministries involved, following the list of issues.

c) It reiterates its recommendation that the Greek Report notes and endeavours to explain the reasons for the differences between legislation and practice. This is what all treaty bodies require, including the Committee Against Torture.

d) Last but not least, the GNCHR wishes to underline once more the importance of the ratification of OPCAT, which would oblige the country to create the necessary mechanisms in order to comply with the recommendations of the Committee Against Torture and those of other relevant bodies.

10. Comments regarding Law 3304/2005 «Implementation of the principle of equal treatment irrespective of racial or ethnic origin, religious or other beliefs, disability, age or sexual orientation» and recommendations for its amendment

I. Introduction

Law 3304/2005 «Implementation of the principle of equal treatment irrespective of racial or ethnic origin, religious or other beliefs, disability, age or sexual preferences» incorporated in the Greek legal order Directive 2000/43/EC «implementing the principle of equal treatment between persons irrespective of racial or ethnic origin» and Directive 2000/78/EC «establishing a general framework for equal treatment in employment and occupation».

Greece belongs to the majority of member states which, prior to the adoption of the two directives, did not have specialized legislative framework establishing equal treatment and prohibiting discrimination. Nevertheless, Greece did not incorporate correctly the two EU legislative instruments.

A) The comments of the National Commission for Human Rights in 2003

The National Commission for Human Rights took the initiative, in 2003, to comment upon the Bill incorporating the two directives into the Greek legal order. In its Advisory Opinion it underlined several provisions which were directly opposed to the letter of the two directives. The NCHR recommended a number of amendments to the Bill so as to comply with the letter and the ratio of the two directives.

Few of the recommendations were followed by the State. However, they were crucial for the compliance with the EU law. Specifically, the law prohibits expressly, as it ought to, every direct or indirect discrimination. Moreover, the law defines correctly the terms of «direct» and «indirect» discrimination, «harassment», as well as the requirements of limited exceptions to the principle of equal treatment.

Nevertheless, since the enactment of Law 3304/2005 until today, the majority of the recommendations of the NCHR, regarding the correct adjustment of Greek law to the letter and ratio of the two directives, has not been taken into account.

B) The comments of the Economic and Social Committee

The Economic and Social Committee (hereafter ESC) -designated by Law 3304/2005 as the body for social dialogue aiming at the implementation of Law 3304/2005, the promotion of the principle of equal treatment and the taking of measures to combat discrimination- ascertains that the population of the country is «composed» of groups with distinctive cultural, linguistic and religious features and that «the problems that hinder» the equal treatment of the members of «special» and «vulnerable» social groups (such as the migrants, ethnic minorities, Romas, people with disabilities, the elderly) are due to «mistaken stereotypes (of the majority) towards the others».

The ESC holds the view, in its Annual Reports regarding the implementation of Law 3304/2005, that the substantive application of the equal treatment principle requires initiatives and actions on the part of the State, which will not be restricted simply to the enactment of rules for the legal protection of those social groups, but they will provide for cohesive practices aiming at combating social and labour inequality and the positive support of the «different» social groups.

C) The need to amend Law 3304/2005

The NCHR, taking into account a) the existing situation in Greek society regarding the treatment of «different» national (migrants), ethnic, social groups and categories of persons falling under the scope of the law, and b) the fact that the majority of its 2003 recommendations for the full compliance of Law 3304/2005 with the directives were not followed, feels the need to repeat some of its recommendations and to propose the amendment of the current legal framework on equal treatment.

II. Incorporation into the Greek law of the substantive provisions of the Directives concerning equal treatment

A) The prohibition of multiple discrimination

Directives 2000/43/EC and 2000/78/EC, have partly a common field of application regarding the activities in which discrimination is prohibited (access to employment, vocational training, terms and conditions of employment, unions, etc.). However, they cover different grounds of discrimination.

This differentiation has generated the impression that the Directives do not prohibit multiple discrimination, i.e. actions or omissions entailing discrimination on more than one grounds (e.g. due to racial origin and religion or age and/or sex, which is common). By a teleological interpretation of the directives, and in the light of the principle of non discrimination provided for expressly by article 10 of the Treaty on the Functioning of the EU, the prohibition of multiple discrimination against persons belonging to the vulnerable groups protected by the directives may be deduced. This interpretation is corroborated by the following:

The preamble of both directives refers to several international human rights treaties (CEDAW, CERD, ICCPR, ICESCR) ratified by all member states. These instruments provide interpretational tools and are directly binding to Greece. Furthermore, the respective treaty bodies require from states parties to eliminate multiple discrimination.

The recent International Labour Conference of ILO (June 2009), in its report for gender equality strongly urges public authorities to adopt policies and programs combating multiple discrimination, victims of which are mainly women.

Moreover, the EU Commission in its proposal to the Council, in June 2008, regarding the so-called «horizontal directive» which expands beyond labour market the principle of equal treatment irrespective of religion or beliefs, disability, age or sexual orientation, moved towards a more general prohibition requiring protection from discrimination «irrespective of grounds». The European Parliament, in its relevant legislative resolution recommended the inclusion of the explicit prohibition of multiple discrimination.

The NCHR, in its 2003 advisory opinion had recommended that par. 1 of article 2 should establish the prohibition of discrimination "on all grounds provided for in article 1" of the bill and not just "on one of the grounds".

Taking into account the aforementioned, the NCHR recommends the amendment of article 2, par. 1 of Law 3304/2005 in order to provide for the prohibition of direct or indirect discrimination ***«on one or more of the grounds enumerated in article 1»***.

B) Discriminatory treatment of third country nationals

Law 3304/2005, in articles 4 and 8, provides that it does not cover difference of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence and the legal status of third country nationals and stateless persons on the territory of Greece. However, according to the preambles of Directives 2000/43 and 2000/78: *"This prohibition of discrimination should also apply to nationals of third countries, but does not cover differences of treatment based on nationality and is without prejudice to provisions governing the entry and residence of third-country nationals and their access to employment and to occupation"*. Therefore, if a discriminatory treatment is based on one of the prohibited grounds by the Directives, the nationality of the victim should not be examined.

The NCHR notes that different treatment based on nationality often conceals discriminatory treatment due to the racial or ethnic origin of the affected person. The NCHR takes the view that the law should prohibit the pretextual invocation of nationality covering up racial or ethnic grounds of discrimination.

C) The scope of application of equal treatment, positive action and occupational requirements

In order for Law 3304/2005 to comply fully with the Directives, articles 4 and 8 (scope), 6 and 9 (positive action) and 9 (occupational

requirements) need to be amended:

(a) In articles 4, par. 1(a) and 8, par. 1(a), after the word *"employment"* the words ***"self-employment and occupation"*** should be added.

(b) Articles 6 and 8 of the Law concerning positive action, should begin with the phrase ***"With a view to ensuring full equality in practice …"***, which clarifies that positive measures are the means to substantial equality.

(c) Article 9, par. 2 concerning occupational requirements, in order to be consistent with article 4, par. 2 of Directive 2000/78, should be phrased as follows: ***"This difference of treatment shall be implemented taking account of the provisions of the Constitution and the consistent with it laws …».***

D) Different treatment due to age

The NCHR reiterates its 2003 observation that article 11 of Law 3304/2005 (justification of differences of treatment on grounds of age) does not incorporate correctly article 6 of Directive 2000/78.

The NCHR, once more, highlights that a special legislative provision already exists, which was enacted on the basis of the said directive. Article 10, par. 11 of Law 3051/2002 abolishing maximum age limits for hiring employees in the public sector, should be repeated in Law 3304/2005 while at the same time expanding its scope of application in the private sector and the other activities covered by the Law.

III. Incorporation in the Greek law of increased and effective legal protection of the right to equal treatment

A) Incorporation of the procedural provisions of the directives in the codes of procedure

The NCHR, in 2003, has underlined the need for the procedural provisions of the two directives (locus standi of legal entities and burden of proof) to be incorporated in the Code of Civil Procedure and the Code of Administrative Procedure, after their phrasing is improved. However, the relevant provisions of Law 3304/2005 are still defective and have not been incorporated in the Codes of Procedure. Consequently, judges and other competent authorities, lawyers, employees and their organizations ignore these provisions and they are not applied in practice. Thus, very few cases have been filed in courts. Therefore, the NCHR reiterates its previous recommendation for the incorporation of the relevant provisions on the Codes of Procedure.

B) The locus standi of organizations in the context of judicial protection of discrimination victims and for the recourse to administrative authorities

As the NCHR underlined, in 2003, the number of legal entities which are given the right to defend discrimination victims is very limited, since it includes only those which, according to their statutes, state the safeguard of the equal treatment principle as one of their purposes. So far, the implementation of the Law does not indicate a broad interpretation of the relevant provision in order for every organization defending human rights to have *locus standi.*

Moreover, in order for the aims of the relevant provision to be fulfilled, it does not suffice for the aforementioned legal entities to be able to represent discrimination victims, but they should also be able to act in their own name. In that way discrimination victims will be encouraged to report their rights without fear of retaliation by their employers. The NCHR had also emphasized that it needs to be explicitly provided that a negative *res judicata* in a case that was filed by a legal entity in its own name will not be binding for the discrimination victim

Furthermore, the requirements in order for legal entities to represent discrimination victims provided for in article 13, par. 3 of Law 3304/2005 (prior consent of the discrimination victim given before a notary or in writing signed and having the authenticity of the signature certified) hinder the application of the provision. The Directives require the victim's *"approval",* which can be given later on, and not his/her "consent", which must be given in advance. Moreover, with the requirement of "consent" there is the risk that the deadline for recourse to the court or to another competent authority will elapse.

Therefore, the NCHR recommends the amendment of article 13, par. 3 of the Law on the basis of the aforementioned.

Lastly, if the State wishes to ensure the administrative review of the administrative acts violating Law 3304/2005, a special provision should be added in par. 1 of article 13, which will expressly provide for the right to have administrative recourse to the administrative authority issuing the act entailing discrimination. This recourse will result in the review of both the legality of the act and the substance of the case by the administrative authority, and the latter will be able to abrogate the act, in whole or in part, or to modify it. This amendment is procedurally necessary, because through the special administrative recourse provided for in article 25, par. 2 of the Code of Administrative Procedure (to which article 13, par. 1 of Law 3304/2005 refers) only a legality review is permitted. Moreover, according to the Code of Administrative Procedure, only the victim may exercise the administrative recourse. The NCHR asks for a provision according to which the legal entities of article 13, par. 3 may exercise the administrative recourse for violations of Law 3304/2005.

IV. Compliance of domestic law with the requirement for social regulation of equal treatment and combating discrimination

A) The Commission for Equal Treatment of the Ministry of Justice

There is no doubt that the Greek legislator did not interpret correctly the institutional provisions of Directive 2000/43/EC –especially article 13 which requires the establishment, in every member state of the E.U., of an equality treatment body.

The NCHR, in its 2003 opinion, criticized the fact that the Commission for Equal Treatment, founded by Law 3304/2005 as the Greek equality body, functions simply as an advisory body of the State –only for the interpretation of the law– and as a conciliatory body between the parties in cases of discrimination, although the Directive does not provide for similar duties. Moreover, the independence of the Commission for Equal Treatment is debatable since its members are appointed by the Minister of Justice and it is chaired by the Secretary General of the Ministry. Therefore, it could not be given the competence of providing independence assistance to victims of discrimination (article 13, Directive 2000/43/EC). The independence of the Labour Inspectorate- designated as an equality body for employment and occupation in the private sector- is also debatable.

B) The need to institutionalize a central and independent action for the promotion of the equal treatment principle - The role of the Greek Ombudsman

Taking into account, the need for the effective promotion and application of the principle of equal treatment and the problems of discrimination that segments of the population face because of their racial or ethnic origin, age, religion, disabilities or sexual orientation, as well as the delay on the part of the State to shield the society with public institutions able to combat effectively discrimination, the NCHR recommends that the Greek Ombudsman be given the primacy in promoting and monitoring the implementation of the equal treatment principle. To this end the NCHR also recommends the necessary readjustments of the competences of the other designated equality bodies.

Although Directive 2000/43/EC does not require the equality bodies to be set up as independent authorities, the relevant features are "indirectly" required given the emphasis it places on the condition of independence.

In particular, the NCHR recommends:

(a) The expansion of the competence of the Ombudsman in the private sector, apart from the case of access to and supply of goods and services, which should be assigned to the Ombudsman for Consumers. Moreover, every public authority, which receives complaints or information regarding the violation of the equal treatment principle, including the Labour Inspectorate, should communicate them to the Ombudsman (or the Ombudsman for Consumers) for investigation and mediation. The respective competences of the Labour Inspectorate and the Commission for Equal Treatment of the Ministry of Justice should, therefore, be abrogated.

(b) The provision of independent and specialized assistance by the Ombudsman (and the

Ombudsman for Consumers) to victims of discrimination. Furthermore, the Codes of Procedure should be amended in order to provide for the *locus standi* of the Ombudsman (and the Ombudsman for Consumers) as a third party before civil or administrative courts or as a civil party before criminal courts.

(c) The expansion of the ratione temporis "jurisdiction" of the Ombudsman over cases which have been filed in courts until the first hearing of the case or the issuing of interim measures. Given that a complaint submitted to the Ombudsman does not suspend the deadlines for judicial remedies, if the mediation of the Ombudsman is not fruitful, the discrimination victim might be deprived of his/her right to judicial protection. This expansion might encourage discrimination victims to have recourse to the Ombudsman and limit the number of potential cases before the courts, a procedure which is more time-consuming and costly.

(d) The systematic monitoring by the Ombudsman, in cooperation with the Labour Inspectorate, the Department for Equal Opportunities of the Ministry of Labour and the Organization of Mediation and Arbitration, of the developments in employment and occupation, collective agreements, codes of ethics and practices regarding combating discrimination.

(e) Given that none of the aforementioned may be successfully fulfilled without the systematic communication of the State with the NGOs, unions, and the society, the NCHR deems necessary for the role of the ESC to be enhanced. To this end, the NCHR recommends the creation, within the ESC, of a permanent consultative body, composed of representatives of NGOs and organizations in general, with the participation of the Ombudsman, which will conduct with the plenary of the ESC the social dialogue concerning equal treatment.

Finally, the NCHR considers that, as a result of the recommended expansion of the Ombudsman's competences, its budget and staff should be increased accordingly.

V. NCHR's recommendations

The NCHR, on the basis of all the above, recommends the following:

1. The expansion of the competence of the Ombudsman also in the private sector, apart from the case of access to and supply of goods and services, which should be assigned to the Ombudsman for Consumers.

2. The amendment of Law 3304/2005 so as to prohibit multiple discrimination.

3. The amendment of several articles so as to prevent the prohibited discriminatory treatment against third country nationals by invoking their different nationality.

4. The amendment of a number of articles concerning the scope of the Law, positive actions, the occupational requirements and the different treatment due to age in order for the Law to comply fully with the Directives.

5. The improvement of the phrasing and the incorporation of the procedural provisions of the directives (locus standi of the organizations and burden of proof) in the Code of Civil Procedure, the Code of Administrative Procedure and the Code of Administrative Process.

6. To provide for the recourse to administrative authorities by NGOs in their own name.

11. Cameras surveillance of public areas, image and sound recording, DNA analysis in criminal proceeding and the national data base of DNA profiles

I. Introductory remarks

A. The cameras surveillance and the DNA use law amendment

According to para. 2 c) of article 3 Law 2472/1997, data protection mechanism is not applied in cases of data processing by a public authority using special technology for sound or image recording in public areas for the protection of State security, for purposes of defence, public security, and in particular for the protection of persons and possessions as well as for the management of traffic/circulation. Data which is not used in criminal proceedings is kept for 7 days and then destroyed on the basis of an act issued by the competent Public Prosecutor. The violation of this provision is punished by imprisonment of at least 1 year, unless any other provision providing for a more severe punishment is applied.

Furthermore, according to article 200A of the Criminal Code as amended, "if there is serious evidence that a person has committed a crime or an offence punished by imprisonment of at least 3 months, the prosecuting authorities take compulsorily genetic sample in order to identify the offender. If the analysis is negative, the genetic sample and the DNA profiles are destroyed immediately. If the analysis is positive, the genetic sample is destroyed immediately but the DNA profiles of the allegedly perpetrator are retained on a special data base at the Headquarters of the Hellenic Police. All data are retained for the investigation of any other crime and they are destroyed in any case after the person's decease. The data base is put under the supervision of the Deputy Attorney General or the Court of Appeals Attorney General.

The law on data protection was amended without taking into consideration the opinions of the Hellenic Data Protection Authority that found that the law amendment was not compatible with the constitutional and conventional guarantees for the protection of personal data (article 9A Constitution and article 8 ECHR).

B) The artificial dilemma between freedom and security

The amendment reflects an expanded worldwide preventive policy of an imperceptible danger that transforms security into a super-right absorbing all restrictions of individual rights and presenting them as the sole rescue from the fear.

The GNCHR shares the Hellenic Data Protection Authority's concern for "security in a freedom context and not freedom in a security context". The need for security in a democratic society enjoying freedom should be satisfied by respecting all guarantees for fundamental freedoms and human rights.

C) The Minister's of Justice commitment

The GNCHR welcomes the commitment announced by the Minister of Justice related to the abrogation of the last amendment concerning the surveillance cameras in public areas. The GNCHR states its willingness to follow-up the implementation of this commitment and fully agrees with the Hellenic Data Protection Authority's opinion on the incompatibility of the provision with the Constitution and the ECHR, as: a) it does not provide for clear and sufficiently precise conditions for the operation of cameras and the data processing, b) it does not specify adequately the objective, the criteria according to which cameras are installed and operate, the conditions for the collection, the registration, the processing and the transmission of data, it does not provide for any remedy against a violation and c) it removes an important and broad sector of State action from the competence of the Hellenic Data Protection Authority. The GNCHR notes that the surveillance cameras have been proved ineffective, according to studies related to the same system of surveillance in the UK.

II. The new article 200A of the Criminal Code

A) Unforeseeability

According to the European Court for Human Rights case-law, the law imposing the restriction must be accessible and foreseeable. In the case of the DNA use in criminal proceedings, the individual should be able to foresee when his

DNA sample would be taken and in which cases it would be retained in order to regulate his conduct. The provision must afford adequate legal protection against arbitrariness and accordingly indicate with sufficient clarity the scope of discretion conferred on the competent authorities and the manner of its exercise. It is rather difficult to foresee with certainty the meaning of serious evidence, in particular given the fact that the relevant competence of the judicial council has been abrogated. Furthermore, since the DNA analysis constitutes interrogatory act and can be ordered during the preliminary investigation, it is more complicated to foresee which evidence the competent agent would consider to be serious.

The general and brief terms in which the provision is formulated does not comply with the requirements set in the Recommendations No. 87 (15) and No. 92 (1) of the Council of Europe or the principles stipulated in the preamble of the Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime.

B) Legitimate aim and disproportionate measures

The DNA analysis and retention are a part of the State anti-criminal policy. In the GNCHR's view, the legitimate aim of crimes investigation, as a part of the Police action presenting an aspect of coercion should leave the least margin of appreciation to the authorities. In the light of this, the new Article 200A of the Criminal Code does not strike a fair balance as: a) it extends the list of crimes for the investigation of which the measures are provided for, b) it is not an extraordinary measure, c) it prolongs without distinction of any kind the period of retention at the national data base, d) no special measures are provided for in cases of minors, acquitted persons or victims of discriminatory treatment during the investigation, e) no study has been presented to support the necessity of the measures.

C) Lack of adequate guarantees and remedies

In addition to the suppression of the competence of the judicial council as regards the order of the measure, Article 200A of the Criminal Code as amended, has put the national data base under the supervision of the Deputy Attorney General or the Court of Appeals Attorney General. The GNCHR expresses its concerns due to their lack of special technical knowledge and adequate staffing. The Greek Constitution reserves to the Hellenic Data Protection Authority, an independent authority, the protection of personal data.

III. Proposals

While the GNCHR expects the abrogation of the provision related to the surveillance cameras in public areas, it recommends the following modification concerning the DNA analysis and retention in criminal proceedings:

1. Taking samples and analysing the DNA should be ordered by the judicial council according to the principle of proportionality and only in cases the identification is not possible by other less intrusive means.

2. Genetic fingerprints should be used only in criminal proceedings for crimes and offences against sexual freedom or related to financial exploitation of sexual life.

3. Genetic fingerprints of an adult person should be retained after his/her conviction only for a precise period of time determined by the court accordingly to the gravity of the crime, the personality of the convicted person and other individual factors.

4. Genetic fingerprints should be destroyed after the acquittal of the accused person.

5. The protection of genetic data should be monitored by the Hellenic Data Protection Authority.

NCHR's Activities at the Domestic, European and International Level

III. NCHR'S ACTIVITIES AT THE DOMESTIC, EUROPEAN AND INTERNATIONAL LEVEL

1. Domestic Level

During the past year, the NCHR's Bureau and/or staff had the following meetings upon request:

a) With a visiting delegation from the National Human Rights Commission of Ethiopia, b) with a visiting delegation from the Council of Europe and, in particular, the Department of Execution of Judgments of the European Court of Human Rights, regarding the execution of ECHR judgments by Greece and the compliance of Greek administration with the decisions of domestic courts, c) with a delegation of CPT on an ad hoc visit in Greece, regarding the reforms of the correctional system, prison monitoring by independent bodies, and the issue of citizens' ill-treatment by police, d) with the UN High Commissioner for Refugees A. Guterres, e) with the Executive Secretary of the European Social Charter of the Council of Europe, Mr. R. Brillat, f) with the Human Rights Commissioner of the Council of Europe T. Hammarberg and members of his office, on the issue of incidents of police brutality, minority rights and the rights of asylum seekers, g) with the Special Permanent Parliamentary Committee on Equality, Youth and Human Rights, h) with the Greek Office of the High Commissioner for Refugees and NGOs dealing with refugees, h) with representatives of relevant authorities from Georgia and Ukraine on aspects of the immigration from the countries of the Black Sea, i) with the Permanent Parliamentary Committee on Public Administration, Public Order and Justice, regarding the new Law on "Political participation of non-citizens of Greek origin and third country nationals who reside legally and long-term in Greece", and j) with the Vice-Chair of the Commission for Legal Affairs of the Parliamentary Assembly of the Council of Europe, Mr. C. Pourgourides.

Furthermore, the NCHR's Bureau and/or staff had the following meetings at their own initiative: a) with the President of the Parliament, D. Sioufas, b) with his Excellency, the President of the Hellenic Republic, K. Papoulias, d) with the Minister of Justice, Transparency and Human Rights, H. Kastanidis, and e) with the Minister of Interior, P. Pavlopoulos.

Members and/or staff of the NCHR also took part as panelists in the following conferences/seminars: a) International Workshop organized by UNICRI on "Prevention and Fights against Trafficking of Nigerian Girls and Women in Greece", b) Workshop on "Asylum and undocumented migrants", organized by the Greek Ombudsman's Office and NGOs, c) Workshop on "Mental Health of Migrants" organized by the Medical Personnel of Athens' Psychiatric Hospitals, d) Conference organized by the Greek Section of Amnesty International and the Hellenic League for Human Rights, on the International Human Rights Day, e) Workshop on "Human Rights in the mental health related field", organized by the Network of Institutions and Bodies involved in Mental Health Services provision, f) the 2nd International Conference of Roma Women, co-organised by the Council of Europe, and the ROM Network, g) Roundtable on "Detention conditions of juveniles", organized by the Initiative for the Rights of the Detainees.

In addition, during the past year the NCHR convened two meetings of the "Joint Working Committee on the design of an education and training programme for the Greek Police", an initiative which the Commission launched in 2008. At these meetings the overall framework and content of the programme was designed and debated, on the basis of a list of priority areas selected by the representatives of the Police. At the present stage (July 2010), the programme has not materialised, as there is no final decision regarding the reform, on the part of the Ministry for Citizen's Protection (previously known as the Ministry of Public Order).

The NCHR has also organized two consultations on mental health related issues, where more than thirty different experts and institutions participated, in order to assess the overall system of mental health services provided

in Greece and to formulate proposals for its improvement. The working group has decided to convene yet another consultation focusing on the views of the health professionals involved in the provision of services, before it finalises its report and proposals.

Another consultation initiated by the NCHR concerned the protection of the rights of HIV-positive persons. The group is currently working on finalizing its proposals.

Last, but not least, the NCHR has actively participated during the past year in the meetings of two Working Groups established by the Ministry for Citizen's Protection. The first explored ways of reforming the Greek system of granting asylum, and submitted its proposals to the Ministry in December 2009. The second Working Group explored the issues related to the "screening centres" to be established for the reception of aliens entering Greece illegally, and submitted its proposals in April 2010.

2. European and International Level

In the framework of the United Nations the NCHR Participated in the : a) the 22nd Meeting of the International Co-ordinating Committee of the NHRIs (Geneva, 23-27 March 2009), b) the Experts Seminar on the Draft of the UN Declaration on Human Rights Education and Training (Morocco, 16-18 July 2009).

In the framework of the Council of Europe the NCHR participated in the: a) Workshop for specialised staff of national human rights structures on the theme "The role of NHRSs in case of non execution of domestic judgments" (Padova, 24-26 March 2009), b) Workshop for specialised staff of national human rights structures "Rights of the elderly: the role of national human rights structures (Budapest, 15-16 September 2009), c) Workshop for specialised staff of national human rights structures "Protecting the human rights of unaccompanied minor migrants: the role of national human rights structures" (Padua, 20-22 October 2009), d) Workshop of Contact Persons of the NHRSs with the Council of Europe's Human Rights Commissioner (Budapest, 17-18 November 2009).

In the framework of the European Union the NCHR took part in the: a) 2nd meeting of the Fundamental Rights Agency with National Human Rights Institutions (Vienna, 29-30 June 2009) and b) 2nd Conference of the Fundamental Rights Agency on the theme of "Making Rights a Reality for All" (Stockholm, 10-11 December 2009).

In the framework of the cooperation with other national human rights institutions, the NCHR participated in the: a) 4th Arab-European Dialogue on Human Rights for National Human Rights Institutions (The Hague, 11-13 March 2009) on the theme of "Migrant Workers' Rights", b) 2nd Meeting of the Experts Network on Migration and Asylum of the European Group of NHRIs (Brussels, 26 June 2009), c) Meeting of Experts Network on Trafficking of the European Group of NHRIs (Paris 26-27 October 2009), d) Meeting of the Working Groups on "Migration and Human Rights" , and "Counter-terrorism measures and Human Rights" within the framework of the Arab-European Dialogue on Human Rights for National Human Rights Institutions (Jordan, 17-19 November 2009), and e) 5th Arab-European Dialogue on Human Rights for National Human Rights Institutions (Qatar, 8-10 March 2010) on Women's Rights and Gender Equality.

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