HELLENIC REPUBLIC

GREEK NATIONAL COMMISSION FOR HUMAN RIGHTS

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Comments on the Report of the Ministry of Foreign Affairs to the UN Committee on Economic, Social and Cultural Rights

After a reading of the above Report, which was sent to us as a matter of urgency by the Ministry of Foreign Affairs (Directorate for Human Rights D4) on 23 August 2002 with the request that we would formulate any substantive comments on the content of the Report by 2 September 2002, we have formulated the following observations:

1. The above initial Report of Greece covers chiefly the period 1996 - 2001. The International Covenant on Economic, Social and Cultural Rights (ICESCR) was ratified by Greece in 1985 by Law 1532 (Official Journal of the Hellenic Republic A' 43). The initial, second, and third periodical Report of Greece were to be submitted to the CESCR on 30 June 1990, 30 June 1995, and 30 June 2000, respectively.[1] The Report in question shows evidence of a laborious effort to cover so long a period and, moreover, in a way which is basically successful. It is scheduled to be discussed in Geneva in the period 11 - 29 November 2002, together with the reports of five other states which have already sent their Reports to the CESCR.

2. It is thought desirable that the Introduction to the Report (pp. 2 - 3) should take on a more substantive content (the form of an executive summary), making reference to the more essential points of this long (145

[1] United Nations, *International Human Rights Instruments*, UN Doc HRI/GEN/4/Rev. 2. 7.6.2002, p. 70.

pp.) Report, and thus helping the CESCR in the study of the long text which follows. It is also thought necessary that there should be a special account in the Introduction to the Report of the reinforcement of the social character of the Greek Constitution following the revision of the year 2001. By this revision, the country's fundamental law expressly introduced into the Greek legal order and reinforced the principle of the 'social rule of law' (new Article 25, para. 1 C.), which in essence had already been introduced by the Constitution of 1975 by Articles 21 - 25. The above principle, together with the rights of man as an individual and as a member of society, "is under the guarantee of the State". This fundamental supra-legislative principle has been rendered more specific in various constitutional provisions, such as those of Articles 21, para. 6 (protection of persons with disabilities) and 22, para. 3 (collective labour agreements for civil servants and employees of local government organisations or other public law legal persons), in which a tendency of the new Greek legal order to give emphasis and substantive content to the protection of the social rights of all persons, in principle, who are on the territory of the Greek state can be seen. At the same time, however, it must be pointed out that the above new constitutional provisions have as a consequence the creation of new, particularly important, obligations of the Greek state, whose organs must "ensure the unimpeded and effective exercise" of individual aand social rights and of the principle of the 'social rule of law', in accordance with the new Article 25, para. 1 C.

3. In connection with the sections of the Report entitled 'Foreigners as bearers of human rights' (pp. 10 - 11 of the Report) and 'Prohibition of discrimination in vocational guidance-training-employment-occupation on grounds of race, sex, religious beliefs and national origin' (p. 28), we would refer to the report of 21 December of the National Commission for Human Rights on the subject of 'Main issues of racial discrimination in Greece - Proposals on the modernisation of Greek legislation and practice'.[2] The

[2] NCHR, *Report 2001*, Athens, National Printing-house, pp. 201 - 213.

main points of the NCHR report which should be taken into consideration by the Ministry of Foreign Affairs, as an inter-ministry co-ordinating organ in the present instance, and the ministries jointly competent are the following:

(a) According to the European Parliament, racism in EU countries not only continues to exist , but is taking on particularly disturbing forms in certain cases. The implementation, in particular, of new technologies (e.g., the Internet) has resulted in the appearance of a studied, complex and modern racism which requires particular attention and alertness on the part of the countries of the EU.[3] The EC, in its Report on human rights in the EU in 2000, expressed its particular concern over racist violence directed chiefly against foreign immigrants and against Roma in many countries of the EU, including Greece. This racist violence stems not only from state organs,[4] such as police forces, but also from citizens of the states of the EU.[5] Recent empirical research projects in Europe have pointed out that in Greece the 'negative disposition' of citizens towards minorities in general exceeds the relevant average in the EU. We regard this assertion as an exaggeration. In Greece, we are probably in the 'antechamber' of racism, that is, xenophobia. However, we do not regard as without foundation the assertion that in Greece there is the lowest level of agreement of citizens with the view that racial, religious and cultural variety is to the benefit of the country.[6] Nevertheless, most Greeks look for a foreign workforce, as being to their greater financial advantage.

Particularly violent acts, unprecedented for modern Greek society, on the part of Greek citizens and of public (police) organs, in the years

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[3] European Parliament, *Report on the situation as regards fundamental rights in the European Union (2000)*, final, Doc A5-0223/2001 Rev. 21.6.2001, p. 64.

[4] This is the issue of 'institutional racism'.

[5] Idem, pp. 64-65.

[6] See European Monitoring Centre on Racism and Xenophobia, *Attitudes towards minority groups in the European Union*, Vienna, March 2001, pp. 12, 25, 34, 45, and 46.

1999-2001, chiefly against foreign immigrants lawfully resident in Greece,[7] and against members of the Roma community,[8] have now made plain the need to introduce and apply new comprehensive legislation for the elimination of racial discrimination in Greece and protection from it.

(b) A basic piece of legislation on the combating of racial discrimination in Greece remains Law 927/1979 (OJHR A' 139) - of a penal character - 'Concerning the punishment of acts or actions aimed at racial discrimination', as amended by Article 24 of Law 1419/1984 (OJHR A' 28) and Article 39, para. 4 of Law 2910/2001 (OJHR A' 91). Law 927/1979 contains, and limits to three, substantive provisions by which an effort is made to classify and punish racial discrimination in Greece.

In the first article of the above (amended) law,[9] in which the lawful good of public order is protected, provision is made for penalties against those who publicly, orally, or through the press or with written texts or illustrations or by any other means, intentionally incite acts or actions which can cause discrimination, hate, or violence against a person or group of persons by reason of their racial or ethnic origin or their religion. In the second article of the same law, in which the 'honour' of the person is protected, provision is made for penalties against persons who publicly, orally or through the press or by written texts or illustrations or by any other means express ideas insulting to a person or a group of persons for the above reasons. Finally, the third provision of Article 3 of Law

[7] See, *inter alia*, the case of *Kazakos*, who in 1999 murdered two foreign immigrants and injured seven others (see *Eleftherotypia* newspaper, 13.3.2001, p. 61, 1.3.2001, p. 61). Kazakos was sentenced by the Athens Mixed Jury Court to two life sentences and 25 years imprisonment. See also the case of Tzia, where, in August 2001, three Albanian labourers werer beaten up by Greek citizens (see *Eleftherotypia*, 23 August 2001, p. 43) and the case of Loutra on Lesvos, from which, in early August 2001, 150 Albanian immigrants who were living there were 'ostracised' by the residents following a violent episode between Albanians and local people. See *Eleftherotypia*, 6.8.2001 (www.enet.gr).

[8] See Ombudsman, *Annual Report 2000*, Athens 2001, pp. 65 - 66, and European Commission against Racism and Intolerance. *Second Report on Greeceof 10 December 1999*, Strasbourg, 27.6.2000, pp. 15 - 16.

[9] For a commentary on the relevant provisions see, *inter alios*, C.T. Anthopoulos, *Προστασία κατά του Ρατσισμού και Ελευθερία της Πληροφόρησης* [Protection against racism and freedom of information], Papazisis Publications, Athens 200, pp. 125 - 151.

927/1979, in specifying the possible forms of discrimination provided for in the first article, makes provision for penalties against persons who supply goods or offer services as an occupation and refuse someone the provision of these, again for the above reasons, or make provision dependent upon a condition which relates to these reasons (racial or ethnic origin or religion).

One of the reasons for the non-implementation of this anti-racist legislation up to now has been Article 4 of Law 927/1979, which set as a condition for the activation of this law the existence of a complaint by the victims in each instance. This condition was lifted by the above provision of the law on aliens (2910/2001) and the relevant prosecution is now undertaken *proprio motu*. Here it should be noted that Law 2910/2001 contains provisions which not only conflict with rules of international human rights law, but even with the very principle of non-discrimination on 'racial grounds'.[10] A second principal reason for the defectiveness and ineffectiveness of the Greek legislation in force is its restriction to the level of penal prevention and punishment, completely overlooking the civil and public (administrative) law aspects of the matter. Thus the NCHR, in its above report, submitted to the Greek government a series of proposals on the modernisation of Greek anti-racist legislation and action, in view, moreover, of the incorporation of the relevant Directive 2000/43 EC, which must be completed in 2003.

We consider it proper to draw special attention to the voting of Law 2910/2001 and then of the improved Law 3013/2002 which constitute an important development in the efforts to regulate and improve the position of foreigners, and particularly of immigrants, in Greece.

4. In connection with the sections of the Report entitled 'Foreigners as bearers of human rights' (pp. 10 - 11 of the Report) and 'Prohibition of

[10] See, *inter alia*, Authority for the Protection of Data of a Personal Character, *Opinion No. 86/2001. 19.6.2001, Poinike Dikaiosyne* 10/2001, p. 1016, in which the rescinding of the provision of Article 54, para. 2 of Law 2910/2001, which provides for the obligation of managers of hotels, clinics, etc. to inform the police or the aliens' and immigration bureau of the arrival and departure of the foreigners whom they accommodate.

discrimination in vocational guidance-training-employment-occupation on grounds of race, sex, religious beliefs and national origin' (p. 28), as well as the sections of the Report which concern Articles 6 - 7 (pp. 14 - 41) and 11 - 12 (pp. 61 - 101) of the ICESCR, it is to be noted that Greece has not yet ratified a series of fundamental international conventions on the protection of immigrant workers, such as the ILO Conventions 97 (1945) and 143 (1975) and the International Convention of the United Nations on the Protection of the Rights and Immigrant Workers and the Members of their Families (1990), conventions which the 2nd, 3rd and 5th Sub-commissions of the NCHR has already proposed should be ratified by Greece.[11]

We would also refer to the report of the NCHR of 20.9.2001 on the 'The regime of protection of the social rights of refugees and asylum-seekers in Greece',[12] by which the NCHR put before the competent ministries a series of substantive issues in connection with the above special categories of foreigners in Greece which are in need of immediate action on the part of the State. These issues concern, *inter alia*, more specifically, the following:

(c) Reception centres for asylum-seekers:

For decades now, Greece has remained with only one, entirely inadequate, permanent state reception centre for asylum-seekers, at Lavrio, which since 1999 (Presidential Decree 266/1999, OJHR A' 217) has been subject in administrative terms to the Ministry of Health and Welfare. The law on aliens (1975/1991 - OJHR A' 184, Article 24, para. 2) provided for the setting up of other reception centres, but the relevant provision has yet to be implemented. The Lavrio centre has a maximum capacity of 300 asylum-seekers. Since late 2001, other reception centres for asylum-seekers of a smaller capacity, mainly in the Attica region, have

[11] See the relevant report of the 2nd, 3rd and 5th Sub-commissions of the NCHR, 4.7.2002 (unpublished). See also the *Athens Declaration*, 3.11.2001, para. III, NCHR *Report 2001*, *op. cit.*, pp. 335 - 336.

[12] NCHR, *Report 2001*, *op. cit.*, pp. 169 - 177.

been set up, with the support of the Ministry of Health, which collaborates for this purpose with various non-governmental organisations. However, applications for asylum between the years 1996 and 2000 fluctuated between 1,640 and 4,380, while in the year 2001, they reached 5,500. The result of this situation is that thousands of asylum-seekers remain homeless in Greece each year, forced to live in undignified conditions, in violation, *inter alia*, of Article 11, para. 1 of the ICESCR.[13] The situation, particularly in Attica, is particularly difficult for these individuals because of the fact that in practice a foreigner can expect a reply to his application for asylum only after a long period ranging from six to 18 months. Thus there is an imperative need for the setting up of other state reception centres which will ensure dignified living conditions for asylum-seekers in Greece.

(d) Work of refugees and asylum-seekers:

Greece recognised the right to work of recognised refugees in 1994. This right was also recognised later in the case of asylum-seekers and 'humanitarian refugees'[14] by Presidential Decree 189/1998. The legal regime which governs the exercise of the right to work of asylum-seekers is particularly strict. Article 4 of PD 189/1998 (OJHR A' 140) provides, in connection with asylum-seekers and 'humanitarian refugees', that these individuals "may be employed temporarily in order to meet immediate

[13] Article 11, para. 1: "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing ... ". See also Commission of the European Communities, *Proposal for a Council Directive laying down minimum standards on the reception of applicants for asylum in Member States*, COM (2001) 181 final, 3.4.2001, Article 16 (Housing).

[14] By 'humanitarian refugees' are meant, according to Article 8, para. 4 of PD 61/1999 (OJHR A' 63), which is applied in conjunction with Article 25, para. 4 of Law 1975/1991, aliens who receive from the Ministry of Public Order "approval of residence ... for humanitarian reasons [taking] into consideration particularly [the] objective impossibility of the departure or return of the refugee to his country of origin or usual residence for reasons of *force majeure* (e.g., serious reasons of health of himself or a member of his family, an international blockade on his country, civil conflict accompanied by mass violations of human rights) or the fulfilment in the person of the interested party of the conditions of the clause on *non-refoulement* of Article 3 of the UDHR ... or of the corresponding article of the Convention [of the United Nations against Torture] ...".

vital needs, on the following terms: (a) applicants for their recognition as refugees hold an 'alien asylum-seeker's card' from which it can be seen that they are not being accommodated in a special 'centre for the temporary accommodation of alien asylum-seekers' ... (c) the labour market has been investigated as to the specific occupation and no interest has been shown in it by a Greek, a citizen of the EU, a recognised refugee, or Greek expatriate".

This provision gives rise to the following serious problems: (1) Those staying at the Lavrio reception centre are excepted from the right to work. The law excepts these persons from the right to work clearly because they are being provided with board at the above centre (with Ministry of Health and Welfare financing). Nevertheless, there is no other state financial aid, a fact which forces these individuals to work on the 'black labour market'. *The law should recognise to these individuals also the right to work in accordance with Article 6, para.1 of the International Covenant on Economic, Social and Cultural Rights*.[15] (2) There is a large number of asylum-seekers in the Athens area who remain without an 'alien asylum-seeker's card', because of the malfunctioning of the appropriate service units of the Ministry of Public Order, for a number of months or even a year. These individuals have only the so-called 'in-service notes' of the Ministry of Public Order without any substantive legal or social cover. *The Ministry of Public Order should take the action required to eliminate the phenomenon of the 'in-service notes' so that all asylum-seekers in Greecewithout exception have legal and social protection.*[16]

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[15] Article 6, para.1: "The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right." See also Commission of the European Communities, Doc. COM (2001) 181 final, *op. cit.*, Article 13, para.1: "Member States shall not forbid applicants and their accompanying family members to have access to the labour market for more than six months after their application has been lodged ... ".

[16] See also in this connection para. 13 of the proposals of the 3rd Sub-commission on asylum in Greece submitted to and approved by the Plenum of the NCHR on 8 June 2001.

(d) Vocational training of refugees and asylum-seekers

Article 3 of PD 189/1998 provides that only recognised refugees may register with the training units of the Manpower Employment Agency on criteria which also apply to Greek citizens. In spite of a gap in the legislation, in practice, asylum-seekers also take part in vocational training programmes.[17] *The closing of the gap in the legislation as concerns asylum-seekers is proposed, together with the inclusion of 'humanitarian refugees', because of what is as a rule their long stay in Greece, within the field of protection of Article 3 of PD 189/1998.*[18]

(e)Financial support for refugees and asylum-seekers

The Greek authorities have never provided asylum-seekers or refugees in need of such assistance, particularly in the first stages of their stay in Greece, with financial support. Such (limited) support has been provided by Non-Governmental Organisations with the support chiefly of the UNHCR. In its 2000 Report, the UNHCR stressed that "a significant number of refugees [in Greece] live near or below the poverty limit".[19] *The institution by statute of the provision of financial aid by the Greek State to all indigent asylum-seekers and refugees, particularly in the first stages of their presence and residence in Greece is deemed necessary and proposed, in order to ensure residence in this country consistent with human dignity.*[20]

(f) Special protection of juvenile refugees and asylum-seekers

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[17] UNHCR, *Annual Report on the Protection of Refugees in Greece 2000,* Athens, March 2001, p. 12.

[18] See also Commission of the European Communities Doc. COM (2001) 181 final, *op. cit.*, Article 14 (Vocational Training): "Member States shall not forbid applicants and their accompanying family members to have access to vocational training for more than six months after their application has been lodged ... ".

[19] UNHCR, *Annual Report 2000*, *op. cit.,* p. 10.

[20] See also Commission of the European Communities, *op. cit.*, Article 17, para. 1 (Total amount of allowances or vouchers): "Member States shall ensure that the total amount of the allowances or vouchers to cover material reception conditions is sufficient to avoid applicants and their accompanying family members falling into poverty."

This is a particularly vulnerable category of refugees/asylum-seekers as to whom the Greek legislator should introduce provisions which foresee special treatment and the legal and social protection of unaccompanied under-age refugees, as stipulated, *inter alia*, by Article 4 of the Resolution of the Council of the European Union of 26 June 1997 on unaccompanied minors from third countries[21] and by Article 10 of the Proposal of the European Commission on asylum procedures.[22] The only relevant provision in Greek legislation on asylum is that of Article 1, para. 4 of PD 61/1999 and this is defective in that it simply provides for the appointment of the Public Prosecutor for Juveniles as the Special Provisional Guardian of a juvenile asylum-seeker until a final judgment is delivered on the relevant asylum application. The serious lack of state infrastructure and care for unaccompanied juvenile asylum-seekers (whose numbers increased in 2000) in Greece has also been noted by the UN High Commission for Refugees.[23] *It is essential that there should be a new, detailed, comprehensive legislative regulation of this matter, based on the above positions of the competent organs of the European Union, for the provision of full and effective protection for juvenile asylum-seekers and refugees.*[24]

5. As to the section of the Report which concerns Article 6 of the ICESCR (pp. 14 - 32), it is considered necessary to state that according to European Union (EU) statistics, Greece continues to have an

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[21] *OJ* C 221, 19.07.1997, pp. 23 -27.

[22] Proposal of the European Commission on the issuing of a Directive of the Council of the EU on the minimum specifications for the procedures by which the member-states grant and revoke the status of refugee, Doc. 500PC0578, 03.11.2000. See also relevant special paras 213-219 of the *Handbook of the High Commission of the United Nations on Refugees as to the Procedure and Criteria for Determination of the Status of Refugees*, Geneva 1979.

[23] See UNHCR, *Annual Report 2000, op. cit.*, p. 15.

[24] See also European Union, *Annual Report on Human Rights - 2000,* Doc. 11317/00, DG E IV, p. 20, and Commission of the European Communities, *op. cit.*, Article 25 (Unaccompanied minors).

unemployment index higher than the mean for the EU (in 2000, it was 11.1% as compared with the European average of 8.2%), which, of course, has a particular effect on women and young people.[25] In 2001, Greece had the lowest employment index in the EU (55.6%), together with Italy (54.5%).[26] Also, in the same section of the Report, on individuals with special needs (p. 21) there should be a special reference to the new (2001) provision of Article 21, para. 6 of the Constitution, according to which "individuals with disabilitiesd have a right to enjoy measures which safeguard their autonomy, social inclusion and participation in the social, economic, and political life of the Country".

We consider that it would also be useful to note two actions indicative of the intentions of Greece for the realisation of the protection of social rights. More specifically, Greece has hastened to ratify the ILO Convention on the prohibition of the worst forms of children's labour (Law 2918/2001). It has also ratified the additional Protocol of the European Social Charter of the Council of Europe (Law 2595/1998), which provides a mechanism for collective reports for the denunciation of the violation of the social rights protected by this Charter.

6. In connection with Articles 7 - 8 of the ICESCR (pp. 33 - 41 and pp. 42 - 48 of the Report), it is thought desirable that there should be a special reference to the Resolution of 4 July 2002 of the NCHR on the issue of temporary employment (leasing of employees) and the specific issues which have arisen from the implementation of this institution in Greece. The chief points of the above Resolution of the NCHR are as follows:

"I. This form of employment finds many individual expressions, its chief characteristic being the effective involvement of more than one employer, over and above the two parties to the labour relation. These are

[25] European Commission, Employment and Social Affairs, *Joint Report on Social Inclusion*, Luxembourg 2002, p. 104.

[26] Eurostat, *News Release - Labour force survey*, No. 101/2002 - 29.8.2002.

cases of the sub-division of the capacity of employer, as is also the case with contracts for the assigning of an employee between enterprises as an indication of solidarity between them - a frequent practice in groups of businesses.

One particular form of flexibility is the loaning of personnel as a business, through temporary employment agencies which are engaged in profit-making activity.

This form of employment started to be practised in Greece in the last 20 years, in spite of the fact that there was no specific legal regulation to provide for it and despite the express opposition of the labour unions, which regarded it as a modern form of slave-trading.

Law 2956/2001, Articles 20, 21, 22, 23, 24, 25, and 26 legalised and regulated this form of employment, through the introduction of 'temporary employment companies'. 'Temporary employment companies', according to the law, engage personnel on their own account and cede them for a fee for a certain period to other enterprises to meet their temporary needs. In this way, they relieve them of the time-consuming process of the search 'without guarantees' for staff. This is a contract for the supply of personnel whose more classic expression is loaning as a business.

Personnel temporarily loaned do not enter into a contract with the borrowing enterprise (the indirect employer), although the latter, in effect, exercises the right of directing them for the period that they are employed with it. As to the formula 'direct employer', with whom the staff who are to be leased sign a written employment contract for a set or indefinite period, this is considered to be the leasing 'temporary employment company'.

In spite of the guarantees which are given by relevant articles of Law 2956/2001 as to the labour, insurance, and trade union rights of the personnel leased, in practice these are an impossibility because of the weaknesses of the state monitoring mechanisms (Institute of Labour Inspectors), but above all because of the nature of this form of employment, which does not allow scope to the personnel leased, because

of their absolute dependence on the 'indirect employer', to claim their lawful rights.

In practice, the leased employees, because of the direct and constant threat of termination of their lease, are not able to negotiate with their employers ('direct' or 'indirect'), do not join trade unions, do not even receive the whole of the lawful day's wage stipulated, do not enjoy the protection of Labour Law, work on much worse terms than the permanent employees of the 'indirect employer', in violation of the constitutional principle of equal treatment, and in most cases are not insured, as has been proved by checks carried out by labour inspectors and IKA (Social Security Foundation) auditors.

The 'direct' employer selects, on the basis of the management of their personal data, which is collected immediately on their engagement, which of his employees to be leased, when and to what enterprises he will send on loan. The dismissal of an employee loaned in this way is now called termination of the lease and his/her 'direct employer' can transfer him/her from one 'indirect employer' to another, perhaps with worse remuneration and working conditions, without a unilateral change for the worse for the employee being able to be presumed.

In paragraph 1 of Article 22 of the law in question provision is made for temporary employment companies to engage employees for leasing not only on contracts of an indefinite duration but also on contracts for a set period. The direct employer, by making use of this possibility, engages employees for leasing on contracts for a set period and, by the threat of non-renewal of these contracts on their expiry, is able to blackmail the leased employees to accept during the term of their job with the indirect employer violations of their rights and the circumvention of labour legislation.

There is no regulation in the law in question to the effect that in the event of the concurrence of collective labour agreements which have force for the staff of the indirect employer, the principle of the most favourable regulation will apply to the employees loaned to him.

Nor is there any provision in the law in question for those employed for leasing with temporary employment companies to be able to form their own special unions or branch federations. Thus, however, they are not able to exercise the rights provided by the Constitution to engage in trade union activity, because usually their joining the unions which cover those premanently employed with the indirect employer is precluded, either because of the high-handedness of the employer and a threat of their being blacklisted, with a danger that their contract will not be renewed, or because of prohibitions which stem from the articles of these unions themselves, which allow membership only for those permanently employed with the indirect employer.

Nor is there any provision in the law in question for leased employees to enjoy from the indirect employer the whole of the employment status which has force in his enterprise for those permanently employed in it and stems not only from collective labour agreements but also from job regulations or from business customs.

II. It will be clear from the above that, in essence, the 'business activity' of 'temporary employment companies' operates counter to basic human rights which stem from Article 23, and arguably from Article 4, of the Universal Declaration of Human Rights.

This form of employment is a blatant affront to the personality of the employees who are leased in each instance and is contrary to Articles 2, para. 1 and 22 of the Greek Constitution on the protection of the personality and of labour, so that a question arises in connection with the unconstitutionality of the articles dealing with the leasing of employees of the recently voted Law 2956/2001.

III. On these grounds, we would propose to the competent state agencies that they should take into account the following assessments - proposals:

(a). There is a need for a re-examination of the desirability of the existence of the institution of leasing of employees in Greece, because, of its very nature, and as can be seen from its implementation in this

country, as well as from recent research carried out at a Pan-European level by the European Institution for Occupational Safety and Health, which has its headquarters in Dublin, it does not make it possible for the leased employees to claim their lawful rights. The leased employees, because of the double nature of their employment, are the most vulnerable to the circumvention of labour legislation.. The constitutionality of the provisions of Law 2956/2001 in relation to the regulations of Articles 2, para. 1, and 22 of the Greek Constitution is even called into question, as is their compatibility with modern international human rights law, more specifically, Articles 4 and 23 of the Universal Declaration of Human Rights. A serious examination should also be undertaken by the National Personal Data Commission of the grave issues which arise because of the unaccountable and uncontrolled handling of personal data of the employees ('management of employment profile') by the 'direct' employers, that is, by the temporary employment companies.

(b) The possibility of effective monitoring by the Institute of Labour Inspectors (ILI) of the more general implementation of labour legislation by the employers should be ensured. In order for this to happen, the following changes in the functioning and action of the Institute of Labour Inspectors should be ensured and established by the Ministry of Labour, even by the amendment, if needed, of Law 2639/1998:

* Full and substantive staffing of the ILI with specialist personnel, to meet effectively the needs of the whole of Greek territory.

* Guarantees of the independence of the labour inspectors in relation to any change of government or outside influence, with a view to ensuring the fairness of their action in verifying denunciations or of their *proprio motu* interventions.

* Legislative provision for substantive collaboration of the ILI with other state services and with the relevant trade union organisations where and when this is required for them to succeed in their aims.

* Entrusting to the ILI of pre-judicial examining duties and powers for the effective exercise of its competences.

* An obligation on the employer or his representative to put in an appearance on the summons of the inspector, with provision for an administrative and penal sanction in the event of refusal, as well as the possibility of his forcible presentation in instances of the disturbance of the climate of labour relations for which the employer is responsible.

* Provision for satisfactory financial compensation of the labour inspectors in line with the independent form of the ILI for the constant state of readiness required of them for what are often necessary interventions outside working hours.

7. In connection with Articles 11, 12, 13, 14, and 15 ICESCR (pp. 61 *et seq.*), it should be noted that the 'poverty index' in Greece remains at particularly high levels within the context of the European Union: 18.4% in 1994 and 17.3% in 1999.[27] Furthermore, Greece, in terms of the EU, occupies the lowest place for state expenditure on public education, public health, and social welfare.[28] As concerns health more particularly, it is thought desirable to point out also that in Greece, in the late 1990s, private expenditure on health rose excessively, a fact especially unfavourable for economically weaker citizens. More specifically, in the years 1998 - 1999, the average monthly expenditure on health of Greek households was 32,132 drachmas, whereas in the years 1993 - 1994 it had been 16,433 drs.[29] These are data which must be taken into account for the necessary objective presentation of the realities of life in Greece.

8. Also judged necessary in the present context is some special account of the existing immediate need for the provision of social welfare to gypsies (Roma) in Greece, as a particularly vulnerable group in society.

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[27] European Commission, Employment and Social Affairs, *Joint Report on Social Inclusion*, Luxembourg 2002, p. 104.

[28] See in this connection EU statistics in M. Drettakis, 'Οταν μιλούν οι αριθμοί - Παιδεία, Υγεία, Κοινωνική Προστασία' [When the figures speak - Education, Health, Social Welfare], *Eleftherotypia* newspaper, 10.8.2001, p. 9.

[29] See relevant statistics of the National Statistical Service, *To Vima* newspaper, 29.4.2001, A41.

For this reason we would refer to the NCHR's report of 29.11.2001 on the situation of the Roma in Greece,[30] the main points of which in need of stressing are as follows:

(g) The ekistic problem

The ekistic problem is recognised by all sides involved as the most pivotal for the Roma. It is a fact that residence in a permanent, known home is linked with the capability of the citizen of enjoying certain rights and with the possibility of the state or of private citizens engaging in lawful transactions with that individual. The nomadic life of the Roma and their residence in illegal camps on the boundaries of municipalities (without any of their family necessarily being resident within them) operates as a brake on their social integration. In 1999, the Public Enterprise for Urban Planning and Housing (EUPH) compiled and delivered the first and only comprehensive study[31] to record the places of residence of the Roma communities and the housing needs of the Roma throughout Greece. The study was adopted by the state, the Roma organisations, and the 'ROM' inter-municipality network.

According to this study, living conditions in the encampments are wretched on any criteria. The Roma live in huts, among garbage, without running water, toilets, electric light, at the mercy of weather conditions and epidemics. Thus gypsy encampments are sources of infection and criminality, so that the non-Roma citizens consider the presence of the Roma a disgrace and degradation for their area and attempt on any pretext to drive them out. However, considerations of impartiality require that it should be noted that the Roma have a great capacity for adaptation to civilised conditions of a life other than the nomadic life to which they have been accustomed for long centuries. For example, there are not a few instances where instead of living in apartments which the state has

[30] NCHR, *Report 2001*, *op. cit.*, pp. 181 - 197.

[31] Department for Research of the Urban Planning and Housing Public Enterprise on behalf of the Ministry of the Environment, Spatial Planning and Public Works, Study for a draft programme to deal with the immediate ekistic problems of the Greek Roma, 1999.

provided for them, Roma prefer to live in tents or huts which they have set up themselves in front of their built houses. In addition, they often refuse to register their new-born childen with the local registry so that later they do not have to send them to school or the army. However, it is a certain fact that the parents of Greek children do not wish them to mix at school with Roma children.

It is also a fact that on the occasion of the Olympic Games, the expulsion of the Roma has been organised in many regions. The local communities invoke (very often falsely) the need to construct sports facilities in order to drive out the Roma, as was the case in Mexico in 1968. The President of the special commission for the Roma with the Council of Europe, Josephine Verspaaget, on a recent visit (June 2001), denounced, as did the Ombudsman, the unlawful conditions under which the tents were destroyed and the tent-dwellers of Aspropyrgos were driven out by reason of Olympic projects.

It is, furthermore, a fact that the Roma often, having no alternative, illegally occupy municipal or private land in order to set up their rough-and-ready settlements, a practice which leads to the exacerbation of conflicts, the spread of racist arguments, and the perpetuation of the social problem of the co-existence of the Roma with the rest of the citizens. The case of the 42 Roma families at Halandri who illegally occupied private land, with the result that the local community turned against them, is typical.

The intervention of the state: The competent Greek authorities - in spite of their constitutional obligation, and in spite of the fact that Greece has signed the Convention on the elimination of all forms of racism - have been exceptionally slow in dealing with the problem of the Roma. Moreover, Greek public opinion, because of a total lack of sensitisation, has never exerted pressure in the direction of an overall solution of the problem. Thus, it was only in 1996 that the government announced a programme for improving the living conditions of the Roma and for promoting their inclusion in society. The inter-ministerial committee

which shapes national policy on the Roma is now concerned with this subject. By a decision of this committee, a six-year action plan has been formulated.[32]

In the field of housing, the declared aim is that all Greek Roma should be housed within three years by the provision of prefabricated houses on organised sites, and by the provision of building plots and housing loans, and of ready-built homes. The bureau of the Prime Minister for the quality of life has concerned itself with the problem of the Roma by taking part in the programme for the construction of an organised self-administrating settlement at the Gonos camp and the planning of other such settlements on Rhodes, at Ano Liosia, at Halandri, and at Nea Alikarnassos, Crete. In November 1999, the ROMEUROPE programme adopted in full the proposal for a law of self-administrating settlements for Roma throughout the European Union. But by 2000, very little had been done - apart from the EUPH study mentioned above - and only 1,250 prefabricated homes had been made available.

Conclusion: For there to be some possibility of the Roma being integrated in a natural manner into the social fabric, the conditions in which they live must first be humanised:

1. Those without should acquire dignified housing within new self-administrating settlements in accordance with the programme of the Prefecture of Thessaloniki in collaboration with the Roma organisations, the Bureau of the Prime Minister for the Quality of Life, and NGOs for the housing of Roma who were living on the bed of the Gallikos river. The settlements must have planned plots, a water supply, an electricity supply, drainage, access to urban transport and schools, a doctor's surgery, and places of worship. Also necessary is the mobilisation and active participation of the Roma themselves for the self-management of

[32] For education 10 bn drs has been budgeted, for vocational training - employment 15 - 20 bn drs. All the remaining fields (health, sport, etc.) will absorb around 10 - 15 bn drs. Total Budget for the six years = 105 bn drs.

the settlements through a management council and internal operation regulations.

2. There should be urban planning improvements made in the existing Roma neighbourhoods.

3. Prefabricated houses, or loans to those Roma who have a plot of land, but are not familiar with banking bureaucracy, should be given by simplified procedures.

4. Houses should be leased by municipalities to house Roma families.

5. Reception areas on the lines of organised camping sites should be created for those involved in seasonal migrations for employment reasons and who live in wretched conditions during the course of their movements, as they have no other option.

6. In the agreed opinion of all sides involved, there should be, apart from the municipalities, which are the principal agencies in the implementation of housing programmes, the possibility of central state monitoring and intervention for the solution of problems or the expediting of procedures.

(h) The state of health of the Roma

The state of health of the population, particularly of the tent-dwellers, is precarious, because of its very poor living conditions, and because of the spreading use of narcotic substances. According to research by Doctors of the World in 1999, in some communities of tent-dwellers up to 99% were infected with the hepatitis-A virus, while 50% had been exposed to that of hepatitis-B. A report of the Prime Minister's Bureau for the Quality of Life states that there are medical and social support units only at the Gonos settlements and the Municipality of Karditsa. The rest of the programme (of a cost of 4.5 bn. drs) is still at the stage of organisation.

Of the Roma, 77% are entirely without insurance. The only medical treatment which they have is that for those without means, that is, they can resort to public hospitals - where they are not welcome, nor are they

treated like the rest of the patients. However, even the certificate of poverty is difficult to obtain. In these cases, the hospitals demand some fees, which they attempt to secure by withholding the identity cards of the Roma. The result is that even those Roma who possess them are deprived of the identity card which is necessary for their transactions.

(i) The education problem

School attendance by Roma - apart from the fact that it is not within their traditional code of values - is exceptionally vulnerable to external factors such as migration, economic problems which lead to child labour, distance from the school, the phenomenon of racism in schools, lack of suitable and permanent housing, etc. It is, then, a fact that the manner in which the Roma are compelled to live is hostile in the extreme to the school, and so some 60% of their total population are completely illiterate. This fact in itself is enough to perpetuate the socio-economic exclusion of the Roma. The relevant research has recorded a peculiarity here: frequently the Roma interpret their relation with the school as the product of choice, but it has nowhere been shown that the Roma do not attend school in order to preserve their individual cultural identity. In reality, access to education is particularly difficult for the Roma, and so, consequently, is their future social and economic integration.

The intervention of the state: Education is an area where the state took action initially with a view to including Roma children in the central education system. A programme for the eduaction of Roma children began to be implemented through the department for cross-cultural education as of May 1997; it is intended that this will be continued within the framework of the Third Community Support Framework (CSF) until 2006.[33]

So far: (a) some teachers have undergone in-service training with specially designed educational material (in the following fields: language,

[33] The programme is being implemented at the University of Ioannina (Pedagogics Section) with A. Gotovos, Professor of Paedagogics, in charge, and includes a network of local associates in 30 regions of the country with high concentrations of Roma populations.

geography, history, health education, the natural world, new technologies, mathematics, cultural assets of the family and the community) for pilot implementation in schools attended by Roma children, and with support from the Second and Third CSF; (b) A card for pupils who travel from place to place has been introduced. According to Ministry of Education data, 2,500 cards have been issued, with the result that the numbers of Roma pupils continuing to attend schools have risen proportionately. According to these statistics, the percentage of loss has been reduced from 75% in 1997 (chiefly in elementary education) to 24% today, and continues to fall. The programme is continuing through the Third CSF, with a provision of 7.5 bn drs within the next six years. The education of adult Roma forms part of the programme.

However, attention should be called to the fact that so far no administrative measure has been taken to avert the incidents of exclusion from education, because the strategy of the programme in the first phase of implementation was the avoidance of conflict.

Conclusion: The education of the younger generation of Roma (and of illiterate Roma of any age who so desire) must be the subject of careful attention, because it is the key which will open the doors of society and of the economy to this marginalised group. Always bearing in mind that the problem of the education of the younger generation of Roma is directly bound up with the solution of the ekistic problem of their family, effective intervention measures within and outside the school should be sought immediately so that education as an institution has some meaning also for this extremely disadvantaged category of Greek citizens. That is to say, the adverse correlations of factors which keep the Roma from school must be reversed.

(j) The problem of employment

The inclusion of the Roma in the lawful labour market is now entirely bound up with education. It is indicative that there are no Roma in the professions, or in general with a higher education - or even in the services sector. Those who are employed in agriculture are in an

unfavourable position since economic immigrants are forced to work for even lower wages and 'take their jobs'. Those employed in open-air trading (street markets) have a problem of legality because they ignore the procedures for obtaining a licence, though this is not difficult to obtain - unlike the licence for an itinerant vendor, which has proved more inaccessible.34

With the present very unfavourable situation in education, only 40% of the Roma have a job which earns them a living, and this is linked to the 'para-market', without viable prospects. The remaining 60% of the Roma are unemployed, pensioners, engaged in housework, etc. Their exclusion from the labour market, however, has chain reactions on their life as a whole, given that it not only condemns them to poverty but increasingly pushes them into criminality, and particularly into dealing in narcotics. The result is a dramatic deterioration in their health and in their relation with other Greeks and with the authorities. It should be stressed that Roma women are in an even more unfavourable position, since they are totally absent from the labour market.

The intervention of the state: The state does not seem to be intervening effectively in dealing with this tragic problem. In the field of vocational training and employment, certain European or mixed training programmes have been put into effect in traditional and in non-traditional occupations (plumbers, motor mechanics, etc.). The problem is that they involve very small numbers (around 1,300 individuals).

Conclusion: Apart from the most basic condition, which is their inclusion in the educational system and in vocational training programmes, personnel should be trained to understand the particularities of the Roma so that they can help them to find alternative fields of employment. Vocational orientation (or re-orientation) programmes should be realistic, and should be based on studies of the

[34] In spite of this, the Public Financial Services offices agree to register Roma peddlers and then tax them on objective criteria. All this angers the Roma and pushes them into illegal activity.

labour market and data concerning the Roma. Information centres for the Roma should be set up - or the existing ones made use of - in every municipality, in order to support the business enterprise of the Roma in a variety of ways. In the interests of social justice, the adoption of positive measures, such as a certain quota in engagements of Roma in the public sector, is indicated.

(k) The civil and municipal problems of the Roma

It should be stressed here that the Roma, because of the way in which they are forced to survive, very frequently have considerable 'unfinished business' as citizens of the municipalities and of the state. According to the ROM - Ministry of Labour and Social Security network survey mentioned above, 5.5% of respondents had not been registered at the births and deaths registry, 10% had no identity card or other equivalent certification, 25% of those entitled because of their age had no elector's booklet, and approximately 50% had not been entered on the municipal registers. These facts exacerbate in their turn or refuel all the rest of the problems of the Roma by impeding their solution. An unregistered child (or the child of unregistered parents) cannot, for example, be enrolled at school. An unregistered citizen quite simply does not exist for the state. The municipal authorities, on the other hand, exploit the problem of illiteracy and the lack of familiarity of the Roma with bureaucracy and make no attempt to facilitate the process of their legitimation. Thus they are able to get rid of them more easily, since they are not even citizens of their municipality. This is a vicious circle which maximises the conviction of the Roma that the Greek state is hostile towards them. The younger generation has realised the importance of legitimation and regularises outstanding issues of this type.

Conclusion: A very basic condition for the integration of the Roma is the solution by every possible means of their civil and municipal pending obligations, which weaken any hope of normalisation and co-existence with society.

9. As concerns more particularly the victims of human trafficking in Greece and the protection of their physical and mental health and their social integration (Article 12, ICESCR, pp. 83 - 106 o the Report), we would point out that the draft law on 'the combating of human trafficking and assistance to the victims of crimes of the economic exploitation of sexual life' has been tabled for voting in the Greek Parliament. Today in Greece there are only penal laws - moreover, as a rule, not implemented in practice - which provide for the protection of the victims of trafficking by the punishment of the guilty, but there is no law providing substantive social protection for these victims. The victims, in most cases foreign women without a residence permit or those brought here by means of fraudulent promises of finding work and then forced into prostitution, themselves, are, when they are identified, arrested, held, and expelled without being provided with any legal, psychological, medical, or material support. The recent Law 2910/2001 on the entry and residence of aliens in Greek territory (amended by Law 3013/2002) made no provision for the protection of foreigners who are in the country illegally and are victims of trafficking. Only in Article 44, para. 7 is it laid down that the expulsion of aliens who are in the country illegally and denounce acts of coercion into prostitution may be postponed until an irrevocable judgment is issued on the acts denounced. That is to say, for the victim of trafficking to avoid expulsion, he/she must him/herself, in spite of the psychological and physical violence to which he/she is subjected on an everyday basis, bear the burden and the very serious risks of denouncing his/her traffickers, without specifically enjoying any measure of protection or support. In other words, he/she must consciously worsen his/her already unenviable position by denouncing his/her traffickers. This provision would seem not to take reality into account.

Consequently, the attempt to fill the legislative lacuna by the above draft law with a view to the self-contained combating of human trafficking, protection from this activity and every kind of exploitation of sexual life, and the provision of support to the victims is to be seen as

positive, as has already been noted in the NCHR report (28 February 2002). The NCHR has proposed significant improvements, most of which were adopted in the final draft law which was tabled in the Greek Parliament. Nevertheless, up to the present, important provisions, such as the punishment of the authorities responsible for the arrest of the guilty when they neglect their duties, and, moreover, if they do this systematically and share in the profits of the those guilty of this crime, have not been adopted. We have also recommended a more specific reference to social support measures for the victims, which should not be left entirely to regulation by a future Presidential Decree.

10. In connection with education (Article 13, ICESCR, pp. 107 - 117 of the Report), this in practice presents serious problems in Greece. Almost all students in secondary education attend 'para-education' institutions (the so-called *phronistiria*) where the parents pay high tuition fees, while the childen are burdened with lessons in the morning and evening with the consequent effects on their physical and psychological development. Furthermore, the children of wealthy parents attend private and not state schools. These two facts mean in effect that the provision of the Constitution on free education (Article 16, para. 4) has to a large degree lost its force.

Furthermore, it is thought desirable that particular emphasis and space should be given to the important programme for the education of Muslim children (pp. 114 - 115 of the Report). In connection with Article 13, para. 3 ICESCR (p. 117 of the Report), we would note that in two judgments of the European Human Rights Court (*Valsami, Efstratiou*, 1996), it was held that Greece had not violated the right of parents to respect for their philosophical and religious convictions in the education of their children, while in Decision 77A/25.6.2002, the Authority for the Protection of Data of a Personal Character (Law 2472/1997) judged that the recording of the religion on primary and secondary school leaving certificates is contrary to the right of parents to respect for their

philosophical and religious convictions in the education of their children, and called for its omission from the relevant documents.

Finally, in connection with Article 13, para. 4 ICESCR (p. 117 of the Report), we would note that in a judgment of the European Human Rights Court (*Doukas Schools and Moraïtis School*, 1999), it was held that Greece had not infringed the freedom of legal persons to set up and direct educational institutions and that the education provided is in accordance with the minimum limits and standards set by the state.

11. In relation to the cultural issues of Article 15 ICESCR (pp. 119 *et seq*. of the Report), we think it desirable to point out that the private channels on contemporary Greek television not infrequently project spectacles with models of violence and sexual crudity which work against the activation of the intellectual and spiritual development of childen and adolescents. Given that children today, as has already been pointed out, are excessively wearied by a multiplicity of lessons at school and *phrontistirio*, passive watching, and, consequently, absorption and tolerance of these models projected by television has its inevitable consequence. In other words, television (with the exception of the state channels) contributes effectively to cultural decline and to the reinforcement of models of the violent resolution of any disputes between people and of the vulgarisation of sexual relations. This means that the provisions of the Constitution (Article 15) as amended in 2001, on the responsibility of the state for the quality of television (and radio) programmes in practice is not implemented effectively.

The special problems of the protection of human rights in Greece which are created by the media, and particularly by television news programmes, were pointed out by a recent NCHR report commissioned by the Fourth Sub-Commission of the NCHR (Sub-Commission for the Promotion of Human Rights) from the Communications and Mass Media Department of the University of Athens. The research and the report (February 2002) demonstrated that the Greek television stations contribute to the promotion of stereotypes and mechanisms of

discrimination against specific goups of the population over issues which concern racial or national origin, religion, gender, or sexual orientation.

In conclusion, in relation to Article 15 ICESCR and the protection of the cultural heritage (p. 140 of the Report), we would note that the recent Law 3028/2002 on the 'Protection of Antiquities and the Cultural Heritage in general', which contains special provisions on intangible cultural goods, is not mentioned in the report.

26 September 2002