

HELLENIC REPUBLIC
GREEK NATIONAL COMMISSION FOR HUMAN RIGHTS

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The Greek National Commission for Human Rights (GNCHR), an independent advisory body to the Greek State for the protection of Human Rights, was greatly surprised at the procedure that was followed for the voting, and finally the withdrawal of Article 19, as a whole, from the Bill “Immigration and Social Inclusion Code”.

Article 19 of the above bill provided for the *“granting and renewal of residence permits on humanitarian grounds”*, in compliance with requirements of the Greek Constitution and international and European law. Among the persons for whom a residence permit on humanitarian grounds was provided, were *third country nationals who were victims of and essential witnesses for felonies and other serious criminal or racist acts, where a criminal prosecution had started for these acts and until a final court decision was given*.

While the Code was discussed in Parliament, an amendment to Article 19 was introduced, which reads as follows: *“if a public official is falsely accused of any of the above crimes and the falsity of the accusation is presumed by a preliminary investigation, following which proceedings are withdrawn, the complainant shall be judged for the offences set out in the eleventh chapter of the Penal Code [perjury, false accusation etc.] by the procedure applying to flagrant crimes. In such cases, deportation may be imposed as a secondary penalty; otherwise, the administrative deportation proceedings shall apply”*.

This amendment **is violating fundamental human rights**, especially the presumption of innocence and the rights of access to justice and to equal penal treatment. In particular:

➤ ***It is reversing the presumption of innocence*** to the detriment of *victims and essential witnesses of felonies and other serious criminal or racist acts*. Indeed, following the mere withdrawal of criminal proceedings by the Public Prosecutor, a ***presumption of guilt*** of the complainant is created by virtue of the law, in breach of the Constitution and Articles 6 of the European Convention for Human Rights (ECHR) and 48 of the EU Charter of Fundamental Rights (the EU Charter).

➤ ***It is requiring the bringing of criminal charges and the referral before a court*** (*“the complainant shall be judged”*), irrespective of the existence of sufficient indications that the complainant committed the above offences, in breach of the above supra-legislative rules.

➤ It is introducing an ***exception*** to Article 74 of the Penal Code currently in effect as this article was replaced by Article 23 of Act 4055/2012 in compliance with requirements of the Constitution and EU law (see the introductory report to the bill which became Act 4055/2012). Indeed, while Article 74 of the Penal Code, in its previous version, allowed deportation by virtue of judicial decision in case of condemnation to either incarceration or imprisonment, ***Article 74 currently in effect allows deportation only of persons sentenced to incarceration, i.e. only of those found guilty of felony***. However, the offences set out in the eleventh chapter of the Penal Code, to which the amendment refers, are misdemeanours, for which the Penal Code does not allow deportation. The amendment is thus introducing ***unfavourable penal treatment of foreigners who are entitled to special protection***, while at the same time ***hampering their access to justice***, in breach of the Constitution, Articles 6, 13 and 14 of the ECHR, 20, 47 and 48 of the EU Charter and Directive 2008/115/EC.

Due to strong reactions, Article 19, as a whole, together with the above amendment, was withdrawn. The GNCHR considers that ***Article 19 must be reintroduced, without the amendment***. This is also particularly important ***in view of the repeated condemnations of Greece by the European Court of Human Rights for degrading treatment of migrants by persons acting in an official capacity*** and inadequate investigation of related complaints.

Moreover, protection from the offences set out in the eleventh chapter of the Penal Code is fully ensured by the Penal Code while the rights of all persons involved are guaranteed.