**HELLENIC REPUBLIC**

**GREEK NATIONAL COMMISSION FOR HUMAN RIGHTS**

Neofytou Vamva 6 (3rd floor), GR 106 74 Athens, Greece, Tel: +30 210 7233221-2;
fax: +30 210 7233217; e-mail: info@nchr.gr, website: www.nchr.gr

# Comments on Bill titled "Amendments to the Penal Code and the Code of Penal Procedure and Other Provisions for the Protection of Citizens from Criminal Acts of Organized Criminal Groups"

In accordance with Article 1, para. 6 (b) of Law 2667/98, which set it up, the National Commission for Human Rights (NCHR) has taken cognisance of and has examined the draft law (and the relevant explanatory memorandum) of the Ministry of Justice entitled: 'Amendment of provisions of the Penal Code and the Code of Penal Procedure and other provisions on the protection of the citizen from indictable offences of criminal organisations'.

After taking into consideration the relevant text of observations of Messrs N. Frangakis (Vice-President of the NCHR) and G. Ktistakis (Legal Officer of the NCHR), and the text of observations of the Union of Greek Criminologists, and following two sessions of the Plenum, the NCHR has formulated the following views:

To begin with, the regulation of the scourge of organised crime, which is, as a rule, international in nature, has been considered necessary in recent years at an international level. With illegitimate profiteering as its main motivation, it has created very extensive dangers of victimisation of members of society, since, on the one hand, it is directed against persons with whom the culprits are not in any kind of conflict, while, on the other, they use systematically in an organised manner all the modern

technological methods to increase the 'turnover' of the business, that is, of its victims.

For this reason, after long preparatory work, the adoption of the international convention against organised crime was greeted with relief. The issue of terrorism, on which a special international convention is in the course of preparation, is different; this has already run into trouble with the definition of its object. This fact is due largely to a difference of political approaches. That is to say, certain views seek to place outside the circle of terrorist organisations organised criminal activities engaged in by state secret services, whereas these are the most serious and most dangerous (for example, the case of the violent overthrow of Allende in Chile and the imposition of a terrorist dictatorship). Others maintain that organised liberation struggles which employ violence cannot be regarded as terrorist organisations.

The NCHR, after a long debate as to the draft law in question concerning both profiteering and terrorist organisations, has arrived at the following:

**On Article 1**

1. Terrorist organisations are included in the field of application of the draft law. This is not clearly evident from the text of the draft law, but only from the explanatory memorandum.

2. Among the features of the crime of Article 187 of the Penal Code, it has been considered correct that the aim of gain (organisations with common organised crime as their objective) or political motives (certain terrorist acts), as well as the participation of at least three persons in the criminal organisation should be included.

3. A simple description of the crimes subject to Article 187, para. 1 is not sufficient; there should be an express reference to the articles of the Penal Code which provide for them.

4. It is considered desirable that for the constitution of the offence of Article 187, para. 1, the element of the principle of the committing of one of the crimes cited by the article, or at least preparatory acts should be added.

5. Misdemeanours have no place in Article 187, chiefly because it is not considered correct that 'breaches' should be made in the provisions of the Code of Penal Procedure safeguarding the rights of the accused except in cases of felonies.

**On Article 2**

6. In paragraph 3 of the new Article 187A, instead of the wording "*to abstain with finality from the criminal prosecution*", "*to abstain temporarily from the criminal prosecution*" should be included, and the sentence "*Discharge from prosecution will be final if the truth of his denunciations is confirmed in non-appealable proceedings*" should be added. The reasons are obvious.

**On Article 3**

7. The phrase "*shall guide him*" in Article 272, para. 2 of the Penal Code should be replaced by the more accurate "shall assist him".

**On Article 4**

8. The competence of the 'Mixed' Jury Courts for felonies and political crimes is - according to the Constitution (Article 97, paras 1 and 2) - the rule. It is significant that during the recent revision of the Constitution, the specific provisions were not amended. The explanatory memorandum betrays distrust of jurors. Nevertheless, court practice tends to militate in favour of a preference for 'Mixed' Jury Courts. Furthermore, the exclusion of lay jurors from the hearing of grave and rapidly

developing modern forms of organised criminality, which, moreover, is to the detriment of an indefinite, but certainly large, number of victims, that is, it raises a danger of the victimisation of a much greater number of members of society than isolated common crimes, justifies the participation of lay jurors in their hearing. Furthermore, the exclusion of the latter is in conflict with the contemporary trend towards the promotion of 'civil society'.

**On Article 5**

9. It is desirable that the investigation of paragraph 1 of the new Article 253A of the Code of Penal Procedure, added by article 5 of the draft Law, should be supervised by a judicial functionary.

10. We propose that the following sub-paragraph be added to paragraph 4 of the same article: "*The material which has been gathered following the examination of para. 1, sub-para. (a) shall not be regarded as sufficient for the conviction of the accused without the existence of other evidence.*"

**On Article 6**

11. Because it believes that genetic material is much more replete with information than a single fingerprint and the dangers which may arise from the building up of a systematic archive of citizens are enormous, the NCHR proposes that the preclusion of the creation of an archive should be clearly stipulated in this article. For this reason, there should be express provision to the effect that the genetic material of the accused and the relevant data are to be destroyed without fail after the relevant trial - whether the accused is acquitted or convicted - the creation of archives, which would conflict with the provisions of Law 2472/97, being prohibited.

**On Article 8**

12. First of all, it is appropriate that serious sanctions of an economic nature should be imposed on legal persons and enterprises which derive financial benefits from organised crime, since unlawful profit, which is often enormous, is their aim. However, it would be right for there to be provision for harsher treatment if there is knowledge on their part of the origin of the benefit and lighter treatment if there is negligence. In the latter case, it would be clearer for the words "ought to have known" to be replaced with the term "negligence".

13. Because of its nature and its gravity, this sanction has, in effect, a penal character and it is not permissible for it only to fall within the competence of the head of the relevant Directorate of the Corps for the Prosecution of Financial Crime. On this point the case law of the European Human Rights Court is consistent. Consequently, the imposition of penal sanctions should take place with the guarantees of the holding of a criminal trial.

**On Article 9**

14. First of all, it is right that there should be special protection for prosecution witnesses against members of a criminal organisation because of the high risks even to their lives. Nevertheless, the revelation of the full particulars of the witness may be ordered, on certain terms. Briefly put, the examination of the witness should take into account the risks which he/she faces in the specific case, and in the light of the guarantees for the accused of Article 6, para. 3 (d) of the European Human Rights Convention, as construed particularly in the case of *Van Mechelen v. the Netherlands* (1997) by the European Court of Human Rights.

3 May 2001