

HELLENIC REPUBLIC

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Submission by

the Greek National Commission for Human Rights (GNCHR)

to the

UN Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Professor Juan Pablo Bohoslavsky

Guidance on human rights impact assessments for economic reform policies

July 2017

The Greek National Commission for Human Rights (GNCHR) is the independent advisory body to the Greek State on matters pertaining to human rights protection. It was established by Law 2667/1998 in accordance with the UN Paris Principles. Thirty-two institutions whose activities cover the field of human rights are currently represented in the GNCHR (independent authorities, departments of university-level educational institutions, workers' and disabled persons' confederations, NGOs, political parties and ministries).

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GNCHR on economic crisis and austerity measures

Urgent GNCHR [Statement](#) on Labour and Social Security Rights in Greece (28.4.2017)

[Statement of the Greek National Commission for Human Rights \(GNCHR\)](#) on the impact of the continuing austerity measures on human rights (15.7.2015) (contains analysis on HRIA)

[The GNCHR Recommendation and decisions of international bodies on the conformity of austerity measures to international human rights standards](#) (2013)

[GNCHR Recommendation](#): On the imperative need to reverse the sharp decline in civil liberties and social rights (2011)

[The need for constant respect of human rights during the implementation of the fiscal and social exit strategy from the debt crisis](#) (2010)

Thematic reports

[Recommendations](#) of the National Commission for Human Rights (NCHR) for Childhood Protection: «Health and Welfare» (2014)

[Protection of the rights of older persons](#) (20.11.2014)

Interventions before international human rights bodies

[Observations submitted by the GNCHR](#) in view of the examination of the 27th Greek Report on the application of the European Social Charter (Articles 3, 11, 12, 13 and 14) and on the 11th Greek Report on the application of the Additional Protocol to the European Social Charter (Article 4)(Reference Period 01/01/2012-31/12/2015) (January 2017)

GNCHR [Written Information](#) on the Second Periodic Report of the Hellenic Republic for the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR), (2.2.2015)

[Observations](#) on the 24th Greek Report on the application of the European Social Charter and on the 9th Greek Report on the application of the Additional Protocol to the European Social Charter (2014)

Examples of Human rights impact assessments ; Lessons learnt.

In the Greek legal order, Law 4048/2012 (OGG A' 34/23-02-2012) provides for the assessment procedures before a legislative draft. The impact analysis as provided for in the aforementioned Law 4048/2012 cannot be considered equivalent to a HRIA, as it consists to a formality without substance. The existing procedure does not guarantee an evidence-based analysis and does not address the impact of the measures in the light of concrete data.

The GNCHR has systematically called upon the EU institutions, the EU member-States as well as the Greek authorities to create a permanent mechanism that would evaluate and assess the impact of austerity measures -primarily but not exclusively- on both the enjoyment of and access to human rights by all those living on EU territory (Human Rights Impact Assessment).

In its 2015 [Statement on the impact of the continuing austerity measures on human rights](#), the GNCHR enumerated the recommendations addressed to the Greek State on the conducting of human rights impact assessments.

After seven years of monitoring the human rights situation in a country facing multiple crisis (i.e. economic, refugees, humanitarian), such as Greece, the GNCHR considers that the “cumulative impact” on human rights of the constant implementation of austerity measures and the “non-compliance with the judgments of the national supreme courts as well as the decisions and recommendations issued by national, European and international human rights tribunals and bodies” should be conceived as fundamental and autonomous parameters of HRIA.

With regard to recent developments, both the UN Independent Expert on the effects of foreign debt (*Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Juan Pablo Bohoslavsky, on his mission to Greece* (30 November- 8 December 2015), A/HRC/31/60/Add.2, 21.4.2016) and the UN Committee on Economic, Social and Cultural Rights (UN, *Concluding observations of the Committee on Economic, Social and Cultural Rights on the second periodic report of Greece*, E/C.12/GRC/CO/2, 27.10.2015) reiterated the need to conduct HRIA. In 2017, two more international bodies

reiterated this very recommendation : a) the ILO, Committee of Experts on the Application of Conventions and Recommendations in its 2017 Report noted the observations from the Greek General Confederation of Labour (GSEE) received on 1 September 2016 according to which no impact assessment of the austerity measures on the implementation of the Equal Remuneration Convention, 1951 (No. 100) has been carried out. b) In a recently published decision, the European Committee of Social Rights (ECSR) found that Greece’s legislation enacted between 2010 and 2014 in response to the economic crisis violated the rights to work, to just conditions of work, to fair pay, to protection for children and young persons against hazards, and to participate in decision making processes on working conditions established in the 1961 European Social Charter (1961 Charter) and the 1988 Additional Protocol (ECSR, *Greek General Confederation of Labour (GSEE) v. Greece*, Complaint No. 111/2014, Merits, 23 March 2017). The ECSR particularly noted that it “has found no evidence, especially from the side of the Government, that a thorough balancing analysis of the effects of the legislative measures has been conducted by the authorities, notably of their possible impact on the most vulnerable groups in the labour market nor are there any indications that a genuine consultation has been carried out with those most affected by the measures. It follows that there has been no real examination or consideration of possible alternative and less restrictive measures” (par. 90).

In its report on social security (GNCHR, The right to social security: main axes (5.5.2016) [in [Greek](#)]), the GNCHR has specifically recalled, inter alia, the decision of the Hellenic State Council Plenary (Supreme Administrative Court) decision no 2287/2015 (recital 24), which echoing the GNCHR observations and recommendations, ruled in favor of an impact assessment study prior to the adaptation of social-security specific measures. As adjudicated by the Supreme Administrative Court: “In particular, in the context of such study, the legislator is first and foremost [bound to] proceed to an overall assessment of the factors that provoked the problem being invoked with respect to social security organizations sustainability (making reference to each one of them separately, in view of its administrative and financial autonomy), and in the light of such factors—like the value decrease, through the PSI (Law 4050/2012), the available resources of such organizations, (...) mainly the prolonged recession and the resulting increase of unemployment, being the practical outcome of the falling living standards of large population groups driven by similar measures or tax burdens as the ones under dispute (pension and salary cuts) – to judge the suitability of such contested measures. The legislator should proceed to any judgment taking into consideration that to date similar measures (pension and salary cuts) have not yielded the anticipated outcome and that the economic recession has been intensified at such a pace that all initial forecasts have been disproved. Moreover (...), the legislator [is bound to] further study and reasonably decide on their necessity, envisaging the

possibility of alternative options and comparing the benefits and disadvantages of each option for the public purposes sought after (fiscal adjustment, sustainability of social security organizations, safeguarding a satisfactory, by virtue of article 22 para. 5, Const., living standard for insured persons). Further to the above, if the legislator [chooses] to proceed to specific pension cuts (an option being judicially uncontrolled), he/she [owes] to first examine, in a scientific and judicially authorized way, whether the impact from such cuts on the affected persons living conditions, in combination with the impact from the measures taken already to cope with the crisis (such as consecutive tax burdens) and in the light of the broader socio-economic conditions of the current extraordinary period (cost of goods and services, healthcare cuts, unemployment and its impact on family income, extent and content of borrowing obligations), drive to an unacceptable lowering of retirees' living conditions below the threshold enshrined, as mentioned above, by their social security right”.

Proposals in relation to content and structure of the guidelines/guidance.

- A permanent mechanism

The GNCHR have repeatedly called upon the EU institutions, the EU member-States as well as the Greek authorities to act in unison for the creation of a permanent mechanism that would evaluate and assess the impact of austerity measures on both the enjoyment of and access to human rights by all those living on EU territory (Human Rights Impact Assessment).

- HRIA : The main axes

The GNCHR, considering in particular the *Guiding principles on human rights impact assessments of trade and investment agreements (Report of the Special Rapporteur on the right to food, Olivier De Schutter, A/HRC/19/59/Add.5, 19 December 2011)*, had underlined ([Statement of the Greek National Commission for Human Rights \(GNCHR\)](#) on the impact of the continuing austerity measures on human rights, 15.7.2015) the key aspects of the HRIA.

Regarding the HRIA process, the GNCHR had noted that it should be framed by specific **principles** such as the following:

1. Transparency: It is of utmost importance to inform all the relevant stakeholders about the impact assessment process as well as about the nature of rights deemed to be affected.
2. Inclusive participation: It is crucial to ensure the effective participation in the process of persons whose rights have been or will be affected by a specific measure.
3. Promotion of equality as well as prevention and elimination of all forms of discrimination: The impact assessment process must ensure the prevention and the elimination of all forms of discrimination in conjunction with the promotion of equality.
4. Monitoring and accountability: The impact assessment should include a system of continual monitoring of the implementation of valued policies and measures as well as to ensure accountability.
5. Interdependence of Rights: The assessment of the impacts should take under consideration the interdependence of rights. This feature implies that the interference with a sector may have consequences on a different sector.

In light of these considerations, the GNCHR pointed out the particular **key steps** for the HRIA, as follows:

1. Screening: The first step includes the necessity test for the impact assessment, therefore is been sought the degree to which a forthcoming or already made action has an impact on human rights. The wider legal, economical and social context is being examined, as well as emerging human rights issues.
2. Scoping: At this stage the plan of the impact assessment, the authority or the team that will conduct the analysis, the timetable of the analysis, the stakeholders, the affected rights and all the possible sources of information are identified. This information is provided, already at this stage, to the holders of the affected rights.
3. Evidence gathering and consultation: In this step evidence and data are collected, both quantitative and qualitative, for the possible occurred or expected consequences of the action. Among the sources is the case-law of national, international and European courts as well as the decisions and recommendations of international and European auditing bodies, official sources of international organizations, university and experts' works, reports of human rights organizations, interviews with persons who get involved individually or as representatives of bodies, as well as questionnaires.
4. Analysis: At this stage, which is the basic stage of the process, the human rights issues are analyzed, with the comparison between the gathered evidence and the rules and indicators of human rights. A relevant preliminary report is being prepared.
5. Dialogue on the options: At this stage, the stakeholders discuss the preliminary report and examine which one of the proposed alternative solutions would have or will have a lighter and permissible impact on human rights or/and could enforce the protection of these rights.
6. Final report: The policy-making bodies publish the final report which contains the best possible proposal from the point of view of human rights and the proposal of these mechanisms that will ensure the monitoring of its implementation.

● The GNCHR's new legislation

The GNCHR addressing the fundamental role of the National Human Rights Institutions (NHRIs) within the framework of the HRIA, actively encouraged the inclusion of the HRIA in its founding Law (Law 2667/1998 establishing the GNCHR, OGG A 281/18.12.1998). The GNCHR founding legislation has been indeed amended by the recent Law 4465/2017 in order to allow the GNCHR to "*monitor and address recommendations to the State for the permanent and constant impact assessment of policy measures on human rights*" (Article 1 (6) (k) of the Law 2667/1998).