

*HELLENIC REPUBLIC*  
**GREEK NATIONAL COMMISSION FOR HUMAN RIGHTS**

---

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

**Comments on the Bill “Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation-Harmonization of Legislation with Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006”**

The bill under consideration adapts Greek legislation to Directive 2006/54/EC recasting 4 directives on gender equality in matters of employment and occupation. The deadline for the directive’s transposition expired on 15.8.2008. Directive 2002/73, which was transposed by Law 3488/2006, is one of the codified directives. The NCHR had commented upon the relevant bill. Whenever necessary, it will reiterate its previous comments; the Commission wishes to express its satisfaction for the inclusion of several of its recommendations in the final draft of the latter bill.

The NCHR would like to note that Directive 2006/54 allows for more favourable national provisions, while it prohibits, as well as the Greek Constitution, any limitation of the existing national level of protection. Therefore, attention needs to be paid while new provisions are introduced or existing ones are amended. The NCHR would like to stress that its comments aim at ensuring the effective implementation of the legislation, a key requirement of which is the correct formulation of procedural rules and their incorporation into the codes of procedure. NCHR’s effort to contribute in this area falls within the general program of National Human Rights Institutions to strengthen the administration of Justice (see Nairobi Declaration, adopted at the Ninth International Conference of National Institutions for the Promotion and Protection of Human Rights).

**I. General comments**

The Explanatory Report notes that the bill does not fully transpose Directive 2006/54, as it leaves out the chapter regarding equal treatment in occupational

social security schemes (chapter 2 of Title II), due to problems that this transposition would create in the civil servants' pension scheme. Greek law sets different retirement ages and different minimum-service requirements for men and women in the Civil and Military Pensions Code. The NCHR notes that the European Commission has lodged a –still pending– recourse against Greece with the European Court of Justice, for this matter. The European Commission takes the view that the pension scheme of civil servants is “occupational” and that, therefore, it falls under article 141 EC Treaty (equal pay for male and female workers) which does not allow for any exceptions to the principle of equal treatment of men and women. Thus, by maintaining the above different prerequisites for entitlement to a retirement pension, Greece has violated article 141. The legislator is awaiting the ECJ's judgment in order to proceed to full compliance with the provisions of Directive 2006/54 regarding social security.

Given that the bill under consideration abolishes, replaces or complements provisions of previous legislation, the NCHR took the view that the latter, still in force, should be incorporated into the Bill. This way, the new Law will include all the provisions concerning gender equality in employment and occupation, thus facilitating the employees in knowing their rights. This method will also serve the aim of Directive 2006/54, which consolidates in a sole and comprehensive instrument all the Directives to be abrogated.

## **II. Provisions of the Bill**

### **Article 2–Definitions**

The definition of ‘indirect discrimination’ included in the bill is restrictive compared to the Directive's definition and previous Greek legislation transposing Directive 2002/73 and Directives 2000/43 and 2000/78.

### **Article 3- Principle of equal treatment–Prohibition of Discrimination**

The meaning of article 2 para 2 (a) of the Directive is not accurately reflected in element (a) of the article under examination.

### **Article 4 –Access to employment-Conditions and Terms of employment**

The NCHR expressed its satisfaction for the recognition of the rights prescribed in article 16 of the Directive (return from maternity leave) to both sexes. However, it proposed a more accurate phrasing of the said provision, as well as an additional

provision qualifying as discriminatory ‘any ***unfavourable treatment of a woman which is related directly or indirectly to her pregnancy, or to maternity or of parents which is related, directly or indirectly to their parental duties or to their parental or adoption leave or to other measures facilitating the harmonization of family and professional life***’.

#### **Article 5-Equal pay**

The NCHR expressed its satisfaction for the clarification of the beneficiaries of family allowances paid by the employer.

#### **Article 6-Termination of employment relationships**

The NCHR welcomed the express prohibition of acts of victimisation by the employer against an employee as a reaction to his/her filing a complaint or any legal proceedings or testifying or taking any other action relating to the enforcement of the Law transposing the Directive. However, it proposed a broader phrasing of the provision so as to cover all possible forms of victimization, such as exclusion from vocational training, in all possible cases.

The NCHR also noted that in the bill the terms ‘vocational training’ and ‘vocational education’ are used interchangeably, which may lead to confusions. The term ‘vocational training’ is preferable, as it is broader and is also the one used in the Directive itself. Furthermore, as this article prohibits not only dismissal, but also any other adverse treatment, the NCHR suggested that its title be: “Protection against victimization”, in according with the Directive’s terminology.

#### **Article 7– Dissemination of information**

The NCHR expressed its satisfaction for the addition to article 11 of Law 3488/2006 transposing Directive 2002/73 of the employer’s obligation to prevent and suppress any form of discrimination based on sex, and especially that of harassment and sexual harassment. This addition concretizes the more general obligation of promoting equality of men and women included in the said Law and the bill under consideration. The NCHR also welcomed the extension of the *ratione personae* scope of the said obligation by the inclusion of those responsible for vocational training. However, in order for the provision to cover the whole material scope of the Law, the NCHR recommended some complementary additions to the provision. The NCHR also suggested that its title be: “Obligation to promote gender equality”

## Article 8-Legal protection

Law 3094/2003 establishing the Ombudsman provides that the Ombudsman cannot deal with complaints pending before courts or other authorities. Furthermore, it provides that recourse to the Ombudsman does not suspend the deadlines for filing a legal claim or complaint. Thus, in case the Ombudsman's intervention does not bear any fruits the victim may be deprived of his/her judicial protection, especially when the deadline is quite short (e.g. 60 days for seeking the annulment of an administrative act, 3 months for challenging a dismissal) whereas the timely exercise of legal remedies effectively precludes the protection the Ombudsman may afford to the victims. The provision, as it stands, forces the victim to choose between the Ombudsman and the courts and discourages recourse to the Ombudsman, an option which may offer the necessary protection more speedily and inexpensively, while at the same time alleviating the caseload of the courts. The NCHR recommended that the Ombudsman should be able to deal with cases, even if complaints have been lodged with courts, up until the case is discussed at court.

*Competence of Associations, Organisations and other Legal entities to exercise the victim's right before judicial or other authorities:* This matter, as well as the *burden of proof*, are crucial to the effective judicial protection of victims, who, often, being afraid of victimization, or not cognizant of their rights, or due to lack of evidence or financial means, do not have recourse to courts or administrative authorities.

The provision in question maintains the shortcomings of the corresponding provision of Law 3488/2006 transposing Directive 2002/73, which had already been criticized by the NCHR: it is more restrictive in comparison with the relevant provision of the Directive (it does not provide for the *locus standi* of the legal entities to bring cases to the courts, but only to intervene in cases already brought by the victims themselves) and it is not incorporated into the relevant Codes of Procedure, thus being ineffective. What is required for the provision to be effective under Greek procedural law is that the legal entities exercise of the victim's rights as their representatives, but rather in their own name, without excluding the exercise of the victim's rights by him/herself.

The NCHR noted that the rights attributed to the legal entities by the Directive are of procedural character. Thus, the Code of Civil Procedure, the Code of Administrative Procedure and the Presidential Decree 18/1989 regulating the

procedure before the Conseil d'Etat need to be amended. In order for the procedural provisions to comply with the Directive, they need to provide for the active legitimation and the legal interest of legal entities before civil and administrative courts, as well as for their standing to intervene in civil and administrative trials in favour of the victim, even if the latter is not a member of the former.

As the NCHR has recommended, in its comments on the bills transposing Directives 2000/43, 2000/78 and 2002/73, the procedural provisions should apply to all cases deriving from violations of the Law and be based on the following principles:

They should provide for the right of legal entities or associations of private or public law, defending human rights or being active in areas falling under the scope of the bill, to: a) exercise the rights provided for by the Law in support of the victims. The legal deed needs to be served on the person whose rights are being exercised and he/she needs to have the right of intervention at every stage of the trial; b) intervene in support of the victim at every stage of the trial.

The requirement of “consent” of the complainant in order for the legal entities and associations to pursue his/her legal protection is not in accordance with the text of the Directive (article 17 para 2) which speaks of “approval” that can also be given at a later stage. The requirement of “consent” may result in exceeding the set time limits and thus, in depriving the complainant of the provided legal protection. The Directive does not provide for a certain form of approval. Therefore, it can be given in several ways. If the legal deed is served on the victim and he/she does not express any objection until the case is discussed at court, then it has to be presumed that he/she has given his/her approval.

The NCHR also recommended that the Bill provide expressly that in case the victim does not take part in the trial, the *res judicata* should operate in his/her favour and not at his/her expense. This is very important for the effective protection of the victims and it is accepted by the courts with respect to certain trials conducted by legal entities under the Code of Civil Procedure.

Furthermore, according to the Code of Administrative Procedure, it is solely the victim who may lodge administrative complaints. Therefore, a provision needs to be added to the Bill so that administrative complaints may also be lodged by legal entities and associations for violations of the Law.

### **Article 9– The Ombudsman**

The NCHR welcomed the appointment of a Deputy Ombudsman for Gender Equality.

### **Article 10- Burden of proof**

The Community rule for the burden of proof is that the person complaining of being discriminated against are only required to invoke and prove facts from which the discrimination is presumed. However, article 10 of the Bill excludes the application of the aforementioned burden of proof rule to non-judicial proceedings. This general exclusion covers all proceedings before any authorities other than courts; thus also quasi-judicial recourses and complaints before administrative authorities, such as competent ministries, the Labour Inspection or the Ombudsman (which the Explanatory Report mentions as an example of an authority to which this rule does not apply), which, according to the Directive, must implement the burden of proof rule. Therefore, the provision under consideration is not in compliance with Directive 2006/54.

### **Article 12-Gender mainstreaming**

Article 12 of the Bill incorporating article 29 of the Directive omits the term “actively”, which expresses the demand for the most appropriate and effective measures for the promotion of substantive equality, also required by the Greek Constitution. (article 4, para 2, in conjunction with article 116 para 2).

### **Strengthening the Labor Inspection Body (SEPE)**

The NCHR has already in the past stressed that SEPE cannot efficiently perform its duties, despite the efforts of its staff, due to lack of human resources and of the necessary infrastructure, a problem also noted by SEPE itself in its annual reports. If SEPE is not strengthened so as to cover all the sectors and all the regions of Greece its effectiveness will diminish even further. The ‘precedent’ of ‘equality offices’ of SEPE which never really operated due to lack of staff is indicative of the problematic situation. Furthermore, it is necessary for SEPE to be restructured so as to effectively contribute to resolution of disputes and, by extension, to the decrease of recourse to courts. Moreover, its staff needs to be continuously trained, especially regarding legislative and jurisprudential developments.

## **Measures for the harmonization of family and professional life**

The NCHR stressed anew the need for effective measures for the harmonization of family and professional life. It recalls certain measures that it has recommended:

- a) The granting of parental leave as an autonomous, non-transferable right to all employees of both sexes. in both the private and the public sector, the replacement of their pay with social benefits, and the maintenance of their social security.
- b) The granting of paternal leave, to be taken at the same time as maternity leave, to those categories of employees for whom it is not yet provided (such as civil servants) and its extension for those already entitled to such leave (the duration of paternal leave in the private sector is only two days).
- c) The extension of these measures to adoptive parents. In addition, special measures need to be taken for single-parent families.
- d) The organisation of working time by law or through collective bargaining or other consultation mechanisms, so as not to allow for unilateral arrangement by the employer.
- e) The regulation of matters related to the organization of employment and, especially, the promotion of flexible forms of occupation (part-time, tele-working) on an optional basis and with safeguards for the rights of employees.
- f) The qualitative and quantitative improvement of supporting structures for all employees, taking into account the good practices of other States.

The NCHR expressed its satisfaction for the fact that provisions regarding the aforementioned issues were included in the National General Collective Labor Agreements of 2006-2007 and 2008-2009 and asked for their full and effective implementation, as well as their further expansion.

13 November 2008