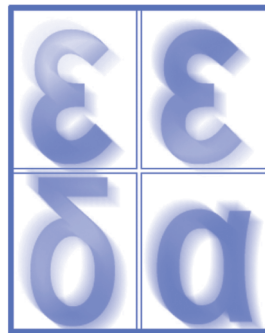


NATIONAL COMMISSION FOR HUMAN RIGHTS

ANNUAL REPORT 2014
SUMMARY IN ENGLISH



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FOREWORD BY THE GNCHR PRESIDENT
MR KOSTIS PAPAIOANNOU

FOREWORD

by the GNCHR President Mr Kostis Papaioannou

2014 has been another year of serious challenges in the field of human rights protection. As has been mentioned in previous reports, the framework set out by the crisis, recession and violent fiscal consolidation constitutes a multiple challenge for the institutional framework of human rights protection. In this context, it is proven at a high cost that rights are interconnected, as there can be no violation of economic and social rights without also a negative impact on individual and civil rights. The GNCHR observed, in a timely manner, that the intensity and the density of legislated measures create a web of negative effects and cause general legal uncertainty. Moreover, it has been now made impossible to fully enumerate all the individual rights that are being either shrunk or violated, as well as to record the damage inflicted to the rule of law and the welfare state. However, it is important to stress that, even while these words are being written, there is an ongoing, *de facto* degradation of the normal legislative procedures and parliamentary control, while access to justice continues to be anything but unimpeded.

The GNCHR, fully aware of its institutional role and the gravity of these moments, has not limited itself to merely recording the aforementioned. Especially during the year of the present Report and after having painstakingly managed to restore the minimum necessary conditions for its own operation, the GNCHR pinpointed a number of issues of utmost importance with regard to human rights. The criteria for the above selection were, mainly, the vulnerability of the population groups for which the GNCHR positions are intended, as well as the institutional importance of the issues.

One can, indicatively, start by mentioning the Recommendations on Childhood Protection, focusing on the fields of Health and Welfare. Particular attention was placed on the bodies institutionally charged with the duty to protect the child in such issues as access to health and re-

inforcement of welfare mechanisms. The GNCHR evaluated their effectiveness and assessed their work with regard to the mission thereto assigned. Based on the above, the GNCHR formulated Recommendations thereby suggesting the undertaking of appropriate measures with a view to addressing the problems and inefficiencies observed. This text was the fruit of a close collaboration with the Ombudsman for Children.

Recommendations on Special Education were also issued, where the GNCHR expressed its concern for the dismantling of Special Education. In addition, upon having considered the concluding observations of the UN Committee on the Rights of the Child, the GNCHR formulated specific recommendations with a view to contributing to the cultivation of a more general philosophy of integration; not just for students with special educational needs, but also for teachers of Special Education.

For the first time, the GNCHR thoroughly examined the issue of protection of older persons' rights, the dimension of which is not visible in Greece. The GNCHR formulated recommendations about the need for effective institutional protection for this vulnerable social group, especially during a period in time when social protection programmes are more and more afflicted. The GNCHR also examined the issue of adopting an international binding text on the protection of older persons' rights.

Moreover, the GNCHR focused on problems regarding the implementation of the International Convention on the Rights of Persons with Disabilities. This Convention, along with its Optional Protocol, entered into force on 31 June 2012, during a crucial time for the protection of fundamental human rights in Greece. Nevertheless, due to inefficient legislative authorisation, independent mechanisms for the promotion, protection and monitoring of the implementation of the Convention have not been yet established.

In addition, occasioned by the Draft law of the Ministry of Interior regulating a number of issues, such as the granting of citizenship, particularly in light of the legal *vacuum* that had been recently created due to the relevant decision of the Supreme Administrative Court of Greece, the GNCHR recalled its firm position on citizenship issues. It particularly stressed that the status of minors cannot constitute grounds for restricting the right to acquire Greek citizenship, while highlighting the necessity to adopt regulations that would allow the Citizenship Law to perform its basic mandate in such a way that it would facilitate, accelerate and protect the social integration of children born or raised in Greece.

The GNCHR also focused on the Right to Water, balancing, on one hand, its legal protection at the European and international level, and, on the other, the risks for its enjoyment due to intensifying pressures for privatisation by its suppliers. Besides, the fact that such an endeavour from the part of the GNCHR was imperative is further reasoned by the topical need to perceive water as "public good" and not as simple "merchandise" as well as the urgent need to address water as a natural good in scarcity.

Regarding the 24th Greek Report on the implementation of the European Social Charter and the 9th Greek Report on the Additional Protocol to the European Social Charter, the GNCHR has forwarded its positions to the European Committee of Social Rights, thus updating its older recommendations on avoiding and reversing the particularly adverse effects of the financial crisis and austerity measures on fundamental rights. The GNCHR expressed its deep concern about the fact that no change has been made regarding the respect to rights as established by the ESC. In particular, the violations observed by the ECSR in its last seven decisions have not been reversed. Furthermore, the avalanche of unpredictable, complex, conflicting and constantly amended "austerity measures" of immediate and often retrospective application, which intensifies general insecurity, continues and, in fact, builds up. Thus, Greek legislation lacks the

"quality" required by the European Convention on Human Rights. These observations had a major impact on ECSR, while its text of conclusions about Greece (January 2015) includes multiple and on point references to the GNCHR's observations.

Finally, the GNCHR's Public Statement on the procedure regarding the establishment of the Appeals Committees holds special weight. The GNCHR expressed its deep concern regarding the most serious and multiple consequences of the legality issues arising from the procedure regarding the establishment of the Appeal Committees under *Law 3907/2011*. A major issue was the clear violation of the lawful selection procedure of the Appeals Authority in which the GNCHR also participates in accordance with the impartial procedure provided for the recognition of the status of international protection. The participation of the GNCHR guarantees the scientific excellence and operational independence of the Chairmen and the members of the Appeals Committees. The GNCHR stressed that the actions of the Ministry of Public Order and Citizen Protection have seriously undermined the GNCHR's trust to the new Appeals Committees. The GNCHR, in the context of its institutional role as the independent advisory body to the State on Human Rights issues, will continue to closely monitor the issues of international protection.

Moreover, the GNCHR, driven by the intertemporal gravity of each issue, publicly stated its position on a number of issues of special importance, such as the educational leaves of detainees, the detention conditions, the withdrawal of Article 19 from the Draft law "Immigration and Social Inclusion Code" and the need to thoroughly investigate the circumstances of the tragedy on the Greek island of Farmakonisi.

It is worth mentioning the GNCHR's successful intervention in the field of combating racist hatred and the subsequent racially motivated violence. Not only did the GNCHR draw State's attention to the need to take timely measures, but

also proceeded in 2012 with establishing, jointly with the Office of the UN High Commissioner for Refugees in Athens, the Racist Violence Recording Network with the participation of almost 40 non-governmental organisations and other actors. The Network's operation is listed under the GNCHR's very positive initiatives and is often mentioned, internationally, as a "best practice" in view of the lack of official effective system of recording incidents of racist violence. It is important to stress that a large number of racist crimes under judicial investigation concern incidents recorded by the Network, while the latter is in constant collaboration with the prosecuting and judicial authorities.

I feel the need to stress that it is the State's responsibility to guarantee all the necessary conditions for the unimpeded and independent operation of the Commission, as the national mechanism for human rights protection. The extent to which we meet these conditions, their affirmation thereof in everyday practice as well as the quality of our institutional cooperation with the Authorities, are pivotal for the regular process of re-accreditation of the national human rights institutions, the result of which directly reflects on the international image of Greece.

Concluding this foreword, which is the last under my signature after having served for nine years and three terms of office as the Chairman of the GNCHR, I would like to stress the particular honor I feel for the trust placed upon me by its members who elected me in this position. I hope to have been worthy of their trust and to have contributed to the maximum extent of my powers, to the strengthening of the authority, the independence and the scope of the Commission.

I would particularly like to thank the legal officers and the secretariat of the Commission for their flawless cooperation. Their dedication to the purposes and the operation of the Commission, the insistence on finding solutions to eventual problems, the investment of time and energy along with the ever clear-headed approach to issues, have been a source of inspi-

ration and power to me. Moreover, it is worth mentioning, in particular, the quality of my collaboration with the Vice-Presidents of the Commission, Ms Argyropoulou, Ms Varchalama, Mr Manitakis and Mr Sicilianos, and, of course, special mention goes to the special role of Ms Maragopoulou, my predecessor in the GNCHR's Bureau and, above all, a special personality for human rights protection in Greece. I also feel the need to thank Ms Spiliotopoulou for her valuable assistance in the context of the Commission's international collaboration as well as the International Amnesty and the Hellenic League for Human Rights, which have designated me as their representative in the GNCHR ever since its establishment.

Of course, these years have not been without difficulties and the cooperation with the competent bodies of the State has not always been a given. They were, however, extremely rich in challenges, not only regarding human rights protection but also about the GNCHR's institutional role itself, during a period of delegalisation and reliability crisis for many institutions.

I trust that the GNCHR will continue its work towards maintaining and increasing its institutional authority. Its intervention, spirited and clear-headed, constitutes an *acquis* for the field of rights. The scope of the GNCHR's intervention, even in fields usually avoided by many actors of rights protection, is a legacy for the future. The same applies for our collaboration with international bodies and the impact of our interventions abroad.

I am confident that the new President, Mr Stavropoulos, assisted by all of the members, shall offer a lot to the GNCHR's operation and shall contribute to the spreading of a calm, informed, critical and unbiased discourse.

This discourse is now more useful than ever.

Kostis Papaioannou

September 2014

PART I.
LEGAL FRAMEWORK AND ORGANISATIONAL STRUCTURE
OF THE GNCHR

1. Law 2667/1998 establishing the GNCHR (OGG A 281/18.12.1998)¹

The President of the Hellenic Republic

We hereby promulgate the following law, which has been voted by Parliament:

SECTION A

National Commission for Human Rights

Article 1

Constitution and mission

1. A National Commission for Human Rights, which shall be attached to the Prime Minister, is hereby constituted.

2. The Commission shall be supported as to its staffing and infrastructure by the General Secretariat of the Council of Ministers [currently the General Secretariat of the Government], and its budget shall be incorporated into the budget of this service unit.

3. The Commission shall have its own secretariat. The President of the Commission shall be in charge of the secretariat.

4. The Commission shall constitute an advisory body to the State on matters of the protection of human rights.

5. The Commission shall have as its mission:

(a) The constant monitoring of these issues, the informing of the public, and the advancement of research in this connection;

(b) The exchange of experiences at an international level with similar bodies of international organisations, such as the UN, the Council of Europe, the OECD, or of other states;

(c) The formulation of policy proposals on matters concerned with its object.

6. The Commission shall in particular:

(a) examine issues in connection with the protection of human rights put before it by the Government or the Conference of Presidents of Parliament or proposed to it by its members or non-governmental organisations;

(b) submit recommendations and proposals, carry out studies, submit reports and give an opinions on the taking of legislative, administrative and other measures which contribute to the improvement of the protection of human rights;

(c) develop initiatives on the sensitisation of public opinion and the mass media on matters of respect for human rights;

(d) undertake initiatives for the cultivation of respect for human rights within the framework of the educational system;

(e) deliver an opinion on reports which the country is to submit to international organisations on related matters;

(f) maintain constant communication and work together with international organisations, similar organs of other countries, and national or international non-governmental organisations;

(g) make its positions known publicly by every appropriate means;

(h) draw up an annual report on the protection of human rights;

(i) organise a Documentation Centre on human rights;

(j) examine the adaptation of Greek legislation to the provisions of international law on the protection of human rights and deliver an opinion in this connection to the competent organs of the State.

Article 2

Composition of the Commission

1. The Commission shall be made up of the following members:

(a) The President of the Special Parliamentary Committee on Institutions and Transparency;

(b) One representative of the General Confederation of Labour of Greece and one representative of the Supreme Administration of Unions of Civil Servants;

(c) Four representatives of non-governmental organisations whose activities cover the field of human rights. The Commission may, without prejudice to Article 9, decide upon its expansion by the participation of two further representatives of other non-governmental organisations (on 6.2.2003 the GNCHR included in its NGO

1. As amended by Articles 15 of Law 2790/2000, 1 of PD 376/2001, 18 of Law 3051/2002, 23 of Law 3156/2003 and 113 of Law 4314/2014.

membership the Greek League for Women's Rights and the Panhellenic Federation of Greek Roma Associations);

(d) Representatives of the political parties recognised in accordance with the Regulations of Parliament. Each party shall designate one representative;

(e) The Hellenic Consumer's Ombudsman (as amended by Law 3156/2003 and Law 4314/2014);

(f) The Greek Ombudsman;

(g) One member of the Authority for the Protection of Personal Data, proposed by its President;

(h) One member of National Radio and Television Council, proposed by its President;

(i) One member of the National Bioethics Commission, drawn from the sciences of Biology, Genetics, or Medicine, proposed by its President;

(j) Two persons of recognised authority with special knowledge of matters of the protection of human rights, designated by the Prime Minister;

(k) One representative of the Ministries of the Interior, Public Administration and Decentralisation, of Foreign Affairs, of Justice, of Public Order, of Education and Religious Affairs, of Labour and Social Security, and for the Press and Mass Media, designated by a decision of the competent minister;

(l) Three professors or associate professors of Public Law or Public International Law. At its first meeting after incorporation, the Commission shall draw lots in which the following departments of the country's university-level educational institutions shall take part: (a) the Department of Law of the University of Athens; (b) the Department of Law of the University of Thessaloniki; (c) the Department of Law of the University of Thrace; (d) the Department of Political Science and Public Administration of the University of Athens; (e) the General Department of Law of the Panteion University; (f) the Department of Political Science of the Panteion University. These departments shall propose one professor or associate professor of Public Law or Public International Law each. The departments of the university-level educational institutions shall be under an obligation to designate their

representative within two months from receipt of the Commission's invitation.

It shall be possible by a decision of the Commission for other departments of the country's university-level educational institutions with a similar subject to be added for subsequent drawings of lots. Six (6) months before the expiry of its term of office, the Commission shall draw lots among the above departments for the next term of office;

(m) One member of the Athens Bar Association.

2. An equal number of alternates, designated in the same way as its full members, shall be provided for the members of the Commission.

3. The members of the Commission and their alternates shall be appointed by a decision of the Prime Minister for a term of office of three (3) years. The term of the members of the Commission who take part in its first composition expires, irrespective of the date of their appointment, on 15 March 2003 (as amended by Law 3051/2002).

4. The Prime Minister shall convene in writing a session of the members of the Commission, with a view to the election of its President and the 1st and 2nd Vice-President. For the election of the Presidents and the Vice-Presidents, the absolute majority of the members of the Commission present who have a vote shall be required. Members drawn from the categories of sub-paragraphs (a), (b), (c), (e), (j) and (l) of paragraph 1 of the present article may be elected as President and Vice-President (as amended by Law 2790/2000).

5. The representatives of the ministries shall take part in the taking of decisions without voting rights.

6. The Commission shall be deemed to have been lawfully incorporated if two of the members of sub-paragraph (c) and the members of sub-paragraphs (a), (e), (j) and (k) of paragraph 1 of the present article have been appointed (as amended by Law 2790/2000).

7. The members of the new composition of the Commission shall be appointed at the latest two (2) months before the expiry of the term of office of the previous composition.

8. The manner of incorporation of the Commission and any other relevant detail shall be regulated by a decision of the Prime Minister.

Article 3

Commissioning of specialist studies

1. The General Secretariat for Research and Technology of the Ministry of Development may commission, on the proposal of the Commission, on a contract for services, the compilation of specialist studies for its purposes from academic working parties.

2. The working parties, on the conclusion of the relevant study, shall submit a report to the Commission, which may be made public by a decision on its part.

Article 4

Operation of the Commission

1. The Commission shall meet regularly every two months and extra-ordinarily when summoned by the President or on the application of at least five (5) of its members. The members shall be summoned by the President by any appropriate means.

2. The Commission shall have a quorum if: (a) the absolute majority of its members is present, and (b) the President of the Commission or one Vice-President are among the members present.

3. The Vice-Presidents shall substitute for the President in the order of their rank when the latter is lacking, is impeded, or is absent.

4. The decisions of the Commission shall be taken by a majority of the members present. In the event of a tied vote, the President shall have the casting vote.

5. The Commission shall, at its discretion, invite persons to be heard before it who can assist its work by an account of personal experiences or the expression of views in connection with the protection of human rights.

6. The honoraria of the members of the Commission shall be set by a decision of the Ministers of the Interior, Public Administration and Decentralisation, and of Finance, by way of deviation from the provisions in force concerning a fee or honoraria by reason of service on councils and commissions of the public sector.

7. The Internal Regulation of the Commission shall be drawn up by a decision of the Prime Minister. The operation of sub-commissions, the distribution of competences among the sub-commissions and the members, the procedure for the invitation and audience of persons, and any other detail shall be regulated by this Regulation. The Regulation may be amended by a decision of the Prime Minister, following an opinion on the part of the Commission.

Article 5

Annual report

The Commission shall by the end of January of each year submit its report to the Prime Minister, the President of Parliament, and the leaders of the political parties which are represented in the national and the European Parliament.

Article 6

Assistance of public services

1. At the end of each year, the ministries which are represented on the Commission shall lodge a report with their observations on the protection of human rights in the field of their responsibility.

2. In order to fulfill its mission, the Commission may seek from public services and from individuals any information, document or any item relating to the protection of human rights. The President may take cognizance of documents and other items which are characterised as restricted. Public services must assist the work of the Commission.

Article 7

Research officers

1. Three (3) posts for specialist academic staff, within the meaning of para. 2 of Article 25 of Law 1943/1991 (OGG A 50), on a private law employment contract of a term of three (3) years, are hereby constituted. This contract shall be renewable (as amended by Law 3156/2003).

These posts shall be filled following a public invitation by the Commission for applications. Selection from the candidates shall be in accordance with the provisions of paragraphs 2, 5 and 6 of Article 19 of Law 2190/1994 (OGG A 28), as replaced by Article 4 of Law 2527/1997 (OGG A

206), by five members of the Commission who have a vote, to be nominated by its President.

2. The legal research officers shall assist the Commission by preparing proposals on issues assigned to them and shall brief it on the work of international organisations which are active in the field of human rights. In addition, they shall keep a relevant file of texts and academic studies.

3. The remuneration of the legal research officers who are engaged in accordance with paragraph 1 of this article shall be determined by the decision of para. 6 of Article 4 of the present law, by way of deviation from the provisions in force concerning the remuneration of specialist academic personnel.

Article 8 Secretariat of the Commission

1. One (1) post of secretary and three (3) posts for secretarial and technical support of the Commission are hereby constituted.

2. The following shall be regulated by a Presidential Decree issued on the proposal of the Ministers of the Interior, Public Administration and Decentralisation, of Foreign Affairs, of Finance, and of Justice:

(a) The distribution of the posts of para. 1 by category, branch and specialisation, as well as issues concerning the organisation of the secretarial and technical support of the Commission;

(b) The filling of the posts of para. 1, which may be by the making available or secondment of civil servants or employees of public law legal entities, or those employed on a contract of employment of a fixed or indefinite duration with the State, public law legal entities or private law legal entities of any form which are under the direct or indirect control of the State;

(c) any matter concerning the in-service status and the remuneration of this personnel.

3. It shall be permitted for an employee of a ministry or public law legal entities of Grade A or B of category ΠΕ, proposed by the President of the Commission, to be seconded as secretary of the Commission, by a decision of the Minister of the Interior, Public Administration and Decentralisation and of the minister jointly competent in the particular instance.

4. Until such time as the Presidential Decree of para. 1 is issued, it shall be permitted for the Commission to make use of employees and to use technical support provided by the Ministry of Foreign Affairs and of Justice in accordance with the decisions of the competent ministers.

Article 9 Transitional provisions

In the first composition of the Commission the following non-governmental organisations shall be represented: Amnesty International, the Hellenic League for Human Rights, the Marangopoulos Foundation for Human Rights, and the Greek Council for Refugees.

[Provisions on the Bioethics Commission follow.]

SECTION C

Final provision

Article 19

This law shall come into force as from its publication in the Official Journal of the Hellenic Republic.

We hereby mandate the publication of the present law in the Official Journal of the Hellenic Republic and its execution as a law of the State.

2. Current Members of the GNCHR

1. The President of the Special Parliamentary Commission for Institutions and Transparency, *Mr A. Nerantzis*.

2. One person designated by the General Confederation of Greek Workers, *Mr I. Panagopoulos* and *Ms E. Varchalama* as his alternate.

3. One person designated by the Supreme Administration of Civil Servants' Unions, *Mr N. Hatzopoulos* and *Mr O. Mermelas* as his alternate.

4. Six persons designated by Non-Governmental Organisations active in the field of human rights protection: for Amnesty International-Greek Section, *Ms K. Kalogera* and *Mr A. Yolassis* as her alternate; for the Hellenic League for Human Rights, *Mr K. Papaioannou* and *Ms E. Kalampakou* as his alternate; for the Marangopoulos Foundation for Human Rights, *Mr D. Gourgou-*

rakis (until 17.4.2014) and *Mr G. Stavropoulos* (since 18.4.2014) and *Ms A. Yotopoulou-Marangopoulou* as their alternate; for the Greek Council for Refugees, *Ms A. Chrysochoidou-Argyropoulou* and *Mr I. Papageorgiou* as her alternate; for the Greek League for Women's Rights, *Ms S. Koukouli-Spiliotopoulou* and *Ms P. Petroglou* as her alternate; and for the Panhellenic Federation of Greek Roma Associations, *Mr Ch. Lambrou* and *Mr K. Dimitriou* as his alternate.

5. Persons designated by the political parties represented in the Greek Parliament: for New Democracy, *Mr C. Naoumis* and *Mr G. Nikas* as his alternate; for PASOK, *Ms A. Papaioannou* and *Ms M. Dimitrakopoulou-Sioua* as his alternate; for KKE *Mr A. Antanassiotis*; for SYRIZA, *Mr N. Theodoridis* and *Mr S. Apergis* as his alternate; for DIMAR *Ms M. Kouveli* and *Ms M. Karaferi* as her alternate.

6. The Greek Ombudsman, *Ms K. Spanou* and *Mr V. Karydis* as her alternate;

7. One member of the Hellenic Data Protection Authority, *Mr I. Metaxas* and *Mr K. Christodoulou* as his alternate.

8. One member of the Greek National Council for Radio and Television, *Ms O. Alexiou*, and *Mr K. Apostolas* as her alternate.

9. One member of the National Commission for Bioethics from the field of Biology, Genetics or Medicine, *Mr Th. Patargias* (until 5.12.2014) and *Mr Ch. Savvakis* (since 6.12.2014) and *Mr K. Krimpas* (until 5.12.2014) and *Mr N. Anagnou* (since 6.12.2014) as their alternates.

10. Two persons of recognised authority with special knowledge of matters of the protection of human rights, designated by the Prime Minister: *Mr N. Ouzounoglou* and *Mr G. Sotirelis* and the *Metropolitan of Demetrias and Almyros His Eminence Ignatius* and *Mr I. Nanas* as their alternates.

11. One representative of the: Ministry of Interior, *Mr A. Syrigos* and *Ms V. GIavi* (until 17.4.2014) and *Mr K. Kintis* (since 18.4.2014) as their alternates; Ministry of Foreign Affairs, *Ms M. Telalian* and *Mr E. Kastanas* as her alternate; Ministry of Justice, Transparency and Human Rights, *Ms E. Flegga* and *Ms A.-E. Lazarou* as her alternate; Ministry of Citizen Protection, *Ms M. Theodorou* and *Mr A. Soukoulis* as her alternate;

Ministry of Education, Long-Term Learning and Religious Affairs, *Ms A. Linou* (until 17.4.2014) and *Mr G. Kalantzis* (since 18.4.2014) and *Ms S.-M. Karamalakou-Lappa* as their alternate; Ministry of Labour and Social Security, *Ms A. Stratinaki* and *Mr A. Karydis* (until 17.4.2014) and *Ms A. Diakoumakou* (since 18.4.2014) as her alternates; and Secretariat General of Communication and Information and Secretariat General of Mass Media, *Mr I. Panagiotopoulos* (until 5.12.2014) and *Mr St. Anagnostou* (since 6.12.2014) and *Mr P. Agrafiotis* and from November 2012 *Mr K. Goulas* (until 8.8.2014), *Mr N. Katsikoulis* (until 5.12.2014) and *Mr P. Papaleloudis* (since 6.12.2014) as their alternates.

12. From the Faculty of Political Studies and Public Administration, National Kapodistrian University of Athens, *Ms P. Pantelidou-Malouta* and *Mr G. Kouzelis* as her alternate; from the Faculty of Law, Demokriteion University of Thraki, *Mr G.-E. Kalavros* and *Mr A. Dervitsiotis*, as his alternate; from the Faculty of Political Science and History, Panteion University, *Mr D. Christopoulos* and *Ms A. Anagnostopoulou* as his alternate.

13. One member of the Athens Bar Association, *Mr K. Kolokas* and *Mr A. Tzoumanis* as his alternate.

It is worth noticing the originality of the law provisions concerning the GNCHR membership and the election of Members, of the President and the two Vice-Presidents. Each institution participating in the GNCHR designates its representatives. All representatives – except for those of seven Ministries who take part in the sessions of the Plenary and the Sub-Commissions without voting rights – elect the President and the two Vice-Presidents of the GNCHR. This particular, liberal system ensures the GNCHR's independence and impartiality.

3. The organisational structure of the GNCHR

Since October 2006, *Mr Kostis Papaioannou* is President of the GNCHR. *Ms Angeliki Chrysochoidou-Argyropoulou* is 1st Vice-President and *Ms Ellie Varchalama* is 2nd Vice-President, following the 2012 elections to the GNCHR Board.

The GNCHR has established five Sub-Commissions:

- The Sub-Commission for Civil and Political Rights
- The Sub-Commission for Social, Economic and Cultural Rights
- The Sub-Commission for the Application of Human Rights to Aliens
- The Sub-Commission for the Promotion of Human Rights
- The Sub-Commission for International Communication and Co-operation

According to the GNCHR Internal Regulation, the Plenary meets every two months. In practice the Plenary meets every month. The Sub-Commissions' work consists in the elaboration of reports on issues related to their specific field of action. All these reports are subsequently submitted to the GNCHR (Plenary) for discussion and decision.

The GNCHR employed in 2014 the following Legal/Research Officers: *Ms Roxani Fragkou* and *Ms Aikaterini Tsampi*. Its Secretariat has two staff-members, *Ms Katerina Pantou*, Secretary and *Mr Nikos Kyriazopoulos*, Secretarial Support Officer.

In 2003 the GNCHR acquired its own premises in Athens (6, Neofytou Vamva Str., GR 10674 Athens); it also maintains its own website (www.nchr.gr).

PART II.
RESOLUTIONS, DECISIONS, OPINIONS AND PRESS RELEASES
OF THE GNCHR

A. Resolutions, Decisions and Opinions of the GNCHR

1. The right to Water* - GNCHR Recommendations for its effective protection¹

I. Introduction

The Greek National Commission for Human Rights (GNCHR), in its institutional capacity as an advisory body to the State on human rights issues, pursuant to Article 1 (6) (b) of Law 2667/1998, its founding statute, considers it of crucial importance to present to the State *recommendations regarding the effective protection of the right to water*.

The GNCHR² decided to deal with this fundamental right after weighing, on the one hand, the progress made towards the guaranteeing of this right at the European and international level, and on the other hand, the dangers posed to its enjoyment by growing pressure for the privatisation of its providers.

The urgency of such a project stems from the need to consolidate the status of water as a “public good” and not as a commercial commodity, as well as to treat water as a natural commodity in shortage.

To this end, the GNCHR decided to formulate its recommendations in order to delineate both the content and the legal guarantees of the right to water. In this way, the **dynamic** character of the right to water will emerge and the GNCHR’s choice to propose its protection in an equally dynamic manner will be justified.

* The present text was adopted unanimously by the GNCHR plenary session on 20.3.2014. Rapporteurs: E. Varhalama, second Vice President GNCHR and Aik. Tsampi, GNCHR Legal Officer.

1. The GNCHR would like to highlight that any reference to the right to water also covers the accompanying right to sanitation.
2. The GNCHR has previously dealt with the right to water in the context of its comments on the draft report of Greece concerning the implementation of the International Covenant on Economic, Social and Cultural Rights, http://www.nchr.gr/images/pdf/apofaseis/politistika_dikaiomata/Paratiriseis_ekthesiYPEX_ICESCR.pdf, pp. 29-30.

II. Delineation of the right to water

A. The content of the right to water

Delineating the content³ of the right to water reveals a right that is of a composite nature. It has thus been argued that **there is not one right to water, but more than one rights to water**⁴. Indicatively, these “rights” would include the right to water for life and survival; the right to safe drinking water; the right to water for sanitation; the right to water for an adequate living standard; the right to water in the context of the right to food and nutrition; the right to water and sanitation in the context of the right to housing; the right to water for the production of food; the right to water within the right to development; the right to water within a natural resources framework; the right to water as a constituent of environmental rights.

For this reason, even when the right to water does not seem protected *per se*, protection is derived through other rights so as to constitute an **intrinsic element thereof**. Such other rights would include the right to life and dignity, the right to an adequate living standard, the right to adequate housing⁵ and nutrition⁶, the right to human dignity and privacy, the right to health, and environmental rights.

And, of course, as an autonomous right to water; based on the **definition** provided in General Comment No. 15 of the UN Committee on Economic, Social and Cultural Rights, it is perceived as *the right of every person to sufficient,*

3. See *inter alia* TZATZAKI (M.-V.), *Water in Public International Law*, Nomiki Vivliothiki, 2012.

4. FAVREAU (B.), «Le droit de l’homme à l’eau», *Annuaire international des droits de l’homme*, Vol. 1/2006, p. 260.

5. In General Comment no. 4 on Article 11 (1) of ICESCR, the Committee on Economic, Social and Cultural Rights highlights that the right to adequate housing requires the access to “safe drinking water” as well as “sanitation”: CESCR, General comment 4. (General Comments), *The right to adequate housing* (Art.11 (1)), 13.12.1991, para. 8 (b).

6. Jean Ziegler, as the UN Special Rapporteur on the right to food highlighted that the right to food does not only include the right to solid food but also liquids, such as drinking water: Economic and Social Council, *The right to food*, Report by the Special Rapporteur on the right to food, Mr Jean Ziegler, submitted in accordance with Commission on Human Rights resolution 2000/10, E/CN.4/2001/53, 7.2.2001, para. 32.

*safe, acceptable, physically accessible and affordable water for personal and domestic uses*⁷.

B. Establishing the right to water

1. International Level

The right to water is not explicitly mentioned neither in the 1948 Universal Declaration of Human Rights, nor in the International Covenants on Economic, Social and Cultural Rights (ICESCR) or Civil and Political Rights (ICCPR). Nonetheless, even before it was framed as a general right in itself, a right to water is explicitly established in texts offering a *special scope of protection*. Such texts include:

The **International Convention on the Rights of the Child** (1989), wherein Article 24 (2) (c) provides that, in order to fully realise *the child's right to health*, the State Parties shall take appropriate measures to "combat disease and malnutrition [...] through, *inter alia*, [...] the provision of adequate nutritious food and clean drinking water, taking into consideration the dangers and risks of environmental pollution".

The **International Convention on the Elimination of all Forms of Discrimination against Women** (1979), enshrines the right of women "to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and *water supply*, transport and communications" (Article 14 (2) (h)).

In turn, Article 28 of the **International Convention on the Rights of Persons with Disabilities** (2006) imposes an obligation on states to ensure *access to drinking water* for persons with disabilities and their families.

A special provision for the supply of an adequate quantity and quality of drinking water is contained in the innovative **International Labour Organisation Maritime Labour Convention (MLC 2006)**⁸, known as the "Seafarers' Labour Rights Charter" (Regulation 3.2 – Food and Catering).

Moreover, in its provisions relating to "Indigenous and Tribal Peoples in Independent Coun-

tries", the **International Labour Convention No. 169 (1989)** provides for the adoption of special measures for safeguarding the *environment of the peoples concerned* (Article 4 (1) *in fine*). In the context of **international humanitarian law**, the third Geneva Convention on the treatment of prisoners of war (1949) refers to the obligation to provide drinking water, in sufficient quality and quantity according to every person's needs (Articles 20 and 26). Moreover, the Additional Protocol on international armed conflict prohibits the destruction of objects indispensable for the survival of the civilian population including, *inter alia*, water installations and supplies.

Some charters and protocols of a purely regional ambit are also worth mentioning, including:

- The **African Charter on the Rights and Welfare of the Child** (1990), Article 14 (2) (c) of which requires State Parties to take measures to "*ensure the provision of adequate nutrition and safe drinking water*" in the context of the child's right to health.

- The **Additional Protocol to the American Convention on Human Rights**, in the sphere of economic, social and cultural rights, provides in Article 11 (1), that "[e]veryone shall have the right to live in a healthy environment and to have *access to basic public services*".

- The **London Protocol on water and health** (1999), contained within the 1992 Convention on the protection and use of transboundary watercourses and international lakes, was the first general text to approach *water and health in combination*, whilst making special reference to *equitable access* to water, adequate in terms both of quantity and of quality, for *all members of the population*, especially those who suffer a disadvantage or social exclusion (Article 5 (I)).

Progress towards the general international establishment of an autonomous right to water began in 1977, with many stops along the way⁹.

9. See also *Sixth World Water Forum, Marseille 2012 – Fifth World Water Forum, Istanbul 2009 – Fourth World Water Forum, Mexico 2006 – Third World Water Forum, Kyoto 2003 – International Decade for Action Programme "Water for Life 2005-2015" – International Summit on Sustainable Development, Johannesburg 2002 – International Con-*

7. Para. 2.

8. The MLC was ratified by Law 4078/2012.

In 1977, the UN General Assembly recognised the *universal right of access to drinking water*, asserting that all peoples, whatever their stage of development and their social and economic conditions, enjoy a right of access to drinking water in quantities and of a quality equal to their basic needs (**Mar del Plata Action Plan** of the UN Water Conference).

In 2000, the **UN Millennium Declaration** included among the Millennium Development Goals the goal “to halve, by 2015, the proportion of the population without sustainable access to safe drinking water”¹⁰.

In 2002, the UN Committee on Economic, Social and Cultural Rights included the right to water in its general comments on the International Covenant on Economic, Social and Cultural Rights, officially recognizing *access to sufficient and safe water as a fundamental human right* by means of **General Comment No. 15**. In fact, the right to water was characterised as a prerequisite for the realisation of other rights¹¹. In 2008, the UN Human Rights Council decided, by dint of Resolution 7/22, to appoint Catarina de Albuquerque an **Independent Expert** on human rights obligations pertaining to access to safe drinking water and sanitation¹².

Finally, on July 28, 2010, the **UN General Assembly** recognised the human right to water and sanitation in its milestone Resolution 64/292, in which the importance of both for the implementation of all human rights is stressed.

ference on Freshwater, Bonn 2001 – Second World Water Forum, the Hague 2000 – First World Water Forum, Marrakesh 1997 – Forth World Conference on Women, Beijing 1995 – World Summit for Social Development, Denmark 1995 – International Conference on Water and Environment, Dublin 1992 – World Summit for Children, New York 1990 – Global Consultation on safe water and sanitation, 1990.

10. United Nations General Assembly, United Nations Millennium Declaration, Resolution A/res/55/2, Goal 19.
11. CESCR, General Comment No. 15 (2002), *The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, E/C.12/2002/11, 20.1.2003, para. 1.
12. The Human Rights Council, appointed Catarina de Albuquerque as a Special Rapporteur with its Resolution 16/2 on 18 March 2011 and it extended her mandate for three more years. The mandate was extended for three more years in October 2013 with the Resolution 24/18.

This was followed in September 2010 by Resolution A/HRC/RES/18/1 by the **Human Rights Council**, which marked a watershed in the protection of the right to water, describing it, as it did, as a part of current international law and binding upon States¹³.

2. European Level

Council of Europe

Explicit reference to the right to water is made in neither the European Convention of Human Rights (ECHR) nor the European Social Charter. However, it is linked to an array of rights protected by the aforementioned texts. This is also clear through the manner in which both are applied by the European Court of Human Rights (ECtHR) and the European Committee for Social Rights¹⁴.

Furthermore, it should be mentioned that the Council of Europe broke new ground in 1968 by adopting the **European Water Charter** and declaring that water constitutes a “common heritage”; it did not, however, refer to an *autonomous right to water*. This Charter was replaced in 2001 by the **European Charter on Water Resources**, which explicitly provides for *the right of every person to a sufficient quantity of water for his or her basic needs*¹⁵.

13. See also the recent Resolution A/HRC/24/L.31, 23 September 2013, in which the Human Rights Council refers explicitly for the first time to the regulatory content of the right.

14. STEICHEN (P.), « Le droit à l'eau dans la jurisprudence de la Cour européenne des droits de l'homme », in *Académie de l'Eau, Le droit à l'eau potable et à l'assainissement, sa mise en œuvre en Europe, France 2011*, p. 69 and onwards. See ECtHR, *Mamère v. France*, 7.11.2006, (on the importance of public dialogue on water), ECtHR, *Taskin and others v. Turkey*, 10.11.2004 and ECtHR, *Tatar v. Romania*, 27.1.2009 (on the protection of water resources), ECtHR, *Butan and Dagomir v. Romania*, 14.2.2008 and ECtHR, *Zander v. Sweden*, 25.11.1993 (on the recognition of an individual right of access to water) and inter alia: ECtHR, *M.S.S. v. Belgium and Greece*, 21.1.2011, ECtHR, *E.G. Radu v. Romania*, 13.10.2009, ECtHR, *Viorel Burzo v. Romania*, 30.6.2009, (especially on the right of access to drinking water and sanitation during detention). As for the Decisions of the European Committee on Social Rights, these mainly refer to living conditions of Roma in light of Article 31 (1) of the European Social Charter.

15. Recommendation Rec(2001)14 Of the Committee of Min-

Finally, in 2011, the **Parliamentary Assembly of the Council of Europe** adopted Resolution 1809/2011 on "Water: a source of conflict", recommending that the authorities of both Members of the Council of Europe and non-Member States *recognise the access to water as a fundamental human right* in accordance with the aforementioned standards set by the UN General Assembly and the resolutions of the Human Rights Council¹⁶.

European Union

The right to water is not explicitly recognised in EU law. The European Union has, nevertheless, adopted a series of texts on the *protection and management of water*.

Through **Directive 2000/60/EC**¹⁷ of the European Parliament and Council (October 23, 2000) "On establishing a framework for Community action in the field of water policy", the European Union (EU) establishes a framework for the protection of inland surface waters, groundwaters, transitional waters and coastal waters. It also contains a provision for the prevention and control of pollution, the promotion of sustainable water use, protection of the environment, the improvement of the aquatic environment and the mitigation of the effects of floods and droughts. On the other hand, its main aim is to ensure the "good status" of all community waters, from both an ecological and a chemical point of view, by 2015.

The Preamble to the Directive states *inter alia* that: (1) **Water in not a commercial commodity** like any other but, rather, a **heritage** which must be protected, defended and treated as such¹⁸, (2) The supply of water is a **service of general interest**, as defined in the Commis-

sion communication on services of general interest in Europe¹⁹ and (3) **Good water quality** will contribute to securing the supply of drinking water for the population²⁰.

Furthermore, **Directive 2006/118/EC**²¹ of the European Parliament and Council (December 12, 2006) "On the protection of groundwater against pollution and deterioration" provides special measures for the prevention and control of groundwater pollution.

The Preamble to the Directive states *inter alia* that: (1) Groundwater is a **valuable natural resource**, and as such it should be protected from deterioration and chemical pollution. This is particularly important in the case of **groundwater-dependent ecosystems and when groundwater is included in the water supply for human consumption**²²; (2) Groundwater is the most sensitive and the largest body of freshwater in the European Union and, significantly, a **key source of drinking water supplies in many regions**²³; (3) detrimental concentrations of harmful pollutants in groundwater must be avoided, prevented or reduced in order to protect the environment as a whole, and human health in particular²⁴.

Moreover, Council **Directive 98/83/EC**²⁵ (November 3rd, 1998) on the quality of water intended for human consumption aims to protect public health by laying down sanitation and purity requirements for drinking water within the EU.

While the right to water is not enshrined in the **Charter of fundamental rights of the European Union**, it is linked to a series of rights protected thereby. Indeed, as well as being in-

19. *Idem*, no. 15.

20. *Idem*, no. 24.

21. The compliance to this Directive was achieved through Common Ministerial Act 39626/2208/E130/2009 on the "Indication of measures for the protection of groundwater from pollution and deterioration" (OG 2075B/25.9.2009).

22. Preamble, no. 1.

23. *Idem*, no. 2.

24. *Idem*, no. 5.

25. The compliance to this Directive was achieved through Common Ministerial Act Y2/2600/2001 "Quality of Water intended for human consumption" (OG 892B/11-7-2001), as amended and in force through Common Ministerial Act ΔΥΓ2/Γ.Π. ec. 38295/22.3.07 (OG 630/B/26.4.2007).

isters to member states on the European Charter on Water Resources (Adopted by the Committee of Ministers on 17 October 2001, at the 769th meeting of the Ministers' Deputies), para. 5.

16. Parliamentary Assembly, Resolution 1809 (2011) 1, Water: a source of conflict, 15.4.2011 (18th Sitting), para. 14.1.

17. Directive 2000/60/EC was introduced by Law 3199/2003 (OG A'280/ 9.12.2003) on the "Protection and Management of Water".

18. Preamble, no. 1.

cluded among the rights protected by the ECHR, the right to water is indirectly covered by rights pertaining to the *protection of health, access to services of general economic interest, the protection of the environment and consumer protection*.

An EU citizen initiative called "*Water: a human right*" is endeavouring to establish an explicit and autonomous universal right to water within the EU legislative framework²⁶. The initiative is proceeding along three axes: (1) ensuring *access* to water and sanitation throughout Europe; (2) fighting to forestall efforts aimed at *liberalizing* the water market and to retain water's status as a *public good* not subject to internal market rules; and (3) increasing efforts to achieve *universal access* to water outside the EU. The Treaties (Treaty on EU, Article 11 and Treaty on the Functioning of the EU, Article 24 (1)) require the competent European organs to respond to an initiative of this sort, which aims to request that the European Commission proposes specific legislation within its competence by March 20, 2014, which is to say within three months of its presentation.

The European Parliament has already expressed the opinion, on 15 January 2014 in view of the adoption of a Directive relating to the award of concession contracts²⁷, that contracts relating to water concessions should be beyond the ambit of the Directive, given that they are often subject to specific and complex regulations which require special consideration given the importance of water as a public good of fundamental value to every citizen of the EU.

For this reason, the European Parliament has expressly stated its objection to the liberalisation of the water services sector²⁸. Similarly,

Commissioners Potočnik and Barnier, having acknowledged the importance of water, recently affirmed in a joint statement that EU Law does not require Member States to privatise water services. They also stressed that the European Commission acknowledges water as a public good of vital importance to citizens.²⁹

3. National level

The right to water *per se* is not constitutionally enshrined in Greece, nor is it explicitly provided for by legislative texts. However, the right to water is adjoined to a series of other rights which are explicitly recognised in the Greek Constitution as well as in international texts which are binding upon Greece. These include the right to *life* (Article 5 (2)) and to *health* (Article 5 (5) and Article 21 (3)), the right to *adequate housing* (Article 21 (4)), the right to have one's *human dignity* respected, the obligation to protect the *environment* and the principle of *sustainable development*, as these are constitutionally enshrined (in Article 2 (1) and Article 24 (1) respectively).

The right to water is related to the status of waters and the framework within which they are managed and protected under the Greek legal order. In addition, pursuant to Article 967 of the Civil Code, waters which flow freely and constantly are considered "**objects of common use**". Similarly, Article 2 of Joint Ministerial Decision (hereafter JMD), No.Y2/2600/2001 on the "Quality of water intended for human consumption" in compliance with Directive 98/83/EC (see above) as amended by JMD DYG2/G.P. 38295/22.3.07, provides that "water intended for human consumption" should not be included under the definition for food, should be **provided to every citizen in Greece by the state as a "public good"**, should not be regulated by

26. *Water campaign, Water and Sanitation are a human right*, www.right2water.eu/el (last accessed on 10.3.2014).

27. *European Parliament, Position of the European Parliament Position of the European Parliament adopted at first reading on 15 January 2014 with a view to the adoption of Directive 2014/.../EU on the award of concession contracts, P7_TC1-COD(2011)0437, para. 40 and Article 12.*

28. *European Parliament, Resolution, 13 January 2004 on the Green Paper on services of general interest, [A5-0484/2003], it is noted that: The European Parliament emphasises the compatibility of the competition rules with the obligations deriving from the field of public services and finally objects to the liberalisation of the water ser-*

vices. The European Parliament points that the services in the field of water and waste management must not be subject to Sectoral EU Directives but highlights that the Union must maintain its competence regarding the standards for the protection of the quality and the environment in these fields.

29. *European Commission, Joint Statement by Commissioners Potočnik and Barnier on privatisation of water services, MEMO/13/131, 22.2.2013.*

market regulations, and should be governed by the laws pertaining to public sanitation.”³⁰

In addition, Article 10 of Law 3199/2003 “For the protection and the management of waters”, which relates to **general rules for the use of waters** in compliance with Directive 2000/60 EC³¹, states *inter alia* that (1) the supply of water for human consumption and sanitation takes priority, both quantitatively and qualitatively, over every other use of water; (2) every use must seek to be consistent with the sustainable and balanced satisfaction of development needs and with securing the long-term protection of waters, the adequacy of reserves and the preservation of their quality, especially by reducing and preventing their pollution; (3) demands for water should be satisfied on the basis of the limits and capacity of the water reserves, taking into account both the water required for the preservation of ecosystems and the need for balance between the pumping and recirculation of underground waters³².

III. The framework ensuring effective protection for the right to water

By pointing out the importance of the right to water, the GNCHR is recalling the State’s obligation to respect, protect and effectively implement it. Using the normative content of the right, as derived from General Comment No.15³³, as a guide, the GNCHR issues its recommendations based on the internationally formulated framework for its protection.

A. Adequate water

The GNCHR stresses the need for **water to be treated as a natural, social and cultural**

good, not as an economic commodity, and in a manner that guarantees the adequacy of water for both present and future generations. Insufficient attention is regularly paid to the fact that water, as a natural good, is already subject to shortages, and that there is therefore a crucial and urgent need for coordinated efforts to secure it. Drawing attention to the recent observations of the UN Special Rapporteur on the right to safe water and sanitation, the GNCHR stresses that water use must be governed by *the principle of sustainable development, even in times of financial crisis*³⁴.

In this regard, the importance of balancing environmental protection and the right to water is stressed in cases where there is a conflict between the two, and especially when designing water supply infrastructure. Even when dealing with the most pressing water supply problems, the state is expected to minimise the environmental impact of water supply projects by opting for those measures that effectively cover the water supply needs of the population, but also affect the environment as little as possible.

The GNCHR also highlights that, since **the insufficiency of water as a natural good is already a reality**, the adoption of measures preventing water overconsumption and encouraging its rational use must be intensified.

B. Available water

Every person must have at their disposal an adequate quantity of water for his/her daily needs according to the standards set by the World Health Organisation. Furthermore, the GNCHR, points out that the State must take into consideration crucial individual water needs along with *inter alia* the individuals’ state of health, climate and working conditions. With this in mind, the GNCHR applauds innovative decisions, such as No 923/2008 from the Thebes Court of First Instance (Procedure of interim measures) which, by indirectly recognizing the right to water, has

30. See *inter alia* TZATZAKI (M.-B.), *Water in Public International Law*, op. cit., pp. 155-156.

31. *The Presidential Decree 51/2007 for the "Determination of measures and procedures for the complete protection and management of waters in compliance with the Directive 2000/60 EC" was issued for the implementation of Law 3199/2003.*

32. *An important step for the awareness of the necessity of a rational and scheduled water use constituted the Law 1739/1987 "For the management of water resources".*

33. CESCR, *General Comment 4 (General Comments), The right to adequate housing (Art.11 (1))*, 13.12.1991, *supra* sub. 8.

34. *Report of the Special Rapporteur on the human right of safe drinking water and sanitation, Catarina de Albuquerque, Sustainability and non-retrogression in the realisation of the rights to water and sanitation, A/HRC/24/44, 11.7.2013.*

temporarily obliged the Municipality, as the competent authority, to provide with safe water the 6,000 inhabitants/consumers of Dilesi until the new water supply network is brought into service in the area, this to be achieved using water tanks the Municipality was forced to install in Dilesi in sufficient numbers to provide the consumers with **1,200 cubic meters of water per day** (200 litres per day each).

The GNCHR stresses that the availability of water must be safeguarded for the population's total needs, **including irrigation**. For this purpose, the State must ensure that the institutions responsible for this task, as well as of the actors it supervises, provide a constant, regular and complete service.

On the other hand, taking into consideration the fact that water is a natural good of which there is a shortage, the State is also under an obligation to supervise the *private use of water* in such a way that it can guarantee that water is available for the entire population.

C. Safe water

The GNCHR points out that the right to water includes access to safe and high quality water for drinking, personal and domestic use, stressing **the indivisible nature of water quality intended for every use**. This aspect of the right to water reveals its close affinity to the right to health, as well as the right to a healthy environment³⁵. Taking into account the recent decision of the Social Rights Committee of the Council of Europe which condemns Greece³⁶, the GNCHR expresses its deep concerns about the ongoing pollution of the waters of the Asopos River over the last 40 years³⁷. Recognizing that this spe-

cific water pollution case is not unique in Greece, the GNCHR stresses the general need to prevent primarily, but also to punish water pollution incidents, irrespective of their source.

As far as the appropriate conservation of water infrastructure is concerned, the recent Issue Paper of the Commissioner of the Council of Europe on the protection of human rights in times of financial crisis, expresses concern over the decreasing attention being paid to the conservation of water infrastructure as a result of austerity measures, and emphasises the risks this may pose for both water access and quality³⁸.

In this context, there is an urgent need to adopt a legislative amendment in relation to the *imposing of a special limit* on hexavalent chromium in drinking water³⁹, introducing stricter measures than those provided for in JMD Y2/2600/2001.

It is equally necessary to ensure that *individuals contribute* to dealing with the consequences of pollution for which they are responsible through application of the "polluter pays" principle. The right to financial freedom must be exercised in such a way that it goes beyond simply not clashing with urgent matters of public interest, such as the protection of the environment and public health, and contributes substantially to their achievement⁴⁰.

D. Accessible water

The right to water includes the access for every person within the jurisdiction of the Greek State. Access to water refers both to physical accessibility and financial accessibility to the commodity for all in an equal and non-discriminatory manner.

35. See Law 1650/1986 "For the protection of the environment" that aims to the protection of surface and underground waters considered as natural resources and as ecosystems.

36. ECSR, *International Federation for Human Rights (FIDH) vs Greece*, No 72/2011, 23.11.2013. The Committee recognised the violation of Article 11 (1) and (3) of the European Social Charter due to the fact that the Greek authorities did not take the necessary measures to prevent the harmful consequences for health and decease and did not provide consultative and educational support for the protection of health, according to Article 11 (2).

37. See also GNCHR, *Observations on the Plan Report of*

Greece about the implementation of the International Covenant of Economic, Social and Cultural Rights, op. cit., p. 30.

38. *Commissioner for Human Rights, Protection of Human Rights in times of financial crisis, Issue Paper of the Commissioner of Council of Europe for Human rights, ComDH/IssuePaper(2014)2*, 22.1.2014, p. 17.

39. *Greek Ombudsman, Protection of Public Health and Adoption of measures for the management of pollution in the wider area of Asopos river*, 6.12.2011.

40. See also *Council of State (Commission on stays of execution) No 662/2012*.

Physical accessibility

Water should be located close enough to safeguard the physical security of every individual in their home, their workplace and in educational institutions.

Focusing on those categories of individual that confront the most serious problems vis-à-vis physical access to water, the GNCHR points out the following:

With regard to persons with disabilities

The GNCHR has expressed its deep concern about the condition of infrastructure relevant to persons with disabilities, from both a right-to-health⁴¹ and a right-to-education viewpoint⁴². The GNCHR calls upon the State to take care of the appropriate equipment, which includes *inter alia* easily accessible water supplies for both healthcare and educational facilities serving persons with disabilities.

With regard to the elderly

The importance of water access for the elderly is usually under-estimated. In light of the recent Recommendation of the Committee of Ministers of the Council of Europe, the GNCHR stresses the need to provide adequate measures of support to enable older persons to have housing adapted to their current and future needs⁴³ in a way that facilitates their access to water. Besides, having adopted Principles for Older Persons, the UN General Assembly refers expressly to their access to adequate water in the context of safeguarding the independence of the elderly⁴⁴.

41. GNCHR, "Recommendations of the GNCHR for the protection of childhood, Health and Providence", publication pending.

42. GNCHR, "Recommendations regarding the implementation of Law 3699/2008, "Special Treatment and Education of persons with disabilities or with special educational needs"", Annual Report 2009, p. 39.

43. Recommendation CM/Rec (2014)2 of the Committee of Ministers to Member States on the Promotion of the Human Rights of older persons, 19.2.2014, para. 23.

44. United Nations General Assembly, Implementation of the International Plan of Action on Ageing and related activities, A/RES/46/91, 16.12.1991, para. 1.

With regard to the population of smaller islands

The water supply of smaller islands poses a constant challenge for the State, which does not always produce a satisfactory response. Moreover, the already severe problem of inadequate water supply to smaller islands is further exacerbated during the summer due to the weather conditions on one hand, and the additional needs that emerge from tourism on the other. The GNCHR calls upon the State to secure consistently adequate and safe water for smaller islands and every other remote area in the country, including border areas, thereby preventing the creation of pockets of population within Greece where access to water is very difficult or even impossible.

Affordability

The GNCHR points out that water must be affordable, so as not to limit an individual's ability to procure other staples or/and to enjoy other rights. As a consequence, under certain circumstances, the necessary quantities of water shall even be provided *for free*.

In light of *the financial crisis and austerity measures*, the affordability of water gains crucial importance. This matter cannot be detached from the **status of the water supply and sanitation services and the *ante portas* privatisation thereof**.

Given the impoverishment of the Greek population⁴⁵ as a result of the austerity measures imposed over the last 4 years, the GNCHR chooses to address the issue of water privatisation primarily with reference to water affordability. However, **the GNCHR wishes to stress that any privatisation of water supply services impacts negatively *in totum* on every aspect of the right to water**, which for reasons of cohesion it chooses to refer to together at this point.

In this context, the GNCHR is concerned, especially during the financial crisis, about acts (on

45. ILO, Observation (CEACR) – adopted 2012, published 102nd ILC session (2013), available from: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100::P13100_COMMENT_ID:3088061.

the domestic and European level) which signal the **withdrawal of the State from publicly controlling and guaranteeing the provision of water as a public social good**⁴⁶. This withdrawal is made clear, especially, by the privatisation of water supply companies (EYDAP, EYATH), and power supply companies (DEI), in so far as these entities are related to irrigation projects and the utilisation of water resources, but also by the abolition of actors on whose actions the irrigation of large rural areas depended.

As the GNCHR has already highlighted, *"the surrender of public property and transfer of public utilities pose a serious risk to the furtherance of the public interest and the preservation of the public character of the goods and services produced or provided by these entities as well as to the working conditions of their employees"*⁴⁷. Similarly, the recent report of the UN Independent Expert on the effects of foreign debt on the full enjoyment of rights in general and social rights in particular, expresses concern about the privatisation of enterprises providing essential public services, and primarily water and sanitation⁴⁸.

Indeed, the scheduled privatisation of water and sanitation providers serves to establish the perception of water as a commercial commodity, therefore annulling its nature as a public natural good. Furthermore, in the light of analogous experiences worldwide⁴⁹, it clearly also jeopardises (1) *Water sufficiency*: Reckless water consumption with the aim of making a profit, coupled with poor conservation of networks and the subsequent leaks, deviate from the principle of sus-

tainable development, exacerbating the global problem of insufficient water supply⁵⁰. (2) *Water quality*: Poor conservation of networks and the negligence shown with regard to monitoring the quality of water supplied, contribute to deterioration in the quality both of drinking water and the water required to cover other personal and family needs. The undivided nature of water quality intended for every use, a necessity for the enjoyment of the right to water, is also at risk. (3) *Access to water*: Increases in the price of services provided is seriously jeopardizing the water access of a large portion of the population, especially in the wake of austerity measures and the subsequent dismantling of the Welfare State which have already led to a radical and dramatic deterioration in the people's standard of living, with a large portion of the population having been rendered destitute⁵¹. The recent Issue Paper of the Human Rights Commissioner of the Council of Europe on safeguarding human rights in times of economic crisis explicitly states that: *"[p]lans to privatise public water utilities have been part and parcel of several austerity packages which may threaten the affordability of water [...]"*⁵². (4) *Equal and non-discriminatory access to water*: Given that a private enterprise operates with the aim of making a profit, the safeguarding of access to water for less privileged population groups does not constitute a priority. (5) *Public participation in water-related matters*: Referring also to Greece, the UN Special Rapporteur on the right to water notes in her latest report that *"[o]nce the decision to priva-*

46. PARARAS (P.), "Water cannot be privatised", Kathimerini, 27.9.2013, <http://www.cecl2.gr/attachments/article/217/teuxos%2028.pdf>.

47. GNCHR, "GNCHR Recommendation: Imperative need to reverse the procedure of shrinking personal and civil rights", Annual Report 2011, p. 119.

48. 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, Cephias Lumina, Mission to Greece (22-27 April 2013), A/HRC/25/50/Add.1, 7/3/2014, para. 31.

49. See Report of the Independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation, Catarina De Albuquerque, A/HRC/15/31, 29.6.2010. Also see an analysis on international experience INE/GSEE Annual Report 2012, p. 153.

50. Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, Sustainability and non-retrogression in the realisation of the rights to water and sanitation, op.cit., para. 44.

51. See GNCHR, "The GNCHR Recommendation and decisions of international bodies on the conformity of austerity measures to international human rights standards", 27.6.2013 "GNCHR Recommendation: On the imperative need to reverse the sharp decline in civil liberties and social rights", op.cit., p. 119 and "Decision on the need for constant respect of human rights during the implementation of the fiscal and social exit strategy from the debt crisis", Annual Report 2010, p. 103.

52. Commissioner for Human Rights, Protection of human rights in times of financial crisis, Issue Paper of the Commissioner of the Council of Europe for Human Rights, op.cit., p. 17.

tise has been made, and especially in the context of economic crisis, the process of selling the assets often does not include sufficient opportunities for meaningful public participation"⁵³ and (6) *The effective accountability of water suppliers for all the aforementioned points*: This point is emphasised by both the Human Rights Commissioner of the Council of Europe⁵⁴ and the UN Special Rapporteur on the right to water⁵⁵.

Equal and non-discriminatory access to water

The GNCHR emphasises that everyone, and especially members of vulnerable groups, must have **equal and non-discriminatory access to adequate and safe water**.

The GNCHR, having stated its position repeatedly with regard to the lack of solutions provided for the housing problems facing the Roma community in Greece⁵⁶, expresses its deep concern over the multiple violations of the right to water. In so doing, it bears in mind both the ECSR judgments⁵⁷ against Greece and recent reports on water-related issues⁵⁸. Many houses

do not even have the infrastructure required for water and sanitation, whilst entire settlements have been left without access to water due to water supply problems. Consequently, the Roma are forced to transfer water to the settlement from other locations outside. Therefore, the GNCHR urges the state to take specific measures to ensure access to clean and adequate water for the Roma, while highlighting the value of initiatives taken by the competent local authorities. The GNCHR also points out yet again⁵⁹ that access to an adequate quantity and quality of water is not ensured on an equal and indiscriminate basis at *detention centres* for both Greek and foreign detainees, asylum seekers and refugees. The ECtHR has taken this and other contributing factors into account in judgements that have found Greece to be in violation of Article 3 of the ECHR concerning conditions of detention⁶⁰. Taking into consideration, too, the Recommendation Rec (2006)2 of the Committee of Ministers of the Council of Europe, the GNCHR highlights the need to ensure continuous access to water, the quality of which must be examined by the competent authorities⁶¹. It also notes that access to clean and adequate hot water must be ensured in order to cover other personal needs.

E. Water and Public Participation

The GNCHR emphasises that water is a common good which should be managed in a

53. *Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, Sustainability and non-retrogression in the realisation of the rights to water and sanitation, op.cit., para. 45.*

54. *Commissioner for Human Rights, Protection of human rights in times of financial crisis, Issue Paper of the Council of Europe Commissioner for the Human Rights, op.cit., p. 17.*

55. *Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, Sustainability and non-retrogression in the realisation of the rights to water and sanitation, op.cit., para. 45.*

56. GNCHR, "Observations on the Second Periodic Review of the Hellenic Republic for the International Covenant on Civil and Political Rights (ICCPR)", http://www.nchr.gr/images/pdf/apofaseis/ellinikes_ektheseis_en_ell_org/OHE/Parathrhseis_EEDA_prosYPEKS_DSAPD.pdf; "Report and recommendations on issues concerning the situation and rights of the Roma population in Greece", *Annual Report 2008*, p. 50 etc and "The situation of the Roma population in Greece", *Annual Report 2001*, pp. 179 et seq.

57. *ECSR, International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Greece*, no. 49/2008, 11. 12. 2009 and *ECSR, European Roma Rights Center v. Greece*, no. 15/2003, 8.12.2004 (violation of the right to adequate housing according to Article 16 of the European Social Charter).

58. *European Territorial Cooperation Programme: Actions that protect the right to health and the protection of the Roma population, Thessaloniki 2012*, <http://www.synigoros.gr/resources/toolip/doc/2014/02/04/rom-alert-meleth.pdf>

(last accessed 10.3.2014), *FRA, EU-MIDIS European Union Minorities and Discrimination Survey, Data in Focus Report - The Roma, 2009 and Council of the European Union, Council Recommendation on effective Roma integration measures in the member states, 9 and 10 December 2013*, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lisa/139979.pdf (last accessed on 10.3.2014), para. 1. 6. (d), p. 7.

59. GNCHR, "Detention Conditions in Police Stations and Detention Facilities for Aliens", *Annual Report 2010*, p. 36 and "Decision regarding detainees rights and detention conditions in Greek prisons", *Annual Report 2007*, p. 71.

60. *Access to drinking water (ECtHR, MSS v. Belgium and Greece, 21.1.2001)* and *to adequate and hot water (ECtHR, Peers v. Greece, 19.4.2001 and ECtHR, Dougoz v. Greece, 6.3.2001)*.

61. *Recommendation Rec (2006)2, du Comité des Ministres aux Etats membres sur les Règles pénitentiaires européennes (adoptée par le Comité des Ministres le 11 janvier 2006, lors de la 952e réunion des Délégués des Ministres)*, para. 22.5 and 44 (a).

democratic manner that aims to achieve the best possible public participation. Public participation is thus integral to the right to water and can be expressed in many forms including access to information, consultation, development of policies and procedures allowing the taking of joint decisions⁶². Besides, the ECtHR jurisprudence increasingly focuses on precisely these elements⁶³.

In this context, it is crucial that workers' representatives participate in the management of the bodies responsible for the supply of water and sanitation services in the context of worker participation in enterprises of public interest⁶⁴. The need to ensure the public monitoring of these bodies makes constant worker participation in their management crucial.

The GNCHR acknowledges the current Greek legislative framework in this area⁶⁵, which intro-

duces *inter alia* participatory bodies such as the National Water Council and the Regional Water Council (in the 13 Regional Water Districts)⁶⁶.

However, the GNCHR highlights that public participation in the management of water and other issues relating to the right to water is not ensured in practice.

This problem derives from the limited resources made available for this purpose⁶⁷, but mainly from the lack of experience on the part of the Greek public administration and its failure to assimilate participatory models. This introversion manifests itself in the indecisiveness, lack of initiative, refusal to take responsibility or even willingness to cooperate with the public demonstrated by both national and regional administrative bodies.

The GNCHR urges the State to take every measure necessary to ensure public participation in issues relating to the right to water. This presupposes the education not only of public employees but also that of the public itself on related issues.

On the other hand, the mode of participation should differ from area to area in accordance with the specific issues faced. The GNCHR considers the effectiveness of these procedures to hinge on the participation of professional groups from the given regions, given their familiarity with the specifics of extant problems.

Similarly, the GNCHR also welcomes the regulations introduced by Law 3852/2010 on a

62. HARE (M.), LETCHER (R) and JAKEMAN (A.), "Participatory modeling in natural resource management: a comparison of four case studies", *Integrated Assessment* 4(2):62-72, 2003.

63. FLAUSS (J.-F.) " L'apport de la jurisprudence de la Cour européenne des droits de l'homme en matière de démocratie administrative" *Revue Française d'administration publique*, no 137-138, 2011, pp. 49-58.

64. See Article 11 (2) (a) Amended Statute of EYDAP A.E. (OG 11085/ Series AE & EPE/9-10-2006).

65. Law 3199/2003 (Article 3 (2) and Article 6) integrates the requirement of public participation according to the Water Directive (2000/60/EC) while enforcing the participation of the public by creating consultation procedures. Furthermore, Greece ratified the Convention on access to information, public participation in decision-making and access to justice in environmental matters of the United Nations Economic Commission for Europe (UNECE), which was signed in Aarhus, Denmark on 25 June 1998, Aarhus Convention introduced by Law 3422/12.12.2005 (OG A' 303/13.12.2005). See also, Presidential Decree 51/2007 " Determination of the measures and procedures for the full protection and management of the water in accordance with the provisions of the Directive 2000/60/EC", JMD no. HP11764/653/2006 (OG 327B/17-3-2006) relating to the access of the public to the public authorities in order to be provided with information regarding the environment, which is provided by the Directive 2003/4/EC on public access to environmental information, which had been issued by EU for the implementation of the Convention, JMD 37111/2021/2003 (OG B 139/29.09.2003) on the determination of the way of the information process and the participation of the public during the procedure of approval of the environmental conditions of the projects and activities according to Article 3 (2) Law 3010/2002 and Directive 2003/35/EC of the European Parliament and of the Council. And JMD no. 9269/470/2007 - OG B' 02.03.2007

which integrated the provisions of the Articles 3 (7) and 4 (4) of the Directive 2003/35/EC as regards to the access of the public to legal remedies in order to challenge the acts or omissions relating to their information and participation during the procedure of approval of the environmental conditions.

66. The national Council and the 13 regional Councils constitute advisory bodies, in which there is a representation of the bodies, which are interested in participating in national and regional level, such as trade union of employees, NGOs etc. See also Law 1650/1985, Law 2742/1999 and Law 4109/2013 the administrative bodies, which have been established in the protected areas of Greece and whose administrative councils consist of delegates of the central, regional and local authorities, interested local bodies, researchers and NGOs.

67. See also Task force on Access to Information: Overview Of The Convention Implementation, AC/TF.AI/Inf.2, 7.8.2013, pp. 17-18.

regional administration level, which include the establishment of Consultation Committees in municipalities and Regional Administrations (Articles 176 and 178). However, it notes that public participation in these bodies is not ensured in practice, due to widespread ignorance of their existence. The local administrations should therefore take measures to remedy this.

Moreover, and as far as the conduct of regional referenda regulated by this law is concerned, the GNCHR stresses that the state should adopt a *clear regulatory framework* to specify how they are to be conducted and thus ensure their legitimacy. Given that a regional referendum is about to take place in Thessaloniki on the public character of the EYATH (Thessaloniki Water Supply and Sewerage SA), this can be considered still more crucial.

The GNCHR observes with great interest these processes which demonstrate the importance of public participation in decisions relating to a very important commodity as crucial as water, and which demonstrate healthy public reflexes in the context, too, of a major international mobilisation aimed at protecting the right to water in Greece.

IV. GNCHR Recommendations for the protection of the right to water

Beyond its timeless importance, the right to water becomes especially crucial in times of crisis. The recognition of a right to water in Greece is rendered still more crucial, given that there is a heightened possibility that water supply companies will be privatised despite the social and economic consequences of the financial crisis.

On this note, and as an overall recommendation, *the GNCHR recommends that water's status both as a public good and a universal right be enshrined in the constitution*. Needless to say, this, would not be an end in itself, but rather a means of bolstering efforts aimed at its protection, which is an absolute necessity⁶⁸.

68. Besides, there are quite many national constitutions or legislations which provide for a right to access to water (e.g. Nigeria, Zambia, Uganda, Mexico, Panama) or a right to clean water (e.g. USA - Texas, Illinois etc). See also Economic and Social Council, Realisation of the rights to drink-

In light of the above, the GNCHR summarises and issues the following recommendations:

GENERAL RECOMMENDATIONS

- Legally recognizing the right to water as a public good. Recognition of the link between the right to water on the one hand and sewerage and irrigation on the other.
- Preserving the public character and oversight of the bodies responsible for water and sewerage; precluding the possibility of their being conceded to private actors.
- Ensuring the right of access to safe drinking water for every inhabitant of the country.
- Ensuring universal access to administrative and judicial procedures whereby members of the public can express their complaints relating to acts or omissions on the part of actors public or private, natural or legal that violate the right to water.
- Monitoring compliance with obligations relating to the right to water, mainly via independent authorities, on the basis of the specified GNCHR recommendations.
- Adopting, implementing and evaluating a National Plan of Action for the full implementation of the right to water. It would be very useful to include a specific chapter on water in the National Plan of Action for Human Rights.

SPECIFIC RECOMMENDATIONS

A. Adequate water

- Creating a perception of water as a natural, social and cultural good, rather than a commercial commodity.
- Utilizing water in a manner respectful of the principle of sustainable development, even in periods of economic crisis
- Taking measures to prevent the overconsumption of water and to encourage its rational use.
- Establishing a balance between the protection of the environment and the right to water in cases where the two rights appear to be in

ing water and sanitation, Report of the Special Rapporteur, El Hadji Guissé, E/CN.4/Sub.2/2005/25, para. 2.3.

conflict, mainly during the design of water supply, sewerage and irrigation structures.

B. Available Water

- Guaranteeing everyone access to a quantity of water adequate for their needs, in accordance with the guidelines provided by the World Health Organisation.
- Taking into consideration crucial water-related needs such as health and working conditions.

C. Safe Water

- Ensuring access to high quality water for any use, with an emphasis on the undivided character of water quality.
- Taking care to both prevent and suppress water pollution, whatever its source. Conserving water-related infrastructure appropriately.
 - Monitoring water quality on a regular basis.
 - Providing an alternative water supply in cases of water pollution.
 - Informing the general public about the underlying dangers to public health in cases of inappropriate drinking water. Amending the legislation to reduce the amount of hexavalent chromium permitted in drinking water, establishing stricter limits than those provided for in Joint Ministerial Decision Y2/2600/2001.
 - Organizing and improving industrial areas; establishing strict quality controls on water intended for industry.
 - Drawing up integrated management plans for river basins in a timely fashion. Employing the criminal provisions included in Y2/2600/2001 against competent authorities that fail to take the indicated sanitary measures.
 - Ensuring the contribution of individuals to countering the consequences of pollution for which they are responsible, applying the "polluter pays" principle.

D. Accessible Water

- Ensuring access to water for every person within the jurisdiction of the Greek State.

Physical Accessibility

- Ensuring the physical integrity of every individual at home, the workplace and educational institutions, in terms of their access to water.
 - Employing appropriate equipment which will include an easily accessible supply of water to both healthcare and educational units catering to the disabled.
 - Catering for the current and future needs of the elderly in terms of housing facilities in a manner that also facilitates their access to water.
 - Ensuring a continuous supply of sufficient and safe water to all mainland and island areas in Greece, and especially to small islands and isolated, remote areas; preventing the creation of pockets in which access to water is difficult or even impossible.

Affordability

- Ensuring that water remains affordable, and that water prices do not limit an individual's ability to procure other staples or/and enjoy other rights.
 - Applying suitable pricing policies and allowing for flexible payment plans (social billing); supplying water for free on a case to case basis whenever this is considered necessary.
 - Preventing consumers having their water supply cut off for failure to pay water bills before their financial situation has been examined.

Equal and non-discriminatory access

- Ensuring access to an adequate quantity and quality of water for all without discrimination and on an equal basis, but especially for vulnerable population groups.
 - Taking special care to ensure that Roma enjoy access to clean and sufficient water, and encouraging the competent local authorities to undertake initiatives in this regard.
 - Providing uninterrupted access to drinking water; monitoring water quality and access to clean and sufficient warm water in detention centres for national as well as foreign inmates, asylum seekers and refugees.

E. Water and Public Participation

- Safeguarding democratic participation in procedures that are relevant to water, access to information, consultation, policy drafting and procedures for the taking of joint decisions.
 - Safeguarding the participation of workers' representatives on the boards of bodies that provide water supply and sanitation services.
 - Training public servants, employees of public organs as well as civil society in participation issues.
 - Adapting participatory procedures to meet the specific issues facing each region.
 - Safeguarding the participation in the aforementioned procedures of professional groups from each region, given that they are better acquainted with the specifics of emerging issues therein.
 - Raising awareness among civil society on the function of participatory mechanisms.
 - Adopting a regulatory framework determining the manner in which referenda are conducted, thereby ensuring their legitimacy.

2. Recommendations of the National Commission for Human Rights (NCHR) for Childhood Protection: «Health and Welfare»*

"1. Children shall have the right to such protection and care as is necessary for their well-being. Children may express their views freely [...]."

2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration [...]."

Article 24 of the EU's Charter of Fundamental Rights

I. Introductory Observations

Considering and guaranteeing the child's best interests as top priority along with each State's obligation to secure childhood protection and care reflects the letter and spirit of numerous Constitutional provisions as well as of European and international texts relating to human rights protection¹.

One of the most important texts of international human rights law - cornerstone of the internationally recognised need for special protection and promotion of children's rights - is the International Convention on the Rights of the Child (hereinafter the ICRC). By guaranteeing civil and political as well as economic, social and

cultural rights, it successfully unites all States Parties around a common idea: the wish to guarantee the most complete protection for the children, recognising them as subjects of rights.

In the framework of its institutional role as an advisory body to the State for the protection of Human Rights, the Greek National Commission for Human Rights (GNCHR) has previously been extensively concerned with the necessity to provide institutional and effective protection to this particularly vulnerable social group, formulating, thus, proposals and recommendations².

Given the tremendous financial and social impact of the financial crisis on the fundamental children's rights, the GNCHR, taking into account the valuable experience and the reports of the Ombudsman for Children's Rights along with the quantitative and qualitative dimension of the already known problems which constitute violations of the children's rights, decides to address Recommendations to the State, aiming at the essential and actual restoration of the regulatory priority of measures and actions capable of contributing to the more effective protection and promotion of the fundamental children's rights.

Even though more restricted in meaning than the «rights of the child»³, the «protection

* The text has been unanimously adopted by the GNCHR Plenary during the session of May 8 2014. Rapporteurs: K. Papaioannou, GNCHR President, A. Chrissochoidou-Argyropoulou, GNCHR First Vice-President, E. Varchalama, GNCHR Second Vice-President, G. Sotirelis, GNCHR Member, Aik. Tsampi and R. Fragkou, GNCHR Legal Officers. It is also noted that the present Recommendations have been developed in collaboration with the Deputy Ombudsman in charge of children's rights, G. Moschos, assisted by his scientific staff.

1. See for example Article 24(1), of the International Covenant on Civil and Political Rights, which acknowledges the need for taking measures to protect each child irregardless of race, colour, sex, language, religion, national or social origin, property or birth, Article 10(3), of the International Covenant on Economic, Social and Cultural Rights, which provides that special protection and assistance measures for all the children and adolescents are taken, Article 7 of the European Social Charter which defines the children and young persons' right to protection and Article 24 of the EU Charter of Fundamental Rights which attributes primary consideration to the child's best interests.

2. GNCHR, «Observations on the Draft Initial Report of Greece concerning the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography», 2011 Report, "Observations on the Draft Initial Report of Greece concerning the implementation of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict", 2009 Report, "Proposals for the implementation of Law 3699/2008 Special Education and Education of people with disability or special educational needs, 2009 Report, "Report and Proposals of the GNCHR relating to the criminal record of juveniles and young adults", 2008 Report, "Observations on the 3rd Periodic Report relating to the implementation of the UN Convention on the rights of the child (CRC)", 2008 Report, "Proposals relating to the issue of unaccompanied minors", 2006 Report, "Observations on the draft law for Addressing Domestic Violence", 2005 Report, "Observations and proposals on the draft law for the Reform of Juvenile Criminal Law", 2003 Report. The Annual Reports of the GNCHR are available at its webpage: <http://www.nchr.gr/index.php/el/2013-04-03-11-07-36/115-etisies>.

3. The rights of the child include all the children's rights that compose the three general categories of rights, as they are defined by the ICRC and have been mentioned above (e.g. provisions: the right to appropriate standards of living, to

of childhood»⁴ covers a **wide thematic spectrum**. The examination of the problem of "Childhood Protection" is mostly served by grouping the relevant issues.

For this reason, the GNCHR's sub-commission in a session held on 14 February 2014, with the participation of the Ombudsman for Children's Rights and its legal research officers, decided to extensively deal with the "Mechanisms of childhood protection" in the long run⁵, inaugurating, for this purpose with the present Report, a series of special thematic reports concerning the promotion of the rights of the child. In order for the possible central points of the present report to be discussed and for a first compilation of the issues which should be given priority, two more workshops took place between the GNCHR's Rapporteurs and the Ombudsman for Children's Rights on 13 January 2014 and on 4 April 2014.

In the light of the aforementioned observations, the present text of Recommendations introduces the GNCHR's special examination of the issue of «Childhood Protection» as a whole. Accordingly, a more focused approach is pursued in the context of issues related to Health and Welfare, which raises double interest, both theoretical and practical. As such, it highlights the most important challenges today's society has to face relating to children's rights and protection. In this framework, knowledge of the current situation is of particular interest both regarding the authorities which are institutionally charged with child

protection in issues relating to access to health and reinforcement of welfare mechanisms, and the evaluation of their effectiveness and their work. Such an evaluation inevitably leads to the formulation of Recommendations regarding appropriate and effective measures which must be adopted in order to address the problems and the inefficiencies which have been detected.

II. The international protection of the child's right to health and welfare through the prism of the financial crisis

Firstly, it is noted that the ICRC, along with other international instruments relating to children, recognise them as subjects of rights, and not only as objects of protection. The ICRC and the EU Charter of Fundamental Rights (hereinafter the CFR) guarantee every child's right to adequate standards of living (Articles 27(2) ICRC and 24(1) CFR.) The ICRC recalls that parents are legally responsible for securing its protection and care (Articles 9(1) and 3(2)). An exception to this rule is provided by the ICRC, defining, in Article 9(1), that a child shall not be separated from his or her parents against their will, except when competent authorities, subject to judicial review, determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. When, in other words, parental care is deemed inadequate or inappropriate, replacing it with another, alternative care is imperative.

In any case, however, the State continues to be responsible for supporting the family, which is charged with custody of minors and for monitoring the structures of alternative care to which the necessary protection and care for the minors' well-being is assigned, given that the State's top priority is protecting and promoting the child's rights. The primary responsibility, therefore, in order to secure the child's appropriate standards of living is assigned to parents or to those responsible for the child's development (Articles 27(2) ICRC and 24(3) CFR), with the State being charged with the obligation to meaningfully contribute to their mission by creating the appropriate conditions for the implementation of the aforementioned right.

education, to health, to welfare, to entertainment, etc, protection: the right to life, prohibition of discrimination, exploitation or abuse and participation: the right to freedom of speech, to information, to freetime, etc.)

4. In accordance with the provisions of the CRC's first article, a child means «every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier». Relating to the definition given to the child by the Greek legislator, it is noted that the positive outcome of the reform of the Article 121 PC (Criminal Code) (Article 1(2), Law 3189/2003) according to the provisions of which "minors are defined those persons who are between eight and eighteen years of age completed at the time of the commission of the offence".

5. A mechanism means the combination of agencies and non-governmental organisations which allows for the smooth functioning of these bodies and their most reliable and effective action.

Besides, the right to health, as every human's universal and inalienable right, is guaranteed both on a national and on a European and international level by numerous instruments. Even more so, when the subject of this right is a particularly vulnerable social group: children. Both the ICRC and the CFR guarantee every child's right to the enjoyment of the highest attainable standard of health (Articles 24(1) ICRC and 24(1) CFR), to the necessary protection and care for his or her well-being (Articles 3(2) ICRC and 24(1) CFR) and to adequate standard of living (Articles 27(1), ICRC and 24(1), CFR), setting at the same time "the best interests of the child" as a primary consideration in every action relating to childhood (Articles 3(1) ICRC and 24(2) CFR.)

The same goal is also pursued by Article 25 of the UN Convention on the Rights of Persons with Disabilities, which guarantees the right of persons with disabilities to health, providing *inter alia* that persons with disabilities enjoy this right without discrimination. States shall take all appropriate measures so as to ensure access for persons with disabilities to health services with the same range, quality and standard of free or affordable health care and programmes as provided to other persons and to provide those health services needed by persons with disabilities specifically because of their disabilities, so as to *inter alia* prevent further disabilities. Moreover, health professionals are required to offer same quality care, with consideration to issues relating to dignity, autonomy and human rights of persons with disabilities. More specifically, Article 7 of the UN Convention on the Rights of Persons with Disabilities provides that States should ensure full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.

Since Article 24 of the ICRC does not provide an exact definition of "the highest attainable standard of health", this term is to be clarified *inter alia* in light of Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which in Paragraph 2 enumerates a series of specific measures for the realisation of the right like, indicatively, measures for

the reduction of infant mortality as well as for the healthy development of the child (Article 12(2) (a) ICESCR)⁶. Further specification is provided by the provisions of both Article 25 ICRC, which guarantees the right of every child who has been placed by the competent authorities to a foster family for the purposes of care/protection of his or her health, to periodic review of the treatment provided⁷, and Article 23(2) ICRC, which guarantees the right of the disabled child to special care and assistance which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child⁸.

Furthermore, the aforementioned provisions relating to every child's right to enjoy the highest attainable standard of health, securing a decent standard of living and the search for its best interests are complemented by Article 26 of the ICRC, which recognises "for every child the right to benefit from social security, including social insurance". The child's social protection is, after all, specifically guaranteed in many international texts, like in Article 25(2) of the Universal Declaration of Human Rights, Article 10(2) of the ICESCR, Article 17 of the European Social Charter (ESC) and Article 24(1) of the CFR.

In its recent report about the application of the 102 ILC by Greece (minimum level of social security)⁹, the Committee of Experts of the International Labour Organisation (ILO) calls for Greece to take measures to successfully reverse the increasing impoverishment of the population, specially mentioning the fact that many of the

6. See also Stergiou A., «Article 24 [The right to health and medical services]», *The International Convention on the Rights of the Child and the internal legal order: interpretation by article*, Eds. Naskou-Perraki, P., Chrysogonos, K., Anthopoulos, C. *Centre of International and European Economic Law: Sakkoulas, Ant. N., 2002. 255 et seq.*

7. *Idem*, p. 270 and Papasteriadou, N. "Article 23 [Protection of the child with special needs]" Eds. Naskou-Perraki, P., Chrysogonos, K., Anthopoulos, C., *op.cit.*, p. 238 et seq.

8. *The General Comments of the UN Committee on the Rights of the Child are also of great importance, like General Comment No. 15 on the right of the child to the enjoyment of the highest attainable standard of health, General Comment No. 3 on HIV/AIDS and the rights of the children, General Comment No. 7 on implementing child rights in early childhood and General Comment No. 9 on the rights of children with disabilities.*

9. *Sanctioned by Law 3251/1955.*

austerity measures have failed to hinder the rise of child poverty. Taking into account that the European Commission is one of the members of the Troika, the Committee of Experts calls Greece to a "post factum examination of the impact of those reforms and the policies of continuous austerity on the rise of poverty and in particular child poverty", highlighting that this evaluation will undoubtedly offer "a unique source of lessons to be learned, not only by the European Commission and other members of the Troika, but by all European countries and the international community at large in order to prevent, in future, the creation of widespread poverty"¹⁰.

As a matter of fact, the Committee of Experts in its report about the application of the ILC 138 by Greece (minimum age for admission to work)¹¹, "[notes once again its **concern** that [PD 62/1998] continues to permit the performance of hazardous work by persons of the age of 15 years [...]. It strongly urges the Government to take the necessary measures to bring its national legislation into conformity with Article 3(3) of the Convention by providing that no person under 16 years of age may be authorised to perform hazardous work under any circumstance [...] and to ensure that section 2(c) of Presidential Decree No. 62/1998 is amended to define a "young person" as a person of at least 16 years of age"¹². In the present dramatic circumstances for children and considering the absence of assessment of the social impact of austerity measures, the acute increase and inadequate addressing of poverty, guaranteeing effective children protection, by reinforcing the rules and monitoring their implementation, is more urgent than ever.

The UN Committee on the Rights of the

Child, in its Concluding Observations on the Second and Third Periodical Report that Greece submitted with regard to the application of the ICRC¹³, expresses its deep concern about the effects of the current crisis and increasing child poverty rates and urges the Greek State to give priority to the battle against child poverty, so as to lower the risk of poverty from 23.6% to 18% by 2020, attaching weight to reinforcing social services and other welfare structures which shall assist the family¹⁴. The economic hardship many families are facing nowadays may lead to the removal of the child from the family environment and consequently increase the tendency towards institutionalisation of children. Providing support to the family can reverse this path¹⁵.

The UN Committee on the Rights of the Child observations appear not to have been taken into account during the drawing up of policies regarding the allocation of social protection expenditure in Greece during the last few years, considering that for the time period from 2000 to 2010, the social protection benefits show a rising tendency (from 22.7% in 2000 to 28.15% in 2010), the corresponding benefits provided to families or children have remained, for the same time period, stable (from 1.68% in 2000 to 1.79% in 2010)¹⁶. It is indicative that recent legislation¹⁷, adopted in view of taking measures

10. ILO, *Report of the Committee of Experts on the Application of Conventions and Recommendations, ILC.103/III(1A), 2.5.2014*, p. 518 (http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_235054.pdf).

11. Sanctioned by Law 1182/1981.

12. ILC, *Report of the Committee of Experts on the Application of Conventions and Recommendations, 102nd Session, 2013, ILC.102/III(1A), C. 138*, p. 306 (highlighting of the Committee of Experts), available from: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_205472.pdf.

13. Committee on the Rights of the Child, *Consideration of reports submitted by States parties under Article 44 of the Convention, Concluding observations: Greece, CRC/C/GRC/CO/2-3, 13 August 2012*, par. 6/58.

14. Committee on the Rights of the Child, *Consideration of reports submitted by States parties under Article 44 of the Convention, Concluding observations: Greece, op.cit.*, par. 58.

15. *Idem*, par. 40-41.

16. UNICEF, *Hellenic National Committee for UNICEF, The State of the Children in Greece, 2013*, p. 7 (<http://www.unicef.gr/pdfs/Children-in-Greece-2013.pdf>). For more information on social protection provisions, see: Hellenic Statistical Authority - EL.STAT. (http://www.statistics.gr/portal/page/portal/ESYE/PAGE-themes?p_param=A2104), Eurostat (http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Social_protection_statistics) and International Labour Organisation - ILO (<http://www.ilo.org/gimi/gess/ShowTheme.do?tid=10>).

17. Article 1(IA,3)(a)(e) of Law 4254/2014 Measures for the support and development of the Greek economy within the scope of application of Law 4046/2012 and other provisions (OHJR A 85/4.7.2014).

to decrease non-salary costs, repeals as from 1 July 2014 contributions and, subsequently, social security provisions in favour of family and children which were paid to employees under certain conditions within the framework of the also repealed special account; the Employees Family Benefits Distributing Account which had applied since 1958¹⁸ within OAED (Manpower Employment Organisation).

III. Recommendation of the European Commission "Investing in children: Breaking the cycle of disadvantage"

Taking into consideration that children are particularly vulnerable to the hazard of poverty or social exclusion, in combination with the serious impact the current fiscal and financial crisis has on children and their families and recognising the particular importance the application of policies improving the well-being of the children has for the positive outcome of addressing child poverty, the European Commission adopted a Recommendation entitled: *Investing in children: Breaking the cycle of disadvantage* on 20.2.2013. Through this text, Member States are urged "to organise and implement policies to address child poverty and social exclusion, promoting children's well-being, through multi-dimensional strategies". The Recommendation came as the result of the goals of the Strategy "Europe 2020" and was based on observations of the Commission, in particular of the fact that "the current financial and economic crisis is having a serious impact on children and families, with a rise in the proportion of those living in poverty and social exclusion in a number of countries"¹⁹.

The Recommendation proposes the development of integrated strategies in Member States on the basis of three key pillars:

- **Access to adequate resources**

It recommends support parents' participation in the labour market and providing for ade-

quate living standards through a combination of benefits, including fiscal incentives, family/child/housing benefits, minimum income schemes, in-kind benefits related to nutrition, child care, education, health, housing, transport and access to sports or socio-cultural activities.

- **Access to affordable quality services**

It recommends reducing inequality at a young age by investing in early childhood education and care, improving education systems' impact on equal opportunities, improving the responsiveness of health systems to address the needs of disadvantaged children, providing children with a safe, adequate housing and living environment as well as enhancing family support and the quality of alternative care settings.

- **Children's right to participate**

It recommends supporting the participation of all children in play, recreation, sport and cultural activities and putting in place mechanisms that promote children's participation in decision making that affects their lives.

In the Recommendation, it is highlighted among others, that "While policies addressing child poverty are primarily the competence of Member States, a common European framework can strengthen synergies across relevant policy areas, help Member States review their policies and learn from each other's experiences in improving policy efficiency and effectiveness through innovative approaches, whilst taking into account the different situations and needs at local, regional and national level".

IV. The state of services as well as health and welfare structures in Greece

The right to health for all children without exception is being secured through preventive measures (preventive examinations, vaccinations) and the promotion of research on health issues as well as through measures securing access to quality health services²⁰ for addressing health problems (treatments, hospitalisation,

18. Legislative Decree 3868 of 10.25/29.1958 (A 178) On the establishment of a Employees Family Benefits Distributing Account and other relevant provisions.

19. EU Recommendation, "Investing in children: Breaking the cycle of disadvantage", (2013/112/EU), Introduction, point (8).

20. See among others: European Commission, Commission Recommendation: *Investing in children: breaking the cycle of disadvantage*, 20.2.2013, C(2013) 778 final and Council of Europe, *Strategy for the Rights of the Child (2012-2015)*, 15.2.2012, CM(2011)171 final.

medical care). This has become more imperative than ever in circumstances of constantly increasing child poverty which doubly affects children's right to health. The socio-economic crisis that afflicts many European countries, and especially our country, is doing more and more serious harm to social protection programs. The unconditional recognition of the child's right to health and access to health services and other protective welfare mechanisms, does not, therefore, seem to be adequate, when the effectiveness of exercising this right is subject to the diversity of institutional mechanisms and national legislations. This is the more so, at a time when society at large is going through a most deep social, cultural and financial crisis.

Indeed, the increase of child poverty in Greece is not a new phenomenon: the relevant index had started increasing slowly but steadily already since the late 1990s. This increase has become more dramatic in recent years. According to a research conducted by the Athens University of Economics and Business, it is estimated that 20% of children (as opposed to 4% in 2009) live in families which are in no position to buy the necessary goods for securing the minimum level of decent living²¹.

More specifically, nowadays in Greece, more than 2.2 million people live under the poverty line; among them are 440,000 children. The constantly increasing unemployment rates and the difficulty of access to social services financed by the State combined with the important shrinking of state financing exacerbate the already hazardous living conditions for both children and their families and render necessary the evaluation of the results of the financial crisis on children and adolescents' life and development, while aiming at minimising the hazards in their

life and development²². On the one hand, child poverty creates circumstances that aggravate child health, while on the other, it creates obstacles to the access of children to the necessary health services.

Poverty creates additional problems, e.g. the lowering of the education level, which impedes prevention and timely coping with health problems and, consequently, results in differentiations in morbidity among income groups. However, holistic health protection is more fully and efficiently achieved through state intervention in other fields as well, apart from securing the child's best possible mental and physical state.

According to a recent research on the state of health in Greece during the period of financial crisis, austerity measures have afflicted children's health due to decrease in family income and to parents' unemployment²³. As the same research mentions, the percentage of children on the borderline of poverty has increased from 28.2% in 2007 to 30.4% in 2011, while the number of children receiving inadequate nutrition is constantly increasing. In the meantime, between 2011 and 2012 children living below the income poverty line were increased by 12%, as opposed to 8% in the whole population of the poor²⁴.

Considering the above, as well as data obtained from the detailed Report of the Ombudsman for Children's Rights included in a study of the European Network of Ombudspersons for Children (ENOC)²⁵, the GNCHR observes with concern that securing the children's universal

21. See Athens University of Economics and Business, Policy Analysis Research Unit, *The Anatomy of Poverty in Greece of 2013, Information Brochure 5/2013*, (eds.) M. Matsaganis, C. Leventi, p. 5-7, available from: http://www.paru.gr/files/newsletters/NewsLetter_05.pdf and *The politics against poverty in Greece during the crisis, Information Brochure 6/2013*, (ed.) M. Matsaganis, p. 5, available from: http://www.paru.gr/files/newsletters/NewsLetter_06.pdf.

22. *Committee on the Rights of the Child, Consideration of reports submitted by States parties under Article 44 of the Convention, Concluding observations: Greece, op. cit.*, par. 28-29 and Greek Ombudsman (Ombudsman for Children's Rights), *Recommendations about the content of a National Plan of Action for Children's Rights, July 2013*, par. 11.

23. A. Kentikelenis, M. Karanikolos, A. Reeves, M. McKee, D. Stuckler, «Greece's health crisis: from austerity to denialism», *Lancet*, Vol. 383 - February 22, 2014, p. 750.

24. UNICEF, Hellenic National Committee, *The State of the Children in Greece 2014. The consequences of the financial crisis on children*, p. 27, available from: <http://www.unicef.gr/pdfs/children-in-greece-2014.pdf>.

25. Greek Ombudsman (Ombudsman for Children's Rights), *The rights of children living in institutions. Report on a study of the European Network of Ombudspersons for Children (ENOC), July 2011*.

right to health encounters innumerable obstacles. The following are indicatively highlighted:

- The GNCHR observes that the number of children receiving insufficient nutrition is constantly increasing. Nutrition problems constitute a fundamental factor of child health degradation, both mental and physical. Poor children in Greece have more chances of being undernourished, even though children who do not belong to families living below the income poverty line can also experience circumstances of deprivation. According to *Eurostat's* data, between 2010 and 2011 the percentage of households below the poverty line declaring incapable of securing nutrition containing meat, fish, chicken or vegetables of equal nutritive value every other day, has doubled. Equal incapability is also observed in non-poor households, something which intensifies social inequality²⁶. Apart from inadequate nutrition, it is also incapability of securing sufficient heating in combination with housing problems, e.g. humidity conditions, lack of living space, insufficient lighting which significantly aggravate the state of children's health²⁷.

- The state of child and adolescent mental health in Greece of the crisis is appalling. This is confirmed by a recent scientific study, in which it is highlighted *inter alia* that the number of new cases is increasing along with the need to provide supporting services within the community – due to the fact that social services are not functioning–, but also in schools – where psychiatric services are not provided²⁸. Besides, a great number of patients abandon the private sector and seek public system services. A recent research compared statistical data, in a sample of public and private psychiatric institutions in Athens, Piraeus and Thessaloniki for 2007 and 2011 (two years before and two years after the implementation of the first austerity measures).

26. UNICEF, Hellenic National Committee, *The state of children in Greece, 2013*, p. 47-48, available from: <http://www.unicef.gr/pdfs/children-in-greece-2013.pdf>.

27. *Idem*, p. 48-49.

28. D. Anagnostopoulos, E. Soumaki, «Child and adolescent psychiatry in Greece during the crisis: a brief report», *ECAP Journal*, February 2013, available from: [http://www.escap.eu/policy/care-crisis-in-greece/brief-report-\(ecap\)](http://www.escap.eu/policy/care-crisis-in-greece/brief-report-(ecap)).

This comparison shows that new cases in non-hospital services increased by 39.8% for children and by 25.5% for adults, while the corresponding percentages in the private sector decreased by 35.4%. As a result, the waiting list and the waiting time are longer²⁹. Indeed, the evaluation of the application of the National Plan of Action *Psychargos* for the period 2000-2009 demonstrates that the development of psychiatric services for children is more inadequate than for adults, while only 30% of scheduled services have indeed been brought into effect. Moreover, the distribution of these services has been quite heterogeneous, given that they are mainly located in Attica. In other regions, the provision of psychiatric care to children is nonexistent³⁰. In fact, the situation is exacerbated due to the impact of the crisis on families and schools, which are no longer capable to fulfil their supporting role as before.

- With regard to the existing mental health services structures, they operate with reduced by 10-40% staff, which is not always remunerated on time and whose salary has been significantly cut. A great number of more specialised personnel had to retire³¹. Also, an important number of community centres, mental rehabilitation units and specialised centres no longer function. The impact of the crisis was exceptionally strong especially on units dealing with special categories of disorders and learning difficulties. This most serious impact of the financial crisis is not only limited to the already existing structures, since all plans to create mental health units for children, which had been originally drafted in the framework of the psychiatric reform since 2000, were abandoned³².

29. *Ibidem*. In most centres, waiting time has tripled and it nowadays exceeds one month, while in special cases it can reach up to a year.

30. G. Thornicroft, T. Craig, T. Power, «Ex post evaluation of the National Plan of Action Plan of Action 'Psychargos' 2000-2009. Executive summary». Hellenic Ministry of Health and Social Solidarity, Athens 2010.

31. D. Anagnostopoulos, E. Soumaki, «Child and adolescent psychiatry in Greece during the crisis: a brief report», *op. cit.*

32. A. Kentikelenis, M. Karanikolos, A. Reeves, M. McKee, D. Stuckler, «Greece's health crisis: from austerity to denialism», *op. cit.*, p. 749.

- Regarding services and structures for children with disabilities and chronic diseases, there is great concern that these structures typically assume asylum character in Greece. The State has not established recreation centres, nor has it provided for care and services in the community for children with serious or multiple disabilities. This causes great concern, given that in certain cases, these children are also neglected in the family which is not receiving adequate support from the State.

- Even more, it is noted that the social protection structures as well as family and child support at regional and local level are almost nonexistent. Wherever supporting social services exist, they are neither efficient, nor do they dispose of personnel sufficiently trained in child protection. Their understaffing frequently results in social workers not being able to carry out home visits.

- The provision of early childhood care has also largely shrunk since 2010, due to cuts in budget and staff resulting in the creation of overcrowded classes. In operating municipal daycare services, problems of non-transparent selection process of the hosted children have been identified, e.g. municipal citizens are given preference over residents, problems of insufficient control by the supervising authority especially during the process of submitting additional contributions or even exceeding the lawful ratio of nursery teachers to children³³.

- Additionally, as far as the organisation of mental health and social welfare services which handle cases of crisis in the family, abuse and neglect is concerned, the GNCHR observes that the services where a child or a family can seek consulting are limited and sometimes the waiting is rather long. There is total absence of services of family mediation and extrajudicial litigation on the implementation of judgements, parental

custody and children's right to communicating with the parent they do not live with.

- Besides, Article 1511(3) of the Civil Code (CC) provides for the child's hearing before every decision regarding his/her interests, while the child's relevant right is guaranteed by supra-legislative provisions (Articles 2(1), 5(1) and 21(1) Const., Article 12 ICRC, Articles 3, 6 and 7 of the European Convention on the Exercise of Children's Rights (ECECR), 24(1) CFR and 8 ECHR). However, the CC's provision in question is rarely applied by lower courts, while the Supreme Court (Areios Pagos) does not review its application, considering that the child's maturity constitutes a real fact, the evaluation of which belongs to the lower court. According to the Supreme Court, this judgment does not require special motivation and is not subject to Supreme Court review³⁴.

- Furthermore, when an adolescent minor wishes to express his/her opposing views on the application of court decisions regarding custody and communication with the parent he/she does not live with, he/she has not the possibility to directly appeal to another judicial authority or another public service which will act on his/her behalf, since he/she is obliged to act through the parent who is his/her legal representative. The possibility for a minor to appeal to social welfare and mental health public services without the parent's escort-consent constitutes a debatable issue and is not explicitly mentioned in the law.

- The insufficient organisation of services for handling cases of abuse and neglect is completed by the institutional absence of provision for family courts collaborating with social workers and mental health experts³⁵.

- The GNCHR observes with great concern that the institutional deficiencies and organisational inadequacies do not only concern the support of the family; they also concern alternative

33. See *Greek Ombudsman (Ombudsman for Children's Rights), Report to the UN Committee on the Rights of the Child. Findings and Recommendations of the Independent Authority on the implementation of Children's Rights in Greece. (July 2003 - December 2011), April 2012, p. 14-15.*

34. *Supreme Court 952/2007, with critical comments by K. Beis, in Diki 2007, 1213, Supreme Court 201/2010. See critic of the legislation by D. Kondili, in Interpretation of the Code of Civil Procedure, 2nd edition (under publication), K. Keramea, D. Kondili, N. Nika, "Appeal", under the reasons for appeal No 1 and 11 Article 559.*

35. See *Greek Ombudsman, Annual Report 2006, p. 200.*

care which replaces parental care, when it is deemed necessary to take the child away from the biological family. In Greece, this alternative care is mostly based on the institutional welfare model. There is, in fact, the phenomenon of the gradual passing of the obligation for childhood protection from the State to the private sector, since children are often placed in guest houses or community houses belonging to non-profit private law legal entities or in church establishments.

- According to the detail Report of the Ombudsman for Children's Rights, which was submitted to the European Network for Ombudspersons for Children (ENOC), on the grounds of a relevant research conducted in 2011³⁶, the most important problems that need to be faced in both public and private law child protection institutions are to be summarised as follows:

- The legislation regarding child protection public institutions is quite obsolete and incomplete, while models and standards with respect to children's rights which must be met by child protection institutions, either public or private, have not been adopted. The process of certifying private law institutions may have been legally provided and is gradually being implemented by the National Centre of Social Solidarity, but the corresponding standards and quality control procedures have not been adopted yet. Additionally, public law institutions' monitoring has been assigned to the Ministry of Health while private law institutions control has been assigned to the Regional Welfare Directorates, through the social counsellors appointed in the country's regions.

- Nevertheless, the absence of a clear framework of standards which must be met by institutions often makes such monitoring inefficient and ineffective. In fact, due to this inadequate or rather ineffective monitoring of these welfare structures, in certain institutions, imposing extreme rules of behaviour on hosted minors which deviate from the Greek society's generally acceptable standards is tolerated. Such rules are,

for instance, prohibiting trousers to girls, imposing strict fast, prohibiting participation in school trips, limiting communication with parents etc. Moreover, children who are placed in institutions, very often remain there for a particularly long period of time. When it is internationally considered that a child shall remain in an institution no more than six (6) months, in Greece it is estimated that a child remains in an institution for more than six (6) years on average. The Ministry of Health and Social Solidarity - while it was competent on welfare issues - and nowadays the Ministry of Labour, Social Security and Welfare, has not transposed into national policy neither the UN Guidelines on alternative care, nor the content of the Recommendations of the Council of Europe 2005(5) on the rights of children living in residential institutions and CM/Rec (2010) 2 on deinstitutionalisation and community living of children with disabilities.

- Many institutions for children with disabilities and chronic diseases continue to have the character of asylum and to operate socially isolated, applying obsolete care systems with the hosted children receiving inadequate coverage of their medical, therapeutic and educational needs. Sometimes, in fact, they use, for preventive reasons, unacceptable methods for immobilizing and limiting children. Despite the introduction of the systematic institution monitoring and control competence of the Health and Welfare Services Inspection Body by Law 2920/2001, in reality, given the absence of a sanction and license revocation system, recommendations formulated by the Body for improving the conditions in the institutions in question are only being partially implemented by their administration boards. It has to be noted that HWSIB is no longer competent for these institutions, due to the transfer to the Ministry of Labour of the Welfare General Secretariat, to which they are subject. Private law institutions are, in fact, functioning in most cases without proper licences, since the legislative framework for their issue is incomplete.

- With respect to human resources, most institutions present serious deficiencies, especially in scientific and skilled personnel. Indeed, it is

36. *Greek Ombudsman (Ombudsman for Children's Rights), The rights of children living in institutions. Report on a study of the European Network of Ombudspersons for Children (ENOC), July 2011.*

often the case that private law institutions operate without qualified scientific staff or are even staffed mainly by volunteers.

- The situation as described above has aggravated, according to the Report of the Ombudsman for Children's Rights towards the UN Committee on the Rights of the Child, during the time of the financial crisis affecting Greek society, especially as staff employment in public institutions suffers severe restrictions, while their resources are shrinking³⁷.

• Finally, despite the widespread acceptance of the need to replace the institution-centered welfare system by other «open child protection» measures, like fosterage and hosting³⁸, the GNCHR observes with great concern that these institutions, in spite of being not only more beneficial for children but also more economic in the long term, are not sufficiently introduced in Greece.

- More specifically, with regard to the institution of fosterage³⁹, it becomes clear that it

is poorly implemented, mainly due to lack of social services and support system for the selection, education, monitoring and support of foster parents, but also due to the State's failure to provide adequate relevant resources. The logical and direct consequence of the country's chronic deficiencies in this field is, in the vast majority of cases, the introduction and long-term residential care for children who need to be removed from their biological families for reasons related to serious dysfunctions within them.

- At last, even though the legal framework regarding adoption is not recent (Law 610/1970 and Law 2447/1996), in practice, the number of adoptions which take place in our country annually is very small. Among these, in fact, only one fifth concerns children hosted in institutions. More specifically, given the serious problems of delays the institution of adoption faces, children hosted in institutions are forced to remain there for a long period of time instead of timely being introduced to foster families.

- The lawfully provided possibility (Article 7(2) of Law 2447/1996, as replaced by Article 20 of Law 3719/2008, OGG A 241/11.26.2008), of assigning the child's care to candidate foster parents, after direct communication with the biological parents, without any prior social research for their suitability, has a faster outcome. However, the extra-institutional assigning of the child's care does not comply with the child protection requirements of the Constitution and international law, since, in many cases, it hides financial transactions and favours the development of infant and child trafficking. Consequently, this possibility must be abolished.

- Generally, the immediate reinforcement of social services dealing with children is imperative, while international adoption has not been sufficiently supported by an organised system of services yet, in accordance with the relevant law.

GNCHR Recommendations

Considering the above, the GNCHR formulates the following recommendations:

37. *Representatives of many private institutions have reported to the Ombudsman that they are even threatened with shutdown because of their reduced resources and increased taxation on both donations and their property. At the same time, the cases of children who must be removed from their biological families are increasing, as the extreme poverty acts as an additional factor which exacerbates the inability of some parents to adequately care for their children. See Greek Ombudsman (Ombudsman for Children's Rights), Report to the UN Committee on the Rights of the Child, op. cit., p. 12.*

38. *In the second case, the need to replace the institution-centred welfare system has become flagrant during the recent years.*

39. *The legislative framework regarding the institution of fosterage in Greece was reorganised under Law 2447/1996, which introduces for the first time in the Civil Code a new special chapter in line with the Constitution and international Conventions. According to this legislative framework, fosterage is explicitly defined as assigning essential care of a child to a new family without altering its legal relationship with the biological family. It can occur either by private contract between the biological and the foster family or with a court decision when parents will not consent. It is crucial to understand that fosterage does not abolish the child's relation with the biological family, but it actually supports and aims at the child's return when the problems which led to the removal are resolved. Foster parents are responsible for housing and taking care of the child, while biological parents are updated and can contact the child depending, of course, on the problems they might be facing and the corresponding court regulation. See Greek Ombudsman (Ombudsman for Chil-*

dren's Rights), Dialogue Meeting on Fosterage, Report by G. Moschos, Deputy Ombudsman for Children's Rights, 11.20.2013, p. 1.

A. National Strategy for the Child

The GNCHR highlights the need to protect, prioritise and implement children's rights. To this end, it recommends the elaboration of a national strategy with distinct components for childhood protection, securing the essential participation of the Ombudsman for Children's Rights as well.

Key pillars of such strategy could be the development of a child-centered fiscal policy combined with the diffusion of the child dimension (child mainstreaming) in all fields and policy levels.

As far as child-centered fiscal policy is particularly concerned, it shall be reflected in "friendly" for child protection budgets and the creation of special credits within the National Budget for the funding of all state policies concerning the child⁴⁰ (child budgeting), monitored for their implementation with specific motivation of the State General Accounting Office.

Towards the same direction, the Ombudsman's for Children's Rights institutional reinforcement is deemed equally important, through legislative safeguarding the achievements made so far, which secure the Authority's function not only as a monitoring mechanism but also as a body promoting children's rights through initiatives.

B. Elaboration of a National Plan of Action for Children's Rights

The GNCHR considers necessary the elaboration of a National Plan of Action for Children's Rights (hereinafter NPACR)⁴¹.

In the light of the observations made so far by the Ombudsman for Children's Rights regarding the best possible development of a mechanism for the elaboration and monitoring of a NPACR, the GNCHR recommends the creation of an interministerial body with a coordinating role

and at the same time the legislative establishment of this interministerial collaboration.

Such a body composed by Ministry Secretary-Generals with relevant responsibilities, shall assume responsibility, operating as an Interministerial Committee for the Children, in developing, implementing and accounting for the NPACR.

It is also recommended that the Deputy Ombudsman for Children's Rights - in an advisory/consultative role - participate and that representatives from other public bodies or independent authorities be called to hearing, depending on the topics of each session.

Equally important is considered the appointment of a Scientific Committee on the Rights of the Child composed by personalities of acclaimed status and established knowledge in the field of children's rights, which will have responsibility for issuing directives on the NPACR's content and for submitting reports towards the interministerial body.

This Committee could be the one provided by the National Children Rights Observatory, on the condition that selecting and appointing its members will indeed be conducted on objective merit criteria.

A special mechanism for the NPACR's development and monitoring is recommended. The elaborated plan will have to be put into public deliberation during its outset and at certain stages of its implementation; to have explicitly expressed goals, a specific timetable (a 5-year one is proposed) as well as development, monitoring, review and evaluation procedures. Also, to provide for actions and clearly allocated responsibilities, both on a national and a regional level, with the participation of representatives from the local authorities, social services for children and NGOs.

C. Guaranteed level of decent living

The GNCHR proposes the constitutional establishment of a guaranteed level of decent living for children.

The guaranteed level of decent living is a concept much wider than the guaranteed minimum income - which mostly invokes income

40. UNICEF, *Hellenic National Committee, The State of the Children in Greece 2014. The repercussions of the economic crisis on children*, op. cit.

41. *Committee on the Rights of the Child, Consideration of reports submitted by States parties under Article 44 of the Convention, Concluding observations: Greece, CRC/C/GRC/CO/2-3, 13 August 2012, par. 28-29 and Greek Ombudsman (Ombudsman for Children's Rights), Recommendations about the content of a National Plan of Action for Children's Rights, July 2013.*

reinforcement - since it aims at a more comprehensive, more efficient but also very flexible coverage of children's social needs, both in general, through targeted and socially controlled services and goods provision (e.g. for welfare, health, housing, heating etc.) and in particular in the field of education, through certain policies for the vocational guidance and the education of children from poor or disadvantaged families.

The constitutional recognition of a guaranteed level of decent living shall enhance the visibility of the compact regulatory core of social rights, as a major institutional guarantee for both the "social acquis" and the redistributory character of social policy, which the legislator can no longer perceive neither as an optional choice, nor as social charity.

At the same time, such a recommendation aims at assigning concrete meaning and content, asserting depth and institutional perspective to the principle of welfare state itself with regard to the child protection. To mark, hence, on the one hand, a different perception for the sociopolitical priorities of modern democracy - in which it's unthinkable not to include children's social protection - and, on the other hand, a new reading of the equality principle, a restoring equality, which aims, through the State's positive actions, at the root of social disparities in childhood, in other words at the elimination of the root causes of social inequality, even more so of social exclusion. However, until an explicit provision with the aforementioned content is incorporated into the Constitution, the existent constitutional provisions (and especially those of Articles 21 and 25(1)) can and must be interpreted and applied, in the light of international standards, so as to promote a more effective implementation of human rights.

D. Ratification by the Hellenic Republic of the third Optional Protocol to the UN Convention on the Rights of the Child on a communications procedure

The GNCHR deems necessary the ratification of the ICRC's third Optional Protocol by Greece.

The Protocol in question recognises the competence of the Committee on the Rights of the

Child to examine communications submitted by individuals or group of individuals, within the jurisdiction of a State party, claiming to be victims of a violation by that State party of any of the rights set forth in the Convention on the Rights of the Child or in its two Optional Protocols. In fact, children whose rights have been violated are enabled to directly submit a communication.

The aforementioned Protocol was adopted in New York on 19 December 2011 and entered into international force on 14 April 2014, in accordance with Article 19(1) of the Protocol, which provides that "The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession". By 6 May 2014, ten (10) states had ratified the Protocol, while 45 states had signed it.

E. Horizontal Coordination of Services

Taking into account the data proving the lack of coordination and consistency between health and welfare services, the GNCHR deems necessary the collaboration of the competent services through:

- a. their consistent horizontal networking and coordination,
- b. the obligatory intersectoral collaboration for the timely adoption of the appropriate and necessary measures,
- c. the adoption of prevention policies and protocols for the right addressing of cases of abuse/neglect and the realisation of references, when necessary, to psychosocial services for the thorough examination of the cases and the adoption of measures for children's rights protection,
- d. the constant and annual monitoring (both intermediary and final) of the course and the results of this synergy aiming at the prompt (re) adaptation of the measures and actions in favour of childhood protection.

F. Structural changes and institutional measures in the sectors of Health and Welfare

In view of the adoption and implementation of a National Plan of Action for Children's Rights, the GNCHR believes that emphasis must

be placed on important structural changes and institutional measures that prioritise the Children's Rights protection in the sectors of Health and Welfare securing among others that:

- Access to health services (preventive medicine, examination, treatment, hospitalisation and rehabilitation) is guaranteed to all children without exception, regardless of the social security regime they fall under.

- Children health services and particularly mental health ones are constantly developing on a regional level, covering the children's needs, with special provisions for groups of children which are threatened by social exclusion, like children with disabilities, Roma, minorities, immigrants, refugees and children living in isolated island/mountain areas.

- Social welfare services, especially the ones provided by Local Authorities (OTA) are adequately staffed and specialise in children protection issues, so as to be able to intervene, in collaboration with schools, nurseries and services of Justice where necessary, both in a preventive and a supportive way, in families with children afflicted by the financial crisis which suffer dysfunctions, abuse, neglect or exploitation by their members or which are particularly vulnerable, due to special circumstances (e.g. due to disability).

- Alternative care for children who need to be removed from their families is being modernised, through reinforcing fosterage and adoption, establishing modern standards for the functioning of child protection units and specialised hosting structures for children that need special care within the community, the certifying, supporting and frequently controlling all units as well as preventing children from staying there for a long period of time.

G. Collection of statistical data

The UN Committee on the Rights of the Child in its Final Observations, places particular emphasis on the need for the competent Greek Authorities to collect sufficient statistical data, capable of allowing it to evaluate the progress achieved relating to the application of

the Convention's provisions⁴². Therefore, taking also into account, among others, the UN Committee's aforementioned recommendation about reinforcing the data collection mechanisms regarding children, the GNCHR considers purposeful the creation of a national central database, in which, with the explicit responsibility of the competent state authorities, all data concerning the implementation of all the rights of the child shall be collected⁴³.

Athens, 8 May 2014

42. *Committee on the Rights of the Child, Consideration of reports submitted by States parties under Article 44 of the Convention, Concluding observations: Greece, op.cit., par. 19-20.*

43. *See also UNICEF, Hellenic National Committee, The State of the Children in Greece 2014 The repercussions of the economic crisis on children, op.cit.*

3. GNCHR Recommendations on the Draft law on Special Education¹

"1. States Parties recognise the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning [...].

2. In realizing this right, States Parties shall ensure that: (a) persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability; (b) persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live; (c) reasonable accommodation of the individual's requirements is provided[...]"

Article 24, Convention on the Rights of Persons with Disabilities

"1. Any discrimination based on any ground such [...], disability [...]"

Article 21, Charter of Fundamental Rights of the European Union

"The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community"

Article 26, Charter of Fundamental Rights of the European Union

"Everyone has the right to education and to have access to vocational and continuing training"

Article 14, Charter of Fundamental Rights of the European Union

"People with disabilities have the right to benefit from measures ensuring their self-sufficiency, professional integration and participation in the social, economic and political life of the Country".

Article 21(6), Constitution of Greece

I. Introduction

A. The GNCHR has previously formulated certain recommendations regarding the implementation of Law 3699/2008 on *Special Education of Persons with Disabilities or Special Educational Needs*², which were not only ignored, but also considerable retrogress has since been observed. Aiming at addressing issues which have rendered in practice difficult the access of persons with special educational needs (SEN) to education, the GNCHR had in fact organised a consultation with stakeholders.

Expressing its concern for the general dismantlement of Special Education and taking into consideration the concluding observations of the UN Committee on the Rights of the Child³, the GNCHR briefly restates its Opinion on the draft law on *Special Education*.

B. The draft law on *Special Education* was put to public consultation from 17 April 2014 to 9 May 2014 and has yet to be introduced into Parliament for debate⁴. Due to the importance of the issues addressed and the strong mobilisation of the stakeholders, the GNCHR deems necessary to return to the issue of special education and make concrete recommendations with regard both to the spirit and goals of the legislation in question and to the implementation of its

1. Adopted by the GNCHR's Plenary in the session of 10 July 2014. Rapporteurs: K. Papaioannou, GNCHR President, E. Varchalama, GNCHR Second Vice-President, Aik. Tsampi and R. Fragkou, GNCHR Legal Officers. It is also noted that the present Recommendations have been developed in collaboration with the Deputy Ombudsman in charge of children's rights, G. Moschos.

2. GNCHR, "Proposals regarding the implementation of Law 3699/2008 *Special Education of Persons with Disabilities or Special Educational Needs*", Annual Report 2009.

3. Committee on the Rights of the Child, *Concluding Observations: Greece, CRC/C/GRC/CO/2-3 (13.8.2012)*. The Committee particularly invites Greece to ensure that children with disabilities shall have the right to choose their preferred school or move between regular schools and special needs schools according to their best interests.

4. It is noted that the draft law on *Special Education* was not sent to the GNCHR by the competent Ministry. In a joint session of the second and fourth GNCHR sub-commissions, held on 30 June 2014, the recommended regulations of the draft law were discussed and it was decided to further analyse the issue.

specific principles. To this purpose and aiming at understanding issues which render in practice difficult the actual access of persons with special educational needs, the GNCHR organised a consultation with stakeholders.⁵

C. It is deemed necessary to note that the GNCHR's recommendations do not attempt a total and exhaustive approach on the organisation and management of Special Education, but the essential contribution to cultivating a general spirit of integration not only of students with special educational needs, but also of Special Education teachers. This pursuit, in combination with the need for effective implementation of the existing legal framework regulating persons' with disabilities access to education, is inevitably connected to the content of the State's obligations arising out of the Constitution and the country's international obligations.

Emphasizing issues related to persons with disabilities requires clarifying the concept of disability, the definition of which presents several difficulties, given that "it is a complex situation associated to both the current social conditions and the personality traits of the person bearing it"⁶. This complexity is reflected in the variety of formulations and definitions one may encounter both in international and in Greek bibliography⁷.

The most widely accepted definition for disability is the one suggested by the World Health Organisation, as presented through the International Classification of Functioning, Disability and Health (ICF). The ICF allows for the definition and the classification of functionality and disability of persons with disabilities in a more systematic and analytical way, which can be more easily understood by all professionals engaged in the care of persons with disabilities. The specific classification is applied to all fields, i.e. in health, education and social relations⁸.

More specifically, regarding the concept of "special educational needs", the Greek legislator considers as persons with disabilities or/and special educational needs those who "*for the whole school life or for certain period of their school attendance have considerable learning difficulties due to sensory, intellectual, cognitive, developmental, mental problems and neuropsychiatric disorders which, according to the multidisciplinary assessment, affect the process of adaptation and learning in school. Among them are included especially those with intellectual disability, visual sensory disability (blind, partially sighted with low vision), hearing impairment sensory disability (deaf, hard-of-hearing), motion disabilities, chronic illnesses, disorders in speech, specific learning difficulties such as dyslexia, dysgrafia, dysarithmisia, dysanagnwsia, dysorthografia, attention deficit syndrome with or without hyperactivity, pervasive developmental disorders (autism spectrum), mental disorders and multiple disabilities*"⁹.

5. The consultation was held on 30 June 2014, in a joint session of the second (Economical, Social and Educational Rights) and fourth (Promotion of Human Rights) GNCHR sub-commissions, with the participation of representatives from the Greek Ombudsman (Children's Rights Department and Social Protection, Health and Welfare Department), the National Confederation of Disabled People (ESAEA), the Greek Federation of Teachers in Private Teaching (OIELE) and the Centre for Educational Policy Development (KANEP-GSEE), as well as the Teachers and Psychologists with 67% and higher hearing loss. The GNCHR is also thankful to the stakeholders who have submitted their positions in writing, such as the Special Education Departments Alumni Association (SATEA) and the Greek Society for the Protection of Autistic People (EEPA), facilitating, thus, the demonstration of issues which call for particular attention. The GNCHR is also grateful to stakeholders and their representatives for the extremely interesting exchange of opinions, which allowed it to shape a clearer view on Special Education everyday issues.

6. See S. Sioutis, *Family and persons with special needs. Sociological, educational and institutional reflections. Pursuits and perspectives*, 2012, p. 15.

7. According to certain authors, for instance, a person with disabilities or special educational needs is "the person who

is not in a position to participate in all activities and enjoy all goods offered by the society he lives in to its other members, due to their condition or other psychosomatic or social traits". See E. Dimitropoulos, *Professional Formation of Mentally Retarded Persons in Greece. Problems of the didactic process. Effectiveness of Educational Programmes*, Doctoral Thesis, National and Kapodistrian University of Athens, School of Philosophy, Faculty of Philosophy, Pedagogy and Psychology, 1995.

8. World Health Organisation, *International Classification of Functioning, Disability and Health (ICF)*, available from: <http://www.who.int/classifications/icf/en/>.

9. Article 3(1) Law 3699/2008 "Special Education and education of people with disability or special educational needs" (OGG 199/A 10.2.2008). The present draft law repeats the same definition in Article 3(1).

Subsequently, a more focused approach is attempted both of the protective framework of the persons' with disabilities right to education on an international and European level (II) and of the current legislation for the recognition and protection of the persons' with special educational needs right to education (III). This approach highlights the very important challenges the State and society have to face nowadays concerning the rights and protection of persons with disabilities (IV) and concludes with the formulation of Recommendations for taking appropriate and fruitful measures for addressing the problems and insufficiencies which have been observed (V).

II. Recognition of the right to education of people with SEN on an international and European level: the challenge of equal inclusive education

One of the most important texts of international conventional law in the field of protecting the rights of persons with disabilities, which provides specific rights to persons with disabilities, is the **International Convention on the Rights of Persons with Disabilities** (hereinafter ICRPD)¹⁰. More specifically, Article 7(1) of the ICRPD states that "*States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children*". At the same time, Article 24 of the ICRPD guarantees the right of persons with disabilities to education without discrimination and on the basis of equal opportunity, through an inclusive education system at all levels and lifelong learning, directed to the full development of human potential and the sense

of dignity and self-worth as well as the strengthening of respect for human rights, fundamental freedoms and human diversity.

A necessary condition for realising this goal is to ensure, on the one hand, the persons' with disabilities access to an inclusive, quality and free primary education and, on the other hand, the reasonable accommodation to the needs of persons with disabilities. Protecting and promoting this right is achieved *inter alia*, according to Paragraph 4 of the same article, through employing teachers with disabilities qualified in sign language and/or Braille, as well as through specially oriented training of professionals and staff at all levels of education. Such training, according to ICRPD's provisions, shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities¹¹.

The International Convention on the Rights of Persons with Disabilities is the first human rights convention to be open for signature by regional integration organisations (Article 44 of the ICRPD). The European Union (hereafter EU) signed it on its opening day for signature on 30 March 2007¹² and it has since been signed by all 28 EU member States. Upon completing the process of "formal confirmation"¹³ by the EU (22 December 2010) and putting it into force (22 January 2011), EU as a whole has been the first international organisation to become official member of the convention. This development reflects EU's commitment that the ICRPD constitutes a point of reference for developing strategies for disability based on incorporating the dimension of disability across all economic and social policies. It also means that EU require-

10. The International Convention on the Rights of Persons with Disabilities and the Optional Protocol were adopted with the UN General Assembly's Decision 61/611 in New York on 13 December 2006 and came into force on 4 May 2008. Greece signed the Convention on 30.3.2007 and the Protocol on 27.9.2010, while they were both ratified by Law 4074/2012 "Ratification of the UN Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention on the Rights of Persons with Disabilities" (OGG A 88) and came into force on 30.6.2012. See at:<http://treaties.un.org/>.

11. See Explanatory Report to the draft law on "Ratification of the Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention on the Rights of Persons with Disabilities".

12. Press release "EU ratifies UN Convention on disability rights" (IP/07/446), 5 January 2011, available at the EU official webpage: http://europa.eu/rapid/press-release_IP-11-4_el.htm.

13. In essence, it is the ICRPD ratification process by regional organisations according to Article 43 of the ICRPD.

ments towards member States will be increased as regards the development of comparable indicators and objectives corresponding to the implementation of the Convention, as it is stated in the European Disability Strategy¹⁴. Moreover, the ICRPD specifies the provisions of the Charter of Fundamental Rights of the EU, as well as those of the Constitution with regard to persons with disabilities.

The right of mentally or physically disabled children to a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community is also guaranteed by Article 23 of the **International Convention on the Rights of the Child** (ICRC)¹⁵. More specifically, the third paragraph of Article 23 of the ICRC specifically mentions the States Parties' obligation to ensure that the disabled child has effective access to free education, continuous training and professional training in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

Every person's access to appropriate and quality education is guaranteed in the most emblematic way by one more very important provision, Article 28 of the ICRC, which provides the States Parties' obligation to guarantee free and compulsory basic education to all children. An education, which, according to the provisions of Article 29 of the ICRC, must aim at "*the development of the child's personality, talents and mental and physical abilities to their fullest potential*" and "*the preparation of the child for responsible*

life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes[...]", within a child-centered educational system which adapts to its development and particular needs and empowers it towards an independent life in a society respectful to human rights¹⁶. In any case and regardless of more specific regulations, every child's right to access education is indirectly deduced from the principle of non-discrimination towards children, as it is stated in Article 2 of the ICRC which actually repeats the provisions of Article 24 of the International Covenant on Civil and Political Rights (ICCPR) regarding special measures of protection for their status as minors and is equivalent to the principle of non-discrimination of Article 14 of the European Convention on Human Rights (ECHR).

As a civil and at the same time social right, the right to education is also guaranteed by the **International Covenant on Economic, Social and Cultural Rights** (ICESCR), which in Article 13(1) recognises the right to free primary education and the obligation to encourage access to all levels, providing at the same time that "*education shall enable all persons to participate effectively in a free society*"¹⁷. The ICESCR Committee, in fact, upon analysis of the right to education, highlights that education must be characterised at all levels by: (a) *availability of resources* within the jurisdiction of the State party (sufficiency of schools, structures, teaching staff and material), (b) *accessibility* (without discrimination, either physical or economic), (c) *acceptability of curricula and teaching methods* (culturally appropriate and of good quality) and (d) *adaptability* to changing societies and the needs of students as formed within their social and cultural settings¹⁸. Steps towards this direc-

14. See Press Release "Creating a barrier-free Europe: European Commission seeks better access for 80 million people with disabilities" (IP/10/1505), 15 November 2010, available at the EU official webpage: http://europa.eu/rapid/press-release_IP-10-1505_el.htm.

15. The International Convention on the Rights of the Child was unanimously adopted by the UN General Assembly in 1989 and was put into force on 2 September 1990. It has been ratified by 191 states, all the states of the world, that is, apart from the United States and Somalia. It was ratified on 2 December 1992 with Law 2101/1992 by Greece and was put into force for Greece on 6.10.1993 (Announcement of the Ministry of Foreign Affairs A 166/9.28.1993) when it acquired supra-legislative status in line with Article 28(1) of the Constitution.

16. UN, ICRC Committee, General Comment No.1 (2001), The Aims of Education, GRC/GC/2001/1(1). Of equally great importance is also General Comment No.9 of the UN Committee on the Rights of the Child on the rights of children with disabilities, see General Comment No.9 (2007), The Rights of Children with Disabilities, GRC/C/GC/9(62-72), which focuses on the quality of inclusive education of children with disabilities. Available from: <http://www.ohchr.org/EN/HRBodies/Pages/TBGeneralComments.aspx>.

17. The ICESCR was ratified with Law 1535/1985 (OGG A 25).

18. UN, ICESCR Committee, General Comment 13, The Right to Education (Article 13 of the ICESCR),

tion must be deliberate, concrete and targeted towards the full realisation of the right to education¹⁹. The State party's obligation to guarantee the actual exercise of the right to education without discrimination is of immediate effect²⁰.

Particular emphasis is, also, placed on the need to respect the principle of equal opportunities in education, as defined by **UN Standard Rule 6**²¹, according to which State parties must not only recognise the principle of equal opportunities in basic, secondary and higher education for children, youth and adults with disabilities, but also ensure, by means of positive actions, that education of persons with disabilities is an integral part of the educational system. More specifically, regarding equality of opportunities in education, Kishore Singh, UN Special Rapporteur on the right to education, stresses that **"given the mutually reinforcing nature of different forms of discrimination and inequality in the context of education, States should address multiple forms of inequality and discrimination through comprehensive policies."** Through policies whose primary concern

must be **"to respond to the need for making learning accessible for the most marginalised and vulnerable"**²². The quality of such education must reflect the same standards and aspirations as general education to which it must be closely linked. Educational budgets equal to the ones allocated to general education must basically be allocated to students with disabilities, taking into account special educational support measures in order for the latter to realise their right to education on an equal basis with their peers. Finally, the gradual introduction of special education services and support services into the general education system aiming at equal participation of all children must constitute priority and constant pursuit for every State Party.

Concerning the issue of children with disabilities or/and special educational needs participating in the general education system, the approach of the **UN Committee on the Rights of the Child** is particularly interesting since it states that equal inclusion constitutes **"a right, not a privilege"** of children with SEN. Highlighting the necessary distinction between the terms "integration" and "inclusion"²³, the UN Committee insists on the need to implement an "inclusive education model", considering that equal inclusion can only be effective through policies aiming at modifying school settings in order to satisfy the child's needs and not vice versa²⁴. Vernor Muñoz, UN Special Rapporteur on the right to education, stresses that **"attempts to a simple integration into mainstream schools without accompanying structural changes have been shown, and will continue for a variety of reasons, to fail to meet the educational**

E/C.12/1999/10, available from: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G99/462/16/PDF/G9946216.pdf?OpenElement>, par. 6.

19. UN, ICESCR Committee, *General Comment 13, op.cit.*, par. 7 and 43.

20. *Idem*, par. 43 and Article 2(2), ICESCR.

21. *Standard Rules on the Equalisation of Opportunities for Persons with Disabilities were adopted by the UN General Assembly in 1993 and signal a new era for policy-making and promotion of programmes of action aiming at improving the quality of life of persons with disabilities. Although they lack any legally binding force, Standard Rules represent the moral and political commitment of Governments to take action to attain equalisation of opportunities for persons with disabilities. Standard Rules, which were adopted by the Greek State under Law 2430/1996 (OGG A 156/7.10.1996), include 22 rules, which reflect the basic principles of the World Programme of Action Concerning Disabled Persons. More specifically, these 22 Rules are grouped into four chapters: Preconditions for Equal Participation (I), Target Areas for Equal Participation(II), Implementation Measures (III) and Monitoring Mechanism (IV) and cover all aspects of life of persons with disabilities such as, indicatively, education, vocational training and employment, social inclusion, recreation, etc. See United Nations, General Assembly, The Standard Rules of Equalisation of Opportunities for Persons with Disabilities, 48th Session, Resolution 48/96, Annex, 12.20.1993, available from: <http://www.un.org/esa/socdev/enable/dissre00.htm>.*

22. UN, Human Rights Council, Kishore Singh, UN Special Rapporteur on the right to education, "The promotion of equality of opportunity in education", A/HRC/17/29 (18 April 2011), par. 72(b).

23. The term "integration" refers to the need to adapt the child's needs in order to be integrated into society, while the term "inclusion" preconditions the adaptation of the school environment in order to satisfy the needs of the child with SEN.

24. See "Children with disabilities", CRC/C/66, Annex V, 16th Session, 6 October 1997, available from: <http://www.ohchr.org/EN/HRBodies/CRC/Documents/Recommendations/disabled.pdf>, par. 335.

rights of persons with disabilities²⁵. The need for radical structural reforms for transitioning to inclusion is corroborated by current research which affirms that segregated education lacks effectiveness due to the multiple administrative bureaucratic structures and, mostly, due to lack of financial viability of special schools²⁶.

Given its double priority as civil and at the same time as social right, the right to education for all and at all levels, including vocational training, is established by the most comprehensive social rights protection mechanism of the Council of Europe: the **European Social Charter (ESC)**²⁷. The importance attached to the rights of persons with disabilities is evident and reflected in various provisions, including the right of persons with disabilities to vocational guidance (Article 9), technical and vocational training (Article 10) and independence, social integration and participation in community life (Article 15). In fact, in the Explanatory Report of the revised ESC, the European Committee of Social Rights commented, in Paragraphs 62-65 which specifically concern the amendment of Article 15, that this provision promotes a change in disability policy. Such a change has occurred in the last decade through a more modern approach which preconditions inclusion and social integration of persons with disabilities. **This statement marks a turn in a human rights-based approach to disability**²⁸.

The objective of full inclusion of persons with disabilities is set by yet another body of the Council of Europe, the Committee of Min-

isters, which by means of *Recommendation to promote the rights and full participation of people with disabilities in society*. The Committee recognises that children and young people with disabilities still face considerable barriers in accessing all aspects of their life, including education and stresses that these issues can only be addressed **"on the basis of a comprehensive strategy"**²⁹. **In the same Recommendation, particular emphasis is placed on the importance of education as a factor "of ensuring social inclusion and independence for all people, including those with disabilities". An education which must "cover all stages of life, including pre-school, primary, secondary, high school education and professional training, as well as life-long learning"**³⁰.

At European Union level, the Treaty of Amsterdam, signed on 2 October 1997, radically modified the European policy on disability. Disability was recognised as a ground for discrimination. A legal basis was thus provided for adopting measures to combat discrimination on grounds of disability (Article 13 TEU). Moreover, it was recognised that when European Union bodies adopt legislation for combating discrimination against persons with disabilities in all aspects of social life (social model of disability), they shall take into account the needs of persons with disabilities³¹. Article 10 of the TFEU provides for the combating of discrimination on the grounds of disability as well, in all EU policies and actions, while Article 19 of the TFEU provides for the adoption procedure of the relevant meas-

25. UN, Human Rights Council, Vernor Muñoz, *UN Special Rapporteur on the right to education*, «The right to education of persons with disabilities», A/HRC/4/29 (2.19.2007), par. 12.

26. Vernor Muñoz, *op.cit.*, par. 13. See also UN ICESCR Committee, *General Comment No. 5, Persons with Disabilities*, E/1995/22(SUPP), Annex IV, (12.9.1994), par. 35.

27. Greece signed the European Social Charter on 18 October 1961 and ratified it on 6 June 1984 under Law 1426/1984 (21 March 1984) "Ratification of the European Social Charter" (OGG A 32/21.3.1984). On the contrary, it has not ratified yet the Revised European Social Charter which it has signed since 3 May 1996.

28. Council of Europe, *European Social Charter, Explanatory Report*, par. 62-65, available from: <http://conventions.coe.int/Treaty/EN/Reports/HTML/163.htm>.

29. Council of Europe, Committee of Ministers, *Recommendation REC(2006)5 to member States on the Council of Europe Plan of Action to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe:2006-2015*, 5 April 2006, Note 4.4, p. 32.

30. *Idem*, Note 3.4.1, p. 16.

31. "22. Declaration regarding persons with a disability. The Conference agrees that, in drawing up measures under Article 100a of the Treaty establishing the European Community, the institutions of the Community shall take into account the needs of persons with a disability." See *Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and Certain Related Acts, Protocol in Article I.7 (22)*, p. 135.

ures. Prohibition of discrimination on grounds of disability is also included in the Charter of Fundamental Rights of the EU (Article 21(1) of the CFR). Its Article 26 enshrines *"the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community"*³², providing thus broader protection to the rights of persons with disabilities.

Combating social exclusion, especially for disadvantaged groups, such as persons with disabilities, has been within the objectives of Regulation No. 1081/2006 of the European Parliament and the Council of 5 July 2006. The Regulation mentions the fields where targeted actions for persons with disabilities must be necessarily implemented through Operational Programmes co-funded by the European Social Fund (ESF). The field of Lifelong Learning Education is among these operational programmes³³.

Finally, the GNCHR also highlights the *European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe*, which launches a process of strengthening the position of persons with disabilities so as to be able to fully participate in society on an equal basis to others³⁴. Building upon all the possibilities offered by the EU Charter of Fundamental Rights, the Treaty on the Functioning of the EU and the UN Convention, the Strategy is founded on the following pillars:

- support to the national attempts through a strategic framework for European cooperation

in education and training "ET 2020"³⁵ aiming at removing legal and organisational barriers for persons with disabilities to general education and lifelong learning systems;

- support for inclusive education and personalised learning, and early identification of special needs;
- adequate training and support for professionals working at all levels of education and
- submission of reports on participation rates and outcomes.

The EU institutions and the Member States are called upon to work together under this Strategy to build a barrier-free Europe for all and, more specifically, for promoting an education and lifelong learning without discrimination against persons with disabilities.

III. The current national legislation promoting the right to education for persons with SEN: the challenge of equal inclusion or another missed opportunity?

In Greece, the right to education is guaranteed as a constitutional right. More specifically, Article 16(2-4) of the Constitution recognises the right to free education for everyone and sets a system of at least nine years of compulsory education. Apart from the State's obligation to respect and guarantee the right to free access to education, the obligation to support those in need of assistance or special protection is explicitly provided. The State shall adopt special measures for the protection of youth, old age, disability and for the relief of the needy³⁶.

The identification of the need to strengthen vulnerable groups, aiming at achieving the enjoyment of rights and equality in practice, resulted in the addition of Article 21(6) to the revised Constitution, which states that *"people with disabilities have the right to benefit from measures ensuring their self-sufficiency, professional integration and participation in the social, economic and political life of the Country"*. The objectives

32. *The Charter of Fundamental Rights (CFR) was "declared" by the Parliament, the Council and the Commission during the Nice European Council on 7 December 2000 (2000/C 364/01), but it did not acquire legally binding force. Since 1 December 2009, with the Lisbon Treaty entering into force, it acquired the same legal force as the treaties, (new Article 6(1) of the TEU). The text was published in the Official Journal of the EU (EE C 303/02, 12.14.2007, EE C 83/02, 30.3.2010).*

33. *Regulation (EC) No 1081/2006 of the European Parliament and of the Council of 5 July 2006 on the European Social Fund and repealing Regulation (EC) No 1784/1999 2006, Article 3(2)(i).*

34. *European Commission, European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe, Brussels, 15.11.2000, COM(2010) 636, p. 5.*

35. *Council Conclusions of 12 May 2009 on a strategic framework for European cooperation in education and training (ET 2020), EE C 119, 28.5.2009, p. 2.*

36. *Article 21(3) of the Constitution.*

of this provision, however, are not fulfilled unless measures guaranteeing effective access to the right to education for children with disabilities are adopted and implemented. Nevertheless, compliance with this provision has been insufficient as the relevant legislation is fragmented and adopted without strategic planning.

Regarding the legislation on special education in Greece, the integration of children with special educational needs in education is guaranteed by Law 2817/2000, which established integration classes and parallel support as individualised special educational support. This institutional framework was later completed by Law 3699/2008. More specifically, in Article 1(1) of Law 3699/2008 it is stated that "*the State is committed to safeguarding and constantly upgrading the compulsory character of special education as an inherent part of compulsory and free public education and to guaranteeing free public special education for persons with disabilities of all ages and at all stages of education*". Inclusion, therefore, of special education in the general public and free education, foreseen under the article which follows (Article 2(1) of Law 3699/2008), constitutes a fundamental obligation of the State.

Moreover, Article 6(4) of Law 3699/2008 states that the education of students is provided within special education school units, in case attending general schools or integration classes is particularly difficult. The educational system, under the current circumstances, leaves room for doubt regarding the possibility to provide effective education to persons with special educational needs within general schools.

IV. Special Education in Greece

In the light of the aforementioned observations, the question which arises at this point, as consistently addressed by the stakeholders³⁷, is whether the Greek educational system, as regards special education, respects the aforementioned principles of international and European law.

The GNCHR observes that the Greek legislation on Special Education is intertemporally

marked by institutional gaps, since it is not fully compatible with the right to education of children with disabilities. It is not only the content of Greek legislation which raises concern, but also its inadequate implementation. In practice, it is noted that discrimination against children with disabilities still exists and their special needs are not effectively addressed.

In its *Conclusions* dated 24 October 2008, the European Committee of Social Rights of the Council of Europe, upon examining the annual reports of state Members of the Council Europe, concluded that the situation in Greece is not in conformity with Article 15(1) of the ESC on the ground that there is no legislation explicitly protecting lifelong learning of persons with disabilities. More specifically, the Committee noted that there was no particular provision for persons with disabilities neither in the public educational system, nor later regarding the effectiveness of the right to vocational training, reintegration and social integration. In fact, in the same Report, the Committee of Social Rights highlighted the lack of and failure to present more specific statistical data which would allow assessing the country's compliance with the ESC requirements³⁸. The situation does not seem to have changed all that much, since in its most recent *Conclusions* as well, dated 7 December 2012, the Committee concluded that the absence of information required for the assessment of the situation of persons with disabilities in Greece and their ability to access education, which the Committee had repeatedly requested from the Greek State, amounts to a breach of the reporting obligation every member State has concerning the implementation of ESC provisions³⁹.

The current economic and social crisis exacerbates the chronic problems observed in the education of children with special needs. The GNCHR has already expressed its concern for the

38. Council of Europe, European Committee for Social Rights, *Conclusions XIX-1*, 24 October 2008, Articles 15, 15(1), available from: <http://hudoc.esc.coe.int/esc2008/query.asp?action=query×tamp=31325.77>.

39. Council of Europe, European Committee for Social Rights, *Final Observations XX-1*, 7 December 2012, Article 15(1), available from: <http://hudoc.esc.coe.int/esc2008/query.asp?action=query×tamp=31325.77>.

37. See *supra*, Footnote No.5, p. 2.

impact of austerity measures on the outbreak of discrimination on multiple levels and the sharp decline in social rights⁴⁰.

The current economic and social crisis exacerbates the chronic problems observed in the education of children with special needs. According to the Unicef Report on *The State of the World's Children 2013*, the link between poverty and disability is very strong. More specifically, household survey data from 13 low- and middle-income countries showed that children with disabilities aged 6-17 years are significantly less likely to be enrolled in school than peers without disabilities⁴¹.

The Greek Ombudsman, in its capacity as equality body, in its latest Report⁴², take notes of a series of chronic problems. Some of them are the school year delay in special schools, the constantly delayed appointment of substitute teachers instead of permanent educational and special educational staff, the significant delay or the non-appropriate provision for parallel support and the lack of its implementation, especially in kindergarten school and primary education, the insufficient staffing of integration classes and special schools, especially in regional areas, which result in hindering the equal access to education for many children with disabilities or/and special educational needs.

40. See GNCHR, "GNCHR Recommendation and decisions of international bodies on the conformity of austerity measures with international human rights standards", 27.6.2013, http://www.nchr.gr/images/pdf/apofaseis/oikonomikh_krish/eeda_metra_litothtas.pdf, GNCHR, "Decision on the need for constant respect of human rights during the implementation of the fiscal and social exit strategy from the debt crisis", 2010 Report, p. 103 et seq. and GNCHR "GNCHR Recommendation: On the imperative need to reverse the sharp decline in civil liberties and social rights", 2011 Report, p. 119 et seq.

41. More specifically, it is stated that "as long as children with disabilities are denied equal access to their local schools, governments cannot reach the Millennium Development Goal of achieving universal primary education (MDG 2), and States parties to the Convention on the Rights of Persons with Disabilities cannot fulfil their responsibilities under Article 24". See Unicef, *The state of the World's children 2013. Children with disabilities*, May 2013, available from: <http://www.unicef.gr/uploads/filemanager/PDF/info/swcr13.pdf>, p. 20 et seq.

42. *The Greek Ombudsman, Special Report 2013*, p. 108.

Another cause for concern is the State's insufficient, hesitant and delayed response to reactions coming from a part of the school community aiming at discouraging the enrollment and integration of children with special needs to general education. The State shares a wider responsibility concerning combating the marginalisation of children with disabilities. The significant divergence between the rates of children's attendance to special kindergarten classes and the corresponding rates of attending elementary classes is yet another cause for concern⁴³. The absence of relevant quality indicators does not allow for clearly defining the factors which discourage parents from enrolling their children in kindergarten. As a result, important aspects of marginalisation in education of children with disabilities are left unexamined.

Unicef, in its recent Report on the *State of World Children 2013*, notes that "exclusion denies children with disabilities the lifelong benefits of education: a better job, social and economic security, and opportunities for full participation in society". In contrast, the same Report places particular emphasis on the fact that the investment in the education of children with disabilities can contribute to their future effectiveness as members of the labour force⁴⁴. Unfortunately, in Greece lack of supporting infrastructure for children with disabilities further extends to the fields of training, lifelong learning and professional placement, widening, thus, their social exclusion. This illustrates the lack of connection between education and professional prospects. The legislation on compulsory recruitment of persons with disabilities does not respond to this problem⁴⁵.

43. KANEP-GSEE, *The fundamentals of education - 2010*, Vol. A, January 2011, available from: <http://www.kanep-gsee.gr/ereynes-meletes-ekdoseis/ethsies-ektheseis-ekpaid-eushs/ethsia-ekthesh-gia-thn-typikh-ekpaideysh-2010>, p. 15 and 20.

44. See Unicef, *The state of the World's children 2013. Children with disabilities*, op.cit. p. 37. It is also mentioned that one year of schooling increases an individual's earnings by 10%. See United Nations Educational, Scientific and Cultural Organisation, *Building Human Capacities in Least Developed Countries to Promote Poverty Eradication and Sustainable Development*, UNESCO, Paris, 2011, p. 8.

45. Law 2643/1998 (OGG A 220/28.9.1998), as amended and in force.

The GNCHR expresses its concern about the absence of data regarding the vocational training of children with disabilities, even within the context of higher degree studies.

V. GNCHR Recommendations on the fulfilment of compulsory special education in connection with the draft law

The draft law, which was recently submitted to Parliament, strives to regulate an issue which had previously been the object of a series of laws.

A. On the legislative process

Apart from the substantive content of the provisions, it is the quality of the legislative process itself which initially raises concern.

The GNCHR stresses that the constant **separate legislation** on the matter constitutes *per se* a form of discrimination against persons with special needs, which is to be added to the already existing social and educational inequalities of the Greek educational system. Special Education is not to be addressed as a foreign or inferior *corpus* of wider education. The quality of the education of persons with special needs influences the quality of the Greek educational system as a whole.

Furthermore, Special Education has been the object of different provisions which inconsistently succeed one another. Furthermore, a number of specific issues are regulated by presidential decrees and not by the legislator. The GNCHR highlights that **scattered provisions** generated by such practices afflict the rights of children with disabilities along with legal certainty.

The introduction of this new draft law to Parliament exacerbates this situation, even more so when there has been neither previous evaluation of the existing legislative framework nor justification of the need for new legislation.

Indeed, the draft law is not the fruit of constant and **essential consultation** between the Ministry of Education and the relevant stakeholders, in breach of Article 4(3) of the ICRPD, which states that "*the development and implementation of legislation and policies to implement the present Convention, and in other decision-mak-*

ing processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organisations".

The GNCHR invites the State to **systematise legislation concerning Special Education** in a way that it guarantees its actual connection with the organisational structures of the general, public and free educational system.

Regarding the current draft law, the GNCHR deems that the State must particularly **specify which of the current scattered laws or regulations for special education shall be abrogated and which shall be incorporated** into the new legislative framework.

The GNCHR also invites the legislator to **refrain from using presidential decrees or ministerial decisions for regulating simple or complex issues** concerning the organisation, structure and operation of special education.

In conclusion, the education of children with disabilities is not necessarily in need of a new law. What is necessary is the identification of measurable objectives, the proportionate increase and rational absorption of the necessary resources for an effective special education and the equal allocation of resources in the field of education.

B. On the provisions of the current draft law

a. According to the explanatory report, the current draft law wishes to form an institutional framework for providing free general and special education to persons with disabilities of all ages and at all stages and educational levels. Thus, it shall re-define and declare the main objective of compulsory free and public education for students with disabilities or/and special educational needs so as to achieve full conformity with Article 24 of the ICRPD which guarantees persons' with disabilities right to education.

The GNCHR observes that the general assessment of the suggested regulations does not conclude in that they can effectively serve the declared objective, in conformity with the In-

ternational Convention for the Rights of Persons with Disabilities. Occasionally, it does not serve the prospect of school and social integration of persons with disabilities or/and special educational needs and functions in a deterrent way for their integration.

By means of the new draft law, the State does not seem to seize the opportunity to improve the educational system **in a way that both different special educational needs across the country and different categories of disabilities are taken into consideration.**

Furthermore, no measures are provided for organising Early Intervention. It is necessary to establish and staff public day centres with a view to planning and realising Early Intervention for children between a few months and 5 years old.

On the contrary, the GNCHR observes that, while trying to regulate the organisation and operation of special education, the suggested legislative initiative puts in danger the quality of education as a whole. More specifically, the draft law does not provide for mechanisms allowing for the monitoring of participation in education of pre-school children and students with disabilities or/and special educational needs on a national, regional and local level. Besides, the draft law does not propose actions towards increasing this participation⁴⁶.

The GNCHR also highlights the need for promoting in a coordinated way the integration of students with special educational needs into General Education. Towards this end the State must provide for the staffing of school units with special education teachers, special support and special education personnel when necessary, in order to provide suitable material resources and necessary infrastructure. It is also deemed necessary to create Integration Classes in all general schools, as well as increase authorisations for Parallel Support for children who can be integrated into general classes. Wherever integrat-

ing students with disabilities into General Education is not possible, it is suggested that special schools be interconnected with the general ones by means of organising sports or cultural activities or exchange visits.

The GNCHR also stresses that promoting the integration of students with disabilities or/and special educational needs into general schools should not undermine the need to improve special schools, which for certain students are irreplaceable. Special schools need material infrastructure and the required personnel, as well as reducing the number of students per class by clearly setting the ratio up to three students per teacher.

The problem of bus transportation for students also requires a permanent solution, as every other matter related to the principle of accessibility. According to Article 9 of the ICRPD [Accessibility], *"to enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures [...] which shall include the identification and elimination of obstacles and barriers to accessibility"*, including schools. Issues relating to the implementation in practice of the principle of accessibility for students with disabilities on behalf of the State require immediate and special consideration. For children with disabilities, moving in order to access school does not just constitute a condition of education, but a precondition for exercising their right to education and, in fact, an indispensable one. In this context, its quantitative-fiscal assessment must be conducted on the basis of precise standards.

b. Great concern is also raised by the incorporation of discriminatory regulations. More specifically, under Article 24 (4) of the ICRPD⁴⁷,

46. For more information see OIELE, Report for the session of the National Commission for Human Rights on the draft law on Special Education, 30 June 2014, available from: <http://www.oiele.gr/eisigisi-tis-oiele-se-synedriasi-tis-ethnikis-epitropis-gia-ta-dikaiomata-toy-anthropoy-methema>.

47. Article 24(4) of the ICRPD: *"In order to help ensure the realisation of this right, States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities."*

teachers with disabilities have the right to be employed in order to provide appropriate education and special educational support to students with disabilities attending general or special education units. In order to be employed, teachers need to have the necessary formal and essential qualifications, provided that their placement ensures the exercise of the right to education for children with disabilities.

Nonetheless, according to its explanatory Report, the draft law attempts, under Chapter 3 which refers to "covering positions and functional needs of primary and secondary special education", to introduce a new **objective** procedure of appointing and recruiting teachers of Special Education and Special Support Staff. It is explicitly mentioned that "the first and foremost selection criterion is the qualifications and skills of the aforementioned, since they should be nothing less than **excellent**". Under Article 21(7), a special provision is introduced for teachers with disability of sixty-seven percent (67%) and higher who have vision or hearing loss and are quadriplegic - paraplegic. More specifically, it is provided that these teachers shall teach "**only**" in school units with students who share the same disability with every each of them, because, as mentioned in the explanatory report, "the aforementioned teachers are not capable of teaching in all Special Education School Units (SESU) due to the particularity of their disability".

In breach of the principle of equal treatment⁴⁸ and "reasonable accommodation", as guaranteed by the EU law (Directive 2000/78) and the ICRPD⁴⁹, as well as by the Constitution (Article 21(6) combined with Article 4(1)), and

despite the fact that the degree these teachers are holding gives them the right to work with students covering the whole range of special education, the present draft law excludes the aforementioned categories of Special Education teachers from access to other Special Education structures, where they can undoubtedly prove effective, as it has been the case for years. To this purpose, these teachers are excluded from the system of allocation of credit points and appointment applied on both teachers without disabilities and teachers with disabilities. For the application of this regulation, the classification in three different lists is provided; lists where the sensitive personal data of the type of disability shall appear and be made publicly available⁵⁰.

The GNCHR expresses its reservations concerning classifying and grouping teachers with particular disabilities, which result in drastic limitations being imposed on their access to work. Taking into account that persons with disabilities constitute a heterogeneous population group, exactly due to the different categories or degrees of disability, the State's actions ought to move towards eliminating these limitations and making the most of each individual's potential.

Given the absence of any official information about developments regarding the present legislative initiative, the GNCHR is optimistic that the State shall take into consideration all its Recommendations, as expressed in the present text and in its Proposals dated 9 April 2009 on the implementation of Law 3699/2008 on *Special Education of persons with disabilities or special educational needs*.

48. Law 3304/2005 "On the implementation of the principle of equal treatment regardless of racial or ethnic origin, religious or other beliefs, disability, age or sexual orientation" (OGG A 16/27.1.2005), which adapts Greek law to Directives 2000/43/EC and 2000/78/EC.

49. "Reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms. See Article 2 of the ICRPD as well as Article 24(2)(c) and (5) and Article 27 (1)(i). The provision of Article 5 of Directive 2000/78/EC is similar.

50. At this point, the GNCHR wishes to specially mention the letter it received on 11 June 2014 by Teachers of all levels of Primary and Secondary education and Psychologists with hearing loss of 67% and higher, by means of which the issue of violating their labour rights was put under the GNCHR's consideration. Through the letter in question and the document of 30 June 2014, Teachers and Psychologists with hearing loss of 67% and higher attempt to demonstrate the adverse consequences voting this draft law shall have on their labour rights, as well as the reasons why they deem that these regulations directly violate the ICRPD and the Constitution while, at the same time, they address recommendations to the legislator.

4. 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 (Reference Period 1.1.2009-31.12.2012)*

Introduction

The Greek National Commission for Human Rights (hereinafter GNCHR) has already, in the past, expressed its concern regarding issues falling in the scope of application of the European Social Charter (hereinafter the ESC) and its Additional Protocol and has addressed relevant opinions and recommendations to the competent Ministries. It has also submitted comments on a previous (21st) Greek Report on the application of the ESC with a view to its examination by the European Committee of Social Rights (hereinafter ECSR).

The Ministry of Labour, Social Security and Welfare (Directorate of International Relations) forwarded a copy of the two Reports (the 24th Report on the application of the ESC and the 9th Report on the application of the Additional Protocol to the ESC), to the GNCHR for its information, after having sent them to the ECSR. It did not send the draft of the aforementioned Reports to the GNCHR so as to enable it to formulate observations. Therefore, the GNCHR is directly sending its comments to the ECSR.

The GNCHR attaches hereto its recommendations regarding the prevention and the reversal of the particularly adverse effects of the financial crisis and the austerity measures on fundamental rights, which it has formulated since 2011 and subsequently repeated and updated. These recommendations are mostly referred to in the present observations. The GNCHR expresses in particular its deep concern about the following facts:

- there has been no progress regarding the

* Adopted unanimously by the Plenary of the GNCHR at its session of 9 October 2014. Rapporteurs S. Koukoulis-Spiliotopoulos, Representative of the Greek League for Women's Rights and E. Varchalama, Representative of Greek General Confederation of Labour, Second GNCHR Vice-President, R. Fragkou and Aik. Tsampi, GNCHR Legal Officers.

respect for the rights guaranteed by the ESC; in particular, the violations found by the ECSR in its recent seven decisions have not been remedied;

- the avalanche of unpredictable, complicated, conflicting and constantly modified "austerity measures" of immediate and often retroactive effect, which exacerbate the general feeling of insecurity, as deplored by the GNCHR in its hereto attached Recommendation since 8.12.2011, is continuing and constantly growing; therefore, the Greek legislation does not have the "quality" required by the European Convention on Human Rights (hereinafter ECHR).

The GNCHR would like to extend its deepest gratitude to the ECSR for quoting the GNCHR 2011 Recommendation "On the imperative need to reverse the sharp decline in civil liberties and social rights" in seven decisions finding violations of the ESC by Greece¹. The ECSR's example was followed by other European and international bodies, such as the Council of Europe (hereinafter CoE) Committee of Ministers², the CoE Commissioner for Human Rights³, the ILO Commit-

1. ECSR 23.05.2012, Complaints Nos. 65/2011, General Federation of Employees of the Public Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece and 66/2011, General Federation of Employees of the Public Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece, as well as ECSR 07.12.2012, Complaints Nos. 76/2012, Federation of employed pensioners of Greece (IKA-ETAM) v. Greece, 77/2012, Panhellenic Federation of Public Service Pensioners (POPS) v. Greece, 78/2012, Pensioners' Union of the Athens-Piraeus Electric Railways (I.S.A.P.) v. Greece, 79/2012, Panhellenic Federation of pensioners of the Public Power Corporation (POS-DEI) v. Greece, 80/2012, Pensioners' Union of the Agricultural Bank of Greece (ATE) v. Greece.
2. Council of Europe, Committee of Ministers, Resolution CM/ResCSS(2013)21 on the application of the European Code of Social Security by Greece (Period from 1 July 2011 to 30 June 2012), adopted by the Committee of Ministers on 16 October 2013 at the 1181st meeting of the Ministers' Deputies, available from: [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/ResCSS\(2013\)21&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/ResCSS(2013)21&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383).
3. Council of Europe, Commissioner for Human Rights, Safeguarding human rights in times of economic crisis, November 2013, p. 52, available from: <https://wcd.coe.int/com.intranet.InstraServlet?command=com.intranet.CmdBlobGet&IntranetImage=2530030&SecMode=1&DocId=2144886&Usage=2>.

tee of Experts on the Application of Conventions and Recommendations (hereinafter CEACR)⁴ and 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, Mr Cephias Lumina⁵.

Let us recall that the measures condemned by the ECSR and other treaty bodies were imposed by "Memoranda of Understanding" (hereinafter MoU) signed by the European Commission, acting on behalf of the Euro-area Member States, and the Hellenic Republic, as conditions for the disbursement of loan installments. The implementation of the MoU is monitored by the "Troika" (representatives of the International Monetary Fund (IMF), the European Commission and the European Central Bank (ECB)).

We also note that the European Network of National Human Rights Institutions (ENNHRI) sent, in January 2014, open letters to Mr J.-M. Barroso and Mr M. Draghi "On the upcoming Troika visit to Greece", to which the above GNCHR Recommendation was *inter alia* attached. In these letters, ENNHRI, also invoking the ECSR decisions regarding Greece, drew attention to the adverse effects of the crisis and austerity measures on the enjoyment of human rights in our country. It recalled that the EU Member States are bound by human rights obligations and that both EU Member States and EU institutions are bound by the EU Charter of Fundamental Rights (hereinafter the EU Charter). It stressed that "only by connecting macro-economic decision-making processes and human rights can we decelerate, perhaps even invert, the transformation of the financial crisis into a humanitarian crisis" and called on the European

Commission and the ECB to carry out a systematic *ex ante* human rights impact assessment of all austerity measures; to make sure they do not lead to human rights violations; and to integrate human rights institutions and experts in the process of macro-economic decision-making⁶.

I. The need to ratify the Revised European Social Charter

The GNCHR emphasises that the ratification of the Revised European Social Charter (hereinafter the RESC), which it is constantly recommending⁷, constitutes a very important and necessary step towards achieving social progress in the present financial and political conjuncture and expresses its deep concern for the fact that it has not yet been ratified by Greece. The GNCHR agrees in this respect, with the Plenum of the CoE Parliamentary Assembly, which in its Recommendation of 12 June 2012 called on all Member States of the CoE to sign and ratify the RESC⁸. The GNCHR is convinced that, despite the financial crisis which afflicts the country and the wider financial crisis that afflicts other EU countries as well, the application of the RESC can contribute to the safeguard of social rights at a time when the welfare state is being dismantled⁹.

II. The non-compliance with the ECSR decisions and the deterioration of the situation in Greece

The GNCHR, in its capacity as an independ-

4. CEACR, in Reports to the International Labour Conference (ILC) 2013 finding violations of ILO Conventions Nos. 95 (protection of wages) and 102 (social security minimum standards) by Greece.

5. 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, Cephias Lumina, in his Report Mission to Greece (22-27 April 2013), to the UN Human Rights Council 25th Session, 11 March 2014 (A/HRC/25/50/Add.1).

6. The ENNHRI open letters and the attachments thereto are available from: <http://www.nchr.gr/index.php/en/2013-04-03-10-23-48/2013-04-03-10-41-02>.

7. A draft law set up for the ratification of the Revised ESC was not adopted. See GNCHR, Observations and proposals concerning the draft law on the «Ratification of the Revised European Social Charter», available from: http://www.nchr.gr/images/pdf/apofaseis/protaseis_epi_nomoth_keimenwn/EEDA_RevSocCharter.pdf.

8. Council of Europe, Parliamentary Assembly, Austerity measures – a danger for democracy and social rights, Resolution 1884 (2012), 26.6.2012, par. 10.3, available from: <http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=18916&lang=EN>.

9. See Greek Economic and Social Committee (OKE), Opinion concerning the draft law on the "Ratification of the Revised European Social Charter", 4.2.2011, available from: http://www.oke.gr/opinion/op_242.pdf.

ent advisory body to the Greek State, is following with particular attention and concern the impact of austerity measures on fundamental, especially social, rights. It is also highlighting the European and international monitoring bodies' observations regarding the violation of international norms on the protection of human rights and the international concern as expressed in the decisions and recommendations of these bodies, which, contrary to the Greek State, take GNCHR's Recommendations into consideration.

With respect to the seven aforementioned ESRC decisions, the GNCHR observes that none of the provisions found incompatible with the ESC has been modified or repealed.

Moreover, apart from the ECSR, the CEACR has found in its Report to the 103rd International Labour Conference (hereinafter ILC) 2014 on the application of ILO Convention No 102 by Greece that its observations made in previous reports were not followed, with the result that the situation has considerably deteriorated. The same conclusion was reached by the CoE Committee of Ministers in a Resolution finding violations of the European Code of Social Security by Greece¹⁰.

The CEACR stresses in particular, referring to the ECSR, that "austerity policies led the country to an economic and humanitarian catastrophe unprecedented in peacetime: a 25% shrinking of GDP – more than at the time of the Great Depression in the United States; over 27% unemployment – the highest level in any western industrialised country during the last 30 years; 40% reduction of household disposable incomes; a third of the population below the poverty threshold; and over 1 million people or 17.5% of the population living in households with no income at all. These consequences are substantially related to the economic adjustment program Greece had to accept from the group of international institutions known as "the Troika" [...], to ensure repayment of its sovereign debt"¹¹.

10. Council of Europe, Committee of Ministers, Resolution CM/ResCSS(2013)21 on the application of the European Code of Social Security by Greece (Period from 1 July 2011 to 30 June 2012), adopted by the Committee of Ministers on 16 October 2013 at the 1181st meeting of the Ministers' Deputies, *op. cit.*

11. Observations (CEACR) adopted 2013, published 103rd ILC session (2014), Social Security (Minimum Standards) Con-

The Greek National Confederation of Labour (hereinafter GSEE) has recently submitted a complaint to the ECSR, regarding the violation of a great number of workers' social rights guaranteed by the ESC in the last four years¹².

The complete deregulation of labour relations, the dramatic salary reductions and the dismantling of the welfare state do not only concern the workers, the unemployed and the pensioners in Greece; they are features of fiscal and social policies which are widespread in Europe.

It is in the light of the above that the GNCHR's more specific observations on the respect for the rights dealt with in the Greek Reports under examination must be read.

III. Matters affecting all the rights examined

The GNCHR considers it crucial to mention at least three matters which affect all the rights examined here: the restrictions to the scope of social rights (A), the dismantling of collective bargaining as a factor exacerbating the violations of social rights (B) and the increasing impediments to access to justice of individuals whose rights are being violated (C).

A. The limitation of the scope of social rights

The GNCHR has repeatedly complained about Article 84 of Law 3386/2005, which prohibits the provision of medical care to undocumented migrants, making doctors who contravene this prohibition liable to criminal and disciplinary sanctions. It has underlined that this leads to inhuman and degrading treatment of these persons and violates their right to social aid and healthcare, whilst endangering public health. According to this provision, hospitals and clinics are only allowed to provide their services to undocumented minors, and to undocumented adults in cases of emergency only. As the doc-

vention, 1952 (No. 102), p. 516, Greece, available from: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3150771.

12. General Confederation of Greek Workers (GSEE), Press Release-GSEE's Application to the Council of Europe, 29.9.2014, available from: http://www.gsee.gr/news/news_view.php?id=2325.

tors, respecting the Hippocratic oath and human rights, defy this prohibition, an urgent Circular of the Ministry of Health and Social Solidarity recalled the above provisions and strongly underlined the relevant obligations and the liability of doctors¹³.

B. The dismantling of collective bargaining as a factor exacerbating the violations of social rights

The GNCHR is constantly deploring¹⁴ that the sweeping reforms which dismantled the system of collective bargaining and collective agreements (hereinafter CAs), as introduced by a series of legislative provisions (in particular Acts 3845/2010, 3863/2010, 3899/2010, 4024/2011, 4093/2012, Ministerial Council Act 6/28.2.2012 implementing Article 1(6) of Law 2046/2012), have a direct impact on labour issues of broader social interest regulated by CAs. This is because the shrinking of the normative content of the CAs weakens significantly the ability of these crucial collective instruments not only to regulate labour relations, but also to function constructively for the eradication of dangerous stereotypes in the workplace and the protection of vulnerable groups and women from social exclusion and misery¹⁵.

C. The mounting barriers to access to Justice and judicial protection

The GNCHR avails itself of the opportunity to remind its positions regarding the drastic increase in litigation costs for lodging legal rem-

edies, and to once again emphasise how inappropriate this choice is as a means to resolve the problem of the excessive length of proceedings. The GNCHR, invoking ECtHR case-law, has emphasised that such measures severely violate the right of a great number of individuals to access to Justice and judicial protection. This is the more so as a large and dramatically increasing part of the Greek population is exposed to poverty and social exclusion.

It is an undeniable fact that the economic crisis in Greece is unprecedented in intensity and duration¹⁶. According to Eurostat, in 2013 the Gross Domestic Product (GDP) of Greece had shrunk by 20.6% in comparison to 2009 (or even by 23.2% in comparison to 2007)¹⁷, while the Group of Analysis of Public Policy of the Athens' University of Economics notes that the poverty threshold based on a fixed rate has sharply risen, to 39% in 2012 and 44% in 2013¹⁸. According to the Greek Statistical Authority (hereinafter ELSTAT), in 2012, 34.6% of the population (now obviously more) were at risk of poverty and social exclusion¹⁹.

Moreover, pursuant to the 2nd MoU, the *minimum* wages under the National General CA of 15.7.2010 were reduced by 22% for all employees, except for those under the age of 25, for whom the *minimum* wages were reduced by 32%. Thus, the *minimum* monthly salary has reached 586.08 Euros and for the workers un-

13. Circular Y4a/οικ.45610/02/05/2012. See GNCHR, *Observations on Law 3386/2005 «Entrance, residence and social integration of third countries' nationals in Greece», as well as GNCHR, Press Release, «Cruel and Degrading Treatment of Our Fellow People: Responsibility of the State», 25.5.2012, available from: www.nchr.gr.*

14. See GNCHR, *Recommendation on the imperative need to reverse the sharp decline in civil liberties and social right, 8.12.2011, available from: http://www.nchr.gr/images/English_Site/CRISIS/nchr_crisis.pdf and Recommendation and decisions of international bodies on the conformity of austerity measures to international human rights standards, 27.6.2013, available from: http://www.nchr.gr/images/English_Site/AusterityMeasuresHR/gnchr.austeritymeasures.2013.pdf.*

15. GNCHR, *Protection of the rights of people living with HIV/AIDS, available from: http://www.nchr.gr/images/English_Site/YGEIA/NCHR%20Report%20on%20the%20rights%20of%20people%20living%20with%20HIV%20_2_.pdf.*

16. See Athens University of Economics, *Analysis Group for Public Policy, Dimension of poverty in Greece of the crisis, Newsletter 1/2012, M. Matsaganis, Ch. Leventi, E. Kanavitsa (dir.), available from: http://www.paru.gr/files/newsletters/NewsLetter_01.pdf; and The anatomy of poverty in Greece in 2013, Newsletter 5/2013, M. Matsaganis, Ch. Leventi (dir.), p. 3-4: http://www.paru.gr/files/newsletters/NewsLetter_05.pdf.*

17. Available from: <http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&plugin=1&language=en&pcode=tec00115>.

18. See Athens University of Economics, *Analysis Group for Public Policy, The anatomy of poverty in Greece in 2013, Newsletter 5/2013, M. Matsaganis, Ch. Leventi (dir.): http://www.paru.gr/files/newsletters/NewsLetter_05.pdf.*

19. ELSTAT *Living conditions in Greece July 2014, Labour market, Table 8, Poverty-inequality, Table 6: http://www.statistics.gr/portal/page/portal/ESYE/PAGE-themes?p_param=A0101&r_param=SJO01&y_param=TS&mytabs=0.*

der the age of 25, 510.95 Euros, while the poverty threshold is 580 Euros²⁰. The ECSR found that this reduction of the young workers' salary constitutes a violation of the ESC. Indeed, in a period, of turbulence of growing intensity in the labour and social security field and of restrictions and deprivation of fundamental social rights, when a greater number of people than ever need effective judicial protection, the mounting barriers to access to Justice constitute a human rights violation of particular gravity.

For this reason and in order not to restrict access to Justice for individuals only, since it is only they who pay litigation costs, the GNCHR has recommended that, in case a legal remedy lodged by the State or legal entities governed by public law is dismissed, considerably increased litigation costs and pecuniary penalties be imposed, which will have a deterrent effect²¹. As it is mainly the unjustified legal remedies lodged by the State and other public entities which burden the system of Justice, this is a way to reduce the courts' backlog without creating a problem of inequality of the parties.

The GNCHR, in its comments concerning the Draft law which became Law 4055/2012, invoked a specific opinion formulated in Opinion No. 4/2010 of the Administrative Plenary of the Council of State (Supreme Administrative Court), according to which "it is absolutely impossible to achieve an important reduction of the length of proceedings before the Council of State without drastically reducing the number of cases brought before it. This reduction cannot of course be achieved by legislative measures which would annihilate or seriously impede the right of individuals, as guaranteed by the Constitution and the ECHR, to seek the annulment of illegal acts or omissions of the Administration. Consequently, the only measure available to the legislator

for achieving a significant reduction of the cases brought before the Council of State, is the drastic reduction of the legal remedies lodged by the State and legal entities governed by public law, which, as they exercise public power, they have not a right to judicial protection, the latter being only guaranteed to individuals"²².

Moreover, the GNCHR has recommended as a measure of support to those heavily afflicted by unemployment, job insecurity and the weakening of CAs, in line with Articles 21, 22(1) and (5), and 25 of the Constitution, that litigation costs be abolished at least for employment and social security cases and be drastically reduced for the other cases. At the same time, the legal aid system, which is inadequate mainly due to the very strict conditions subject to which it is available, must be reorganised and extended²³. These recommendations are also in line with the recommendations of ILO bodies for the taking of support measures in favour of workers in the framework of the crisis, as these recommendations have been formulated following complaints of GSEE²⁴.

20. ECSR 23.05.2012, Complaint No. 66/2011, *General Federation of Employees of the Public Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece*.

21. GNCHR, *Comments on the Draft law of the Ministry of Justice titled "Acceleration of proceedings in administrative courts and other provisions"*, Report 2010, p. 123: http://www.nchr.gr/images/English_Site/DIKAIHDIKH/2010_Di-oikhtikh_Dikh.pdf.

22. *Minutes of the Administrative Plenary of the Council of State No. 4/2010, specific opinion regarding the provision that became Article 12 of the Draft law. This opinion invokes the decisions made by the ECtHR, Radio France v. France 23.9.2003, par. 26 (on the admissibility), Monasteries v. Greece, 9.12.1994, par. 49, and Commercial, Industrial and Rural Chamber of Timisoara v. Romania, 16.07.2009, par. 15. To these decisions we add those of the ECtHR Section de Commune d'Antilly v. France, 23.11.1999 (on the admissibility), and Danderyds Kommun v. Sweden, 7.06.2001 (on the admissibility).*

23. Law 3226/2004.

24. ILO, *Committee on the Application of Standards, 2013 Report (102nd ILC)*, http://www.ilo.org/ilc/ILCSessions/102/reports/committee-reports/WCMS_216456/lang--en/index.htm; *Committee on Freedom of Association, 365th Report of the Committee on Freedom of Association (November 2012), case 2820*, http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_193260.pdf; *Committee on the Application of Standards 2011 Report (100th ILC)*, http://www.ilo.org/global/standards/WCMS_165970/lang--en/index.htm. See also ILO, *Committee of Experts on the Application of Conventions and Recommendations, 2013 Report*, http://www.ilo.org/ilc/ILCSessions/102/reports/reports-submitted/WCMS_205472/lang--en/index.htm; *2012 Report*, http://www.ilo.org/ilc/ILCSessions/101stSession/reports/reports-submitted/WCMS_174843/lang--en/index.htm; *2011 Report*, <http://www.ilo.org/ilc/ILCSessions/100thSession/reports/reports-submitted/>

IV. Specific Observations on the implementation of the European Social Charter and the Additional Protocol to the European Social Charter

Article 2 of the ESC – The right to just conditions of work

Act 4093/2012 has *inter alia* introduced important modifications to working time provisions, which are closely related to workers' health and safety under European and international law. Directive 93/104/EC, which lays down *minimum* safety and health requirements for the organisation of working time, as amended by Directive 2000/34/EC, was transposed by Presidential Decree 88/1999, as amended by Presidential Decree 76/2005. Directive 2003/88/EC has repealed and replaced the above Directives.

The EU directives explicitly provide that they set out *minimum* standards, and do not affect Member States' right to apply or introduce laws, regulations or administrative provisions more favourable to the protection of the safety and health of workers or to facilitate or permit the application of collective agreements which are more favourable to the protection of the safety and health of workers; moreover, they stipulate that their implementation shall not constitute valid grounds for reducing the general level of protection afforded to workers (Articles 15 and 23 of Directive 2003/88/EC). The directives thus express the favourability principle. Greek legislation which transposed the above directives had taken advantage of this principle in order to provide for *minimum* daily rest periods of 12 hours instead of 11 hours provided by the directives.

However, Law 4093/2012 has adversely affected working conditions reducing the level of workers' protection, in particular regarding working time, as follows:

- by disconnecting the opening hours of shops from the working hours of their personnel;
- by allowing derogations from the five-day working week for shop employees by means of

CAs through working time arrangements on a weekly basis;

- by reducing the *minimum* daily rest period from 12 to 11 hours;

- by allowing undertakings employing regular and seasonal personnel to provide, in case of work overload, part of the annual leave (10 working days) for employees working five days a week and (12 working days) for those working six days a week, at any time in the same calendar year;

- by abolishing Saturday work pay increase (30%).

These provisions have significantly reduced the protection level of workers with an adverse impact on workers' health and safety, which working time standards are meant under the ESC and EU law to ensure. In particular, the reduction in the *minimum* daily rest period from 12 to 11 hours has adverse effects on workers' health and safety, while working time arrangements within a shorter time span (weekly) has led to increasing work intensification. Therefore, these provisions violate Article 2 of the ESC on fair and just working conditions.

Paragraph 3 - The right to just conditions of work: a minimum of three weeks annual holiday with pay

The ECSR has unanimously found violations of a number of articles of the 1961 ESC in the case of the "special apprenticeship contracts" between employers and workers aged 15 to 18 years who are not granted paid annual holiday²⁵. More particularly, the deprivation of the annual holiday violates Art. 7 (7) of the 1961 ESC, which requires a paid annual holiday of no less than three weeks. The GNCHR observes that the relevant provisions have not been modified, and as a consequence Greek legislation is still incompatible with the ESC in this respect.

Besides, the deprivation of the annual holiday violates a fundamental principle of EU law, enshrined in Article 31 (2) of the EU Charter (fair and just working conditions) and expressed

WCMS_151556/lang--en/index.htm and ILO's High Level Mission to Greece, Report (November 2011), http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/missionreport/wcms_170433.pdf.

25. ECSR 23.05.2012, Complaint 66/2011, General Federation of Employees of the Public Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece.

in Directive 2003/88/EC²⁶ which provides for the right of every worker to paid annual leave of at least four weeks²⁷. As a consequence, the aforementioned provisions also conflict with relevant EU law norms, which exceed the ESC *minimum* and therefore prevail.

The GNCHR also expresses its concern about the contracts of employment in community service programs, within the framework of which it is uncertain whether employees are entitled to paid leave, since their contracts are considered special purpose contracts. The obligations of the body which is competent for the execution of these programs are limited to ensuring health and safety conditions in the workplace, while it has no obligation to pay any other benefits to the employees beyond those expressly specified in Article 89 (A) (1) of Law 3996/2011.

Article 4 of the ESC – The right to a fair remuneration

Paragraph 1 – The right of workers to a remuneration such as will give them and their families a decent standard of living

The GNCHR expresses its concern for the imposed wage cuts and wage “freezes”, employment issues which used to be regulated by CAs and arbitration decisions already in effect. These measures were provided by Ministerial Council Act 6/28.2.2012, which was issued by virtue of the enabling provision of Article 1(6) of Law 4046/2012 repeating clauses of the 2nd MoU.

These measures have entailed the most dramatic drop in the standard of living guaranteed by the ESC and the Greek Constitution.

Furthermore, the GNCHR expresses its concern about the 32% reduction to the *minimum* wage for all workers under 25 years of age, which has been found by the ECSR to be in breach of Article 4 ESC. The relevant provisions have not been repealed or modified. Moreover, their impact has never been evaluated, as the ECSR has ascertained, and they have not led to the reduc-

tion of the unemployment of the young, while the use of flexible forms of employment for them is increasing.

According to the latest data of ELSTAT, in June 2014 (which, it must be noted, is a month of seasonal employment), the unemployed were 1.303.884 and the unemployment rate was 27% (men: 23.8%, women 31.1%, 15-24 age group: 51.5%)²⁸. Long-term unemployment (over 12 months) was 71.4% of total unemployment in the first quarter of 2014²⁹.

Only 9% of the unemployed registered with OAED (the Manpower Employment Organisation) (the number of whom is lower than the total number of unemployed reported by ELSTAT: 993.118), are entitled to unemployment benefits, in principle for a maximum of 12 months. As a consequence, long-term unemployment is not covered. The beneficiaries are entitled to 360 Euros per month, plus 36 Euros for every dependent family member. This amount is much lower than the poverty threshold (580 Euros, as found by the ECSR). The long-term unemployed may receive a personal allowance of 200 Euros, for a maximum of 12 months more, albeit subject to a very strict means-test³⁰.

The GNCHR also notes that by its recent judgment No. 2307/2014, the Council of State Plenum, partly upheld a petition of GSEE for the annulment of Ministerial Council Act 6/2012³¹. It annulled as unconstitutional the provisions of this Ministerial Act to the extent that they abolished the right of the parties to unilaterally resort to arbitration and restricted the scope of arbitration to basic salary or/and daily wage determination, while prohibiting the regulation of all non-wage matters, and even the adoption of clauses maintaining such provisions in force (retainability clauses). However, in this same judg-

26. Directive 2003/88/EC OJ L 299/9, 4.11.2003 concerning certain aspects of the organisation of working time, OJ 2999/9, 18.11.2003.

27. CEU Cases C-173/99 BECTU, [2001] ecr I-4881; C-579/12 RX-II, Strack, EU:C:2013:570; C-78/11 ANGED, EU:C:2012:372.

28. ELSTAT Press release September 11 for June 2014: http://www.statistics.gr/portal/page/portal/ESYE/BUCKET/A0101/PressReleases/A0101_SJO02_DT_MM_06_2014_01_F_EN.pdf.

29. ELSTAT, Table 6: http://www.statistics.gr/portal/page/portal/ESYE/PAGE-themes?p_param=A0101&r_param=SJO01&y_param=TS&mytabs.

30. OAED (Manpower Employment Organisation): <http://www.oaed.gr>.

31. See *supra*, III.B.

ment, the Council of State avoided to examine the compatibility of this Ministerial Act with the ESC, considering that "this international convention merely contains recommendations to the States-parties, mainly regarding the right to strike, free collective bargaining and trade union rights in general"³².

Paragraph 3 – The right of men and women workers to equal pay for work of equal value

The GNCHR observes that the Greek Report under examination merely presents the legislation in force. The GNCHR has made, in the recent past, various observations on the implementation of the right of men and women to equal pay for work of equal value in Greece³³. Since no progress has been made ever since, the GNCHR repeats the following remarks:

The GNCHR welcomed the adoption of Law 3896/2010, which transposed Directive 2002/73/EC on equal treatment of men and women in employment and the fact that several of its observations regarding the relevant Draft law were taken into account. It noted, however that this law is inadequate in certain respects. Firstly, the definition it provides for "vocational training" is neither clear nor consistent with EU law, something which undermines legal certainty.

Moreover, Article 19 on "Positive Measures" does not comply with Article 116(2) of the Greek Constitution which introduces an obligation for all state organs³⁴. According to well-established jurisprudence of the Council of State, this constitutional provision "obliges the legislator and all other state authorities to adopt in all fields the positive measures in favour of women that are appropriate and necessary for achieving the best possible result" with a view to minimising inequalities

and with the ultimate goal to achieve substantive gender equality³⁵. Furthermore, Article 116(2) of the Greek Constitution stipulates that the positive measures should aim to eradicate "inequalities" (which is a broader term than the term "discrimination" of Article 19 of Law 3896/2010)³⁶.

Furthermore, the GNCHR noted, in its observations on the Draft law for the transposition of Directive 2002/73/EC (which became Law 3488/2006), that there is no autonomous personal right to parental leave for both male and female workers³⁷ and that Article 3(4) of this Law regarding the protection of maternity does not comply with the provisions of Article 21(1) and (5) of the Greek Constitution, which guarantee the effective protection of maternity³⁸.

35. Council of State, decisions Nos 2831/2003, 2832-2833/2003, 3027-3028/2003, 3185, 3187-3189/2003 and 192/2004.

36. See as noted by the GNCHR in Comments on Draft law titled "Application of the Principle of Equal Treatment Irrespective of Racial or Ethnic Origin, Religious or Other Beliefs, Disability, Age or Sexual Orientation", 2003: The Greek Constitution, Article 4(2), guarantees substantive gender equality (Council of State judgment No. 1933/1998). On the occasion of the constitutional revision of 2001, the provision of Article 116(2) allowing derogations was repealed and replaced with a provision which requires positive measures as a means for achieving gender equality and the abolishment of all inequalities in practice, especially those affecting women. Consequently,, as of the entry into force of the revised Constitution (18.4.2001), all provisions allowing derogations were null and void, while any provision introducing derogations in the future shall be invalid. This is why neither Law 3488/2006 transposing Directive 2002/73/EC nor Law 3896/2010 transposing Directive 2006/54/EC, allow derogations from gender equality in employment. Besides, both these Directives allow member States to introduce or maintain national provisions more favourable than their own and do not allow the reduction in the level of protection of workers in the areas which they cover. The GNCHR underlined that "according to fundamental principles of international and European law as well as to the explicit provisions of the Directives, the provisions of Article 116(2) of the Greek Constitution prevail as more protective".

37. GNCHR, Resolution on the Reconciliation between Professional and Family Life in view of the transposition of EU Directive 2002/73/EC into Greek law, 2005: http://www.nchr.gr/images/English_Site/NomothetikesProtaseis/NationalLegislation/Professional_family_life%202006.pdf.

38. Article 21(1): "The family, being the cornerstone of the preservation and the advancement of the Nation, as well as marriage, motherhood and childhood, shall be under the protection of the State" and Article 21(5): "Planning and implementing a demographic policy, as well as taking of all necessary measures, is an obligation of the State".

32. Par. 40 of the judgment.

33. GNCHR, Observations on the Draft of the Second Periodic Report of the Hellenic Republic for the International Covenant on Civil and Political Rights (ICCPR), 5.12.2013, p. 26-29: http://www.nchr.gr/images/pdf/apofaseis/ellinikes_ektheseis_en_ell_org/OHE/dsapd.pdf.

34. Article 116 (2): "Adoption of positive measures for promoting equality between men and women does not constitute discrimination on grounds of sex. The State shall take measures for the elimination of inequalities actually existing, in particular to the detriment of women".

Especially in the private sector, women undergo unfavourable treatment during the hiring and negotiation process, not only when they are pregnant or have just given birth to a baby, but also when they have young children or are married and at child-bearing age³⁹.

The GNCHR has also underlined that the legal framework (Law 3488/2006 and Law 3896/2010, which transpose Directives 2002/73/EC and 2006/54/EC, respectively)⁴⁰ is inadequate for ensuring effective judicial protection to victims of discrimination, most of whom are women. Legal entities are not granted standing to engage in their own name in legal proceedings for the protection of the rights of the victims.

The GNCHR is constantly repeating a general observation, regarding the provisions transposing the EU gender equality Directives: the procedural provisions (mainly regarding the standing of legal entities and the burden of proof) are not incorporated into the relevant Codes of Procedure. As a consequence, they remain unknown to judges, lawyers and the persons concerned. Therefore, the transposition of the EU Directives is inadequate, since it does not establish the required legal certainty and transparency which would allow the victims of discrimination to be aware of their rights and to claim them before the courts and other competent authorities.

Despite the adoption of Law 3896/2010 and the measures mentioned in the Greek Report under examination, the deregulation of employment relations due to the growing financial crisis and the successive austerity measures continue

to aggravate the position of women in the labour market, rendering them even more vulnerable. Taking into account the recent concluding observations of the UN Committee on the Elimination of Discrimination against Women⁴¹, the GNCHR expresses its concern for the marginalisation of women in the labour market as reflected *inter alia* in the high female unemployment rates. The application of Law 4042/2011 and the severe pension cuts regarding widows and other categories of women have also had a negative effect.

Furthermore, the reversal of the hierarchy of CAs and the weakening of the National General CA and the sectoral CAs affect women in particular, mainly regarding equality in pay, and thus lead to the widening of the pay gap, as CAs used to be the best means to promote and protect uniform pay and employment conditions, without any discrimination.

Another source of concern is the continuous reduction of the (already insufficient) day-care structures for children and dependent persons as well as other social structures, which limit women's ability to take up employment or keep them in jobs with reduced rights, at the same time perpetuating gender stereotypes, as men are not encouraged to participate in such care. The harmonisation of family professional life should be a matter for both men and women. There is also a disturbing rise in discriminatory practices, especially on multiple grounds, to the detriment of women employed within the framework of sub-contracting or temporary employment. In such cases, women are especially targeted if they are engaged in trade union activity⁴².

The CEACR expresses its concern at the "disproportionate impact" of the crisis and austerity measures on women and the widening of the pay gap to their detriment. The CEACR stresses in particular that "the combined effect of the financial crisis, the growing informal

39. GNCHR, *Resolution concerning the Reconciliation between Professional and Family Life in view of the Incorporation of EU Directive 73/2002/EC into Greek Legislation, 2005*, available from: http://www.nchr.gr/images/English_Site/NomothetikesProtaseis/NationalLegislation/Professional_family_life%202006.pdf.

40. GNCHR, "Comments on the Draft law "Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation-Harmonisation of Legislation with Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006", available from: http://www.nchr.gr/images/pdf/apofaseis/isothta_fullwn/EEDA_YpErgasias_2006.54_2010.pdf and http://www.nchr.gr/images/pdf/apofaseis/isothta_fullwn/paratiriseis_sx.Nomou_2006_54.pdf.

41. *Committee on the Elimination of Discrimination against Women, Concluding Observations: Greece, CEDAW/C/GRC/CO/7 (26.4.2013)*, par. 28.

42. GNCHR, *Workers' rights and conditions of work in the framework of sub-contracting*, available from: http://www.nchr.gr/images/pdf/apofaseis/ergasia/fin_EEDA_ergolavikes_anatheseis_ioul09.pdf.

economy and the implementation of structural reform measures adversely affected the negotiating power of women, and would lead to their over-representation in precarious low-paid jobs". The CEACR, with reference to the information received from the Greek Ombudsman, (hereinafter the Ombudsman) observes that since the vast majority of employees in the wider public sector are women, the measures of "labour reserve" and those introduced by Law 4024/2011 (a new public service statute, a new job classification and a new harmonised wage scale resulting in wage cuts of up to 50 per cent in certain cases) is likely to have an impact on female unemployment. The CoE Commissioner for Human Rights has also emphasised the serious impact of the crisis and austerities measures on women⁴³.

In the private sector, the rapid growth of **flexible forms of employment** as well as the replacement of contracts of indefinite duration by fixed term contracts lead to a significant reduction in wages. The CEACR stresses, referring to the Ombudsman, that flexible forms of employment, mainly part-time and rotation work, are more often offered to women, especially during pregnancy and upon return from maternity leave, reducing their levels of pay, while layoffs due to pregnancy, maternity and sexual harassment increase. "Flexibility had been introduced without sufficient safeguards for the most vulnerable, or safeguards which had been introduced by law were not effectively enforced"⁴⁴.

In fact, unemployment, especially among women and young people, is especially high and as the CEACR notes, "a large number of women have joined the ranks of the 'discouraged' workers who are not accounted for in the statistics", while "small and medium-sized enterprises, which are an important source of employ-

ment for women and young people, close down massively"⁴⁵.

Moreover, fiscal consolidation decisions and austerity measures are taken **without any ex ante or even ex post impact assessment**, as the ECSR and other treaty-bodies are deploring⁴⁶.

Also, "recalling that CAs have been a principal source of determination of pay rates, the Committee refers to its comments on Convention No. 98 and calls upon the Government to bear in mind that **collective bargaining** is an important means of addressing equal pay issues in a proactive manner, including unequal pay that arises from indirect discrimination on the ground of sex"⁴⁷.

To the abovementioned observations the GNCHR adds the need to strengthen the Labour Inspectorate (SEPE) and the Ombudsman, something crucial at a time when both bodies are suffering major budget cuts. This is all the more so as the number of workers who cannot afford recourse to the courts for financial reasons is in constant increase, stressed hereabove.

More generally, the GNCHR shares the Ombudsman's fear that **any progress** achieved so far in employment and gender equality **may be**

43. Council of Europe, Commissioner for Human Rights, *Safeguarding human rights in times of economic crisis*, November 2013, *op. cit.*, p. 23, and *Protect women's rights during the crisis*: www.commissioner.coe.int.

44. Observation (CEACR) - adopted 2011, published 101st ILC session (2012), Equal Remuneration Convention, 1951 (No. 100), Greece (Ratification: 1975): http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2699054.

45. Observation (CEACR) - adopted 2011, published 101st ILC session (2012), Equal Remuneration Convention, 1951 (No. 100), Greece (Ratification: 1975): http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2699054. See also Observation (CEACR) - adopted 2012, published 102nd ILC session (2013). Discrimination (Employment and Occupation) Convention, 1958 (No. 111) - Greece: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3084473.

46. See GNCHR, "Recommendation and decisions of international bodies on the conformity of austerity measures to international human rights standards (2013)", GNCHR, GNCHR Recommendation: *On the imperative need to reverse the sharp decline in civil liberties and social rights (2011)* and GNCHR, *The need for constant respect of human rights during the implementation of the fiscal and social exit strategy from the debt crisis (2010)*, *op. cit.*

47. Observation (CEACR) - adopted 2011, published 101st ILC session (2012), Equal Remuneration Convention, 1951 (No. 100), Greece (Ratification: 1975), available from: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2699054. See also Observation (CEACR) - adopted 2012, published 102nd ILC session (2013) Discrimination (Employment and Occupation) Convention, 1958 (No. 111) - Greece, available: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3084473.

reversed, something which would result in failure to draw on valuable human resources, as well as in violation of the rule of law and democratic principles⁴⁸. The insufficiency of policy measures aiming at combating high female unemployment, the failure to encourage men's participation in family care, the gender pay gap to the detriment of women and the so-called «glass ceiling» on women's professional evolution indeed constitute problems of human rights and democracy.

Paragraph 4 – The right of all workers to a reasonable period of notice for the termination of employment

Article 74 (2) (A'), of Law 3863/2010, as amended by Article 17 (5) (a), of Law 3899/2010, which aims to increase the flexibility of labour relations, in compliance with the first update of the MoU, reads as follows: «*The first twelve months of employment on a permanent contract from the date it becomes operative shall be deemed to be a trial period and the employment may be terminated without notice and with no severance pay unless both parties agree otherwise.*»

As the ECSR has held, the above provision violates Article 4 (4), of the ESC. However, this provision has not been amended or repealed. On the contrary, dismissals have been further facilitated by Law 4093/2012 in breach of Article 4 (1), (3) and (4) of the ESC, with the following consequences:

A significant part of the risk of job loss is passed on to the worker given that severance pay intends to mitigate the effects of dismissals and secure livelihood support of the employees until they find another job. Moreover, severance payments constitute wages in a broad sense⁴⁹; they are a form of accrued income that increases proportionally with job tenure in an enterprise. In this respect, wages, in the broader sense, have also been affected. Severance pay reductions, in the framework of the current situation in the labour market and in conjunction with high unemployment rates are not only unjustified but also fail to serve the purpose of severance pay.

48. Ombudsman, *Special Report 2012, «Gender and labour relations»*, available from: <http://www.synigoros.gr/resources/docs/11eidikes-fylo--2.pdf>.

49. Cf. *infra*, regarding EU law.

In breach of the principle of equal pay, "multi-speed" workers have emerged in the labour market depending on the wholly fortuitous criterion of the date of hire. Employees hired from now on, as well as those at work who have not completed 16 years of service with the same employer, will receive reduced severance pay with a 12-month salary ceiling. Employees who have completed 17-28 years of service, upon the publication of Law 4093/2012, will be entitled for each additional year of service to one salary with a 2,000 Euros ceiling.

Moreover, as compensation constitutes "pay" in EU law as well and the above provision introduced discriminatory treatment related to dismissal and conditions of pay of employees who are most likely to be mainly young, a violation of Directive 2000/78/EC and Articles 21 (Non-discrimination) and 30 (protection in the event of unjustified dismissal) of the EU Charter is very likely. According to the CJEU and to the ECSR, notice and compensation aim at supporting the worker until he/she finds a new job. However, this measure deprives workers from their income, while at the same time it violates their right to work. This is all the more so as employment prospects are increasingly limited due to soaring unemployment, particularly among young people⁵⁰.

Article 3 of the Additional Protocol – The right to take part in the determination and improvement of the working conditions and working environment

Along with the CEACR, the GNCHR observes that "the industrial relations framework has been destabilised as the managerial prerogatives have been reinforced in a disproportionate and excessive manner: employers were allowed to unilaterally impose rotation work and suspension of work for 9 months and 3 months respectively within a year. The easing of rules

50. S. Koukoulis-Spiliotopoulos, "Austerity measures v. Human Rights and EU foundational values", attached to the open letters of ENNHRI to Mr J.-M. Barroso and Mr M. Draghi (see Introduction above i.f.), available from: http://www.nchr.gr/images/English_Site/NEWS/ Strengthening-FRGNCHRfinal.pdf.

on collective dismissals have led to their drastic increase. In the public sector, the labour reserve was being introduced in order to effectively dismiss thousands of workers in some 150 public agencies. Dismissals had been generally facilitated by reducing severance pay and facilitating its payment in bimonthly installments". The CEACR particularly deplores the massive dismissals in the wider public sector without consultation with the competent trade unions⁵¹.

The GNCHR has already expressed its concern at the facilitation of dismissals⁵². It notes that "the [ILO] High Level Mission [in Greece] echoes the concern expressed to it by many parties that overall, the changes being introduced to the industrial relations system in the current circumstances are likely to have a spillover effect on collective bargaining as a whole, to the detriment of social peace and society at large. The High Level Mission refers in this regard to the obligation of Greece under ratified Conventions to promote the practice of collective bargaining in general. It takes special note of the desire expressed by all social partners to evaluate the impact of the reforms introduced in the framework of the support mechanism on the industrial relations system and social dialogue more generally"⁵³.

Final observations

By seven decisions, the ECSR found violations of the ESC by Greece. None of the provisions which the ECSR considered contrary to the ESC has been repealed or modified. There are also further violations of the ESC which are pointed out in the present observations. The GNCHR avails itself of this opportunity to recall that the ECSR has repeatedly drawn attention to the justiciability of ESC provisions and rights

and to the duty of national courts to ensure the protection of these rights. This is crucial for restoring justice and social peace and ensuring the smooth functioning of democratic institutions.

Athens, 9 October 2014

Update

The GNCHR respectfully requests that the Committee also take into consideration the following additional observations. May we also draw the attention of the Committee to the fact that the Greek legislation is very frequently amended, by virtue of very long and tortuous statutes, which contain provisions unrelated to one another and to the title of the statute ('omnibus laws'). Therefore, as the GNCHR underlined in its 2011 Recommendation (see p. 1-2 above), there is an "*avalanche of unpredictable, complicated, conflicting, and constantly modified 'austerity measures' of immediate and often retroactive effect, which exacerbate the general sense of insecurity*", while great legal uncertainty is created, so that the Greek legislation does not have the "*quality*" required by the ECHR.

Article 4 of the ESC – Right to a fair remuneration

As we have pointed out above (p. 10), the provisions of Law 3863/2010 and Ministerial Council Act No. 6 of 28.2.2012 introducing sub-minima for young workers, which the Committee found contrary to Article 4 alone and in light of the non-discrimination clause of the Preamble to the ESC (discrimination on grounds of age) (Complaint No. 66/2011), have not been repealed or modified. On the same page, we have also expressed our concern about the contracts of employment in community service programs, under which the employer's obligations are limited by law.

We would now like to draw the Committee's attention to the fact that discrimination on grounds of age continues and is even intensified, in particular by virtue of provisions of Law 4093/2012, as amended by subsequent legislation. Examples:

51. ILO High Level Mission to Greece, Report (November 2011), *op. cit.*, par. 126; ILO, Application of International Labour Standards 2014 (I), Report of the CEACR, International Labour Conference, 103rd Session, 2014, p. 111-112, available from: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_235054.pdf.

52. GNCHR, GNCHR Recommendation: On the imperative need to reverse the sharp decline in civil liberties and social rights (2011), *op. cit.* p. 1.

53. *Idem*, par. 307.

Sub-minima for young workers

The sub-minima for workers under 25 years of age which were fixed by the provisions condemned by the Committee are explicitly reaffirmed. Thus by virtue of Law 4093/2012, the minimum monthly salary of white collar workers over 25 years of age is fixed at EUR 586,08 and the minimum daily salary of the blue collar workers over 25 years at EUR 22,73. For white collar workers below 25 years the minimum monthly salary is fixed at EUR 510,95, and the daily salary for blue collar workers below 25 at EUR 22,83.

The minimum wage is increased by 10% for each three year period of employment, for blue collar workers over 18 years of age and for white collar workers over 19 years of age only, not for those under these ages.

When long-term registered unemployed over 25 years of age are hired as white collar employees, their minimum wage is increased by 5% for each three year period of employment. This increase is not provided for blue collar workers of any age, nor for any workers under 25 years of age⁵⁴.

For workers hired by local authorities under fixed term contracts of employment in community service programs, the wages are even lower than the above legal wages provided by Law 4093/2012: EUR 490 monthly for those over 25 years of age and EUR 427 for those below 25 years⁵⁵.

Discrimination on grounds of age regarding unemployment allowances

The long-term unemployed receive an employment allowance of EUR 200 (far below the poverty threshold, which is EUR 580 (see p. 7 above) for a maximum of 12 months, subject to a strict means-test. Those entitled to it must be over 20 years and below 66 years of age. This is clearly discrimination on grounds of age, which

54. Article First, Paragraph IA, Sub-paragraph IA.11 (3), of Law 4093/2012, as amended by Article First, Paragraph IA, Sub-paragraph IA.7, of Law 4254/2014.

55. Article First, Paragraph 1D, Sub-paragraph ID.1 of Law 4152/2013; Joint Ministerial Decision 3.24641/Oik/3.1574/2013, OGG B 2091/27.8.2013 and subsequent Ministerial Decisions.

for workers above 66 years of age is also contrary to Article 12 of the ESC and Article 4 of the Additional Protocol (1988).

Article 16 of the ESC – Right to family protection; Article 34 of the ESC – territorial scope of the ESC, as interpreted by the Committee***Discrimination on grounds of nationality regarding child allowances***

A monthly allowance of EUR 40,00 is granted, subject to a strict means-test, for each dependent child under the age of 18, or 19 if the child is attending high school, or 24 if the child is attending a university or other post-high school educational establishment. The allowance is granted to parents who are permanent residents in Greece, even if they are EU citizens. This constitutes indirect discrimination against families on grounds of EU nationality, according to well-established CJEU case law, which is also contrary to Article 16 and to Article 34 of the ESC as interpreted by the Committee.

If the parents are citizens of other (including European) countries, they must be legally and permanently residents in Greece and their children must be Greek citizens. This constitutes direct discrimination against families on grounds of nationality, which is contrary to Article 16 and to Article 34 of the ESC as interpreted by the Committee.⁵⁶

Article 8 of the ESC- Right of female workers to protection, Article 16 of the ESC – Right to family protection***Discrimination against female employees of the State and public legal entities employed on a fixed-term contract***

The Civil Servants Code (CSC)⁵⁷ as a whole covers civil servants and permanent employees of legal entities governed by public law. The CSC provisions regarding leaves, including maternity and parental leaves, also apply to permanent employees of local authorities⁵⁸, as well as to persons employed by the State, legal entities

56. Article First, Sub-paragraph IA.11 (3), of Law 4093/2012, as amended by Article 38 of Law 4144/2013.

57. CSC (Law 3528/2007, OGG A 26 of 9 February 2007), as amended.

58. This is provided by Article Second of the CSC.

governed by public law and local authorities under a contract of indefinite duration.⁵⁹ They do not apply to persons employed by these same employers under a fixed-term contract. These persons receive the leaves provided for the private sector, which are less advantageous.

In the private sector maternity leave is seventeen weeks in total: eight weeks before and nine weeks after childbirth. It is thus shorter than the CSC leave. In the private sector, the employer pays part of the woman's wages during maternity leave (one month in case of employment of at least one year after the coming into effect of the contract of employment; fifteen days in case of shorter employment), provided that she has worked for at least ten days for the same employer.⁶⁰ By contrast, women covered by the CSC receive their full wages throughout the maternity leave without any requirement of previous service.

In the private sector, the wages during maternity leave are in principle supplemented, by an allowance paid by the woman's social security scheme⁶¹ and an allowance paid by a scheme run by OAED (Agency for Manpower Employment).⁶² However, in order to receive the social security allowance, female employees must have completed 200 working days during the two years preceding the commencement of maternity leave. By contrast, the payment of a sickness allowance by the same social security scheme is subject to 100 working days in the year preceding the notification of the sickness.⁶³ Therefore, the payment of the maternity allowance is subject to stricter conditions than the payment of the sickness allowance, in breach of the requirements of Article 11(3) of Directive 92/85/EEC.

The above constitute less favourable treat-

ment of women employed on a fixed term contract in comparison with employees covered by the CSC and permanent employees of local authorities and persons employed by the State, legal persons governed by public law and local authorities under a contract of indefinite duration, although the women under a fixed term contract are employed by the same employers. This situation conflicts with Articles 8 and 16 of the ESC, also in the light of the non-discrimination clause of the Preamble to the ESC. These violations of the ESC are of particular importance, in view of the growing practice of the State and public entities to hire employees on fixed term contracts.

Thank you very much for your kind attention.

Athens, 1st December 2014.

59. Article 4(5) of Law 2839/2000.

60. Articles 657-658 Civil Code (absence due to a serious reason, such as sickness or maternity leave).

61. Article 11 of Law 2874/2000, which sanctions Clause 7 of the national general collective agreement for 2000; Article 39 of Law 1846/1951 (on IKA, the main social security scheme for workers under a private law employment relationship).

62. http://www.oaed.gr/Pages/SN_46.pg.

63. Article 35(1) of Law 1846/1951, as amended, lastly by Article 178(3) of Law 4261/2014.

5. International Convention on the Rights of Persons with Disabilities: Problems regarding its implementation*

The Greek National Commission for Human Rights (GNCHR) considers the ratification by Greece of the United Nations Convention on the Rights of Persons with Disabilities (Convention) and its Optional Protocol (Protocol) an important step towards protecting fundamental human rights in our country. However, it deems it necessary to identify on a first, indicative level some serious problems arising from the law which ratified this Convention and the implementation of the Convention in practice, with the reservation to readdress the issue at a later date.

1. The Convention and the Protocol were ratified on 31 May 2012¹ by Law 4074/2012, and they were then ratified and entered into international force for Greece on 31 June 2012, in accordance with Article 45(2) of the Convention and Article 13(2) of the Protocol. Therefore, since 31 June 2012 Greece is subject to the monitoring of the Convention conducted by the Committee for the Rights of Persons with Disabilities (Committee), which was established under Article 34 of the Convention. Furthermore, ever since 31 June 2012, the Committee's competence to receive and consider "communications" on behalf of individuals or groups of individuals subject to the Greek State's jurisdiction, claiming that they are victims of a violation of the Convention (Article 1 of the Protocol) has entered into force with regard to Greece.

A. Obligations imposed by the Convention on national implementation and monitoring

2. Article 33 of the Convention imposes on States Parties the following obligations regarding national implementation and monitoring:

a) "States Parties, in accordance with their system of organisation, shall designate one or more focal points within government for matters

relating to the implementation of the present Convention, and shall give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels" (Article 33(1)).

b) "States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights" (Article 33(2)).

c) "Civil society, in particular persons with disabilities and their representative organisations, shall be involved and participate fully in the monitoring process" (Article 33(3)).

B. Inadequate compliance with the obligations imposed by the Convention

I. Inadequate legislative compliance

3. Article 3 of the sanctioning law reads as follows: "By decision of the Prime Minister, in accordance with Article 33(1) of the United Nations Convention on the Rights of Persons with Disabilities, a focal point is designated in the government for monitoring the implementation of the Convention along with a coordination mechanism for facilitating related action." This provision constitutes inadequate compliance with the obligations undertaken by the Greek State upon ratification of the Convention, since it enables the Prime Minister to only implement Article 33(1) of the Convention and not the remaining paragraphs thereof.

4. Pursuant to this enabling provision, Prime Minister's decision No. 426/02.20.2014 "Designation of a focal point for monitoring the implementation of the United Nations Convention on the rights of persons with disabilities (Law 4074/2012, OGG A 88) along with a coordination mechanism for facilitating related action" (OGG

* Unanimously adopted by the GNCHR Plenary during the 9 October 2014 session.

1. Available from: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=68&Lang=en.

B 523/2.28.2014). With the Sole Article of this decision, a focal point is designated for monitoring the implementation of the Convention along with a coordination mechanism for facilitating related action. This focal point shall be the Ministry of Labour, Social Security and Welfare and more specifically the Ministry's Directorate of International Relations of the General Directorate of Administrative Support. Moreover, the decision reproduces verbatim Article 33(3) of the Convention (above No. 2(c)).

5. Thus, due to the inadequacy of the enabling statute, independent mechanisms, which shall promote, protect and monitor the implementation of the Convention, have not been established, as required by Article 33(2) of the Convention. A single mechanism of this kind may even be established or this mission may be assigned to an existing independent body; it is sufficient that this body be independent and dispose of the necessary means (adequate specialised staff and funding) for fulfilling this mission. This omission constitutes a serious violation of the Convention since it considerably reduces its effectiveness. For this purpose, the enabling provision must be completed.

6. Besides, the verbatim reproduction of Article 33(3) of the Convention in the aforementioned Prime Minister's Decision is pointless. A provision enabling an administrative authority to take particular measures which shall grant civil society, in particular persons with disabilities and their representative organisations, the possibility to be involved and to fully participate in the monitoring process of the Convention.

II. Examples of inadequate compliance in practice

7. The substantive provisions of the Convention guarantee the rights of persons with disabilities and impose relevant obligations on States Parties. Among these rights is these persons' right of access, on an equal basis with others, public or private facilities and services which are open or provided to the public; *inter alia*, roads, transportation, buildings, housing, medical facilities, workplaces, monuments, sites of cultural importance etc. (Articles 9 and 30(1) of

the Convention), which is of utmost importance for avoiding social exclusion. It is obvious that, in Greece, many if not most of the facilities and services in question including Court premises are very difficult or impossible to access for persons protected by the Convention.

Consequently, GNCHR addresses the following, first and urgent recommendations to the State regarding compliance with the Convention:

- To promulgate legislative provisions specifically enabling administrative authorities to take measures for the implementation of Article 33(2-3) of the Convention.
- To take measures in order to render public or private facilities and services accessible to persons with disabilities, as required by the Convention.

6. Protection of the rights of older persons¹

"The rights of the elderly.

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life".

Article 25, Charter of Fundamental Rights of the European Union

I. Introduction – conceptual framework

All people regardless of sex, age or need for support have the right to enjoy the inalienable and fundamental human rights and freedoms. In this context, age cannot and must not constitute a reason for imposing restrictions regarding the enjoyment of their right to lead a life of independence and dignity and to participate in the social and cultural life.

Nevertheless, the discussion about guaranteeing older persons' rights has been topical in recent years, given the demographic changes in Europe and the rise in the number of older persons in modern societies, combined with the considerable rise in life expectancy during the last century. More specifically, it is estimated that by the end of 2030 the elderly will constitute 20% of world population, while there will be more people aged over 60 than under 10. Such an evolution constitutes the most radical change in age structures to ever happen in the developing world. The population over 60 years old is expected to reach 1.4 billion people by 2030². In fact, according to Eurostat's statistical data, the percentage of the elderly population in Greece which considerably rose, from 16.7% to 19.4%, is higher than the respective EU average (17.5% in 2011)³.

"The aged", "the elderly", "older persons", "third age". These are the main terms used to describe elder persons. The variety of the terminology does not constitute a Greek particularity. In English documents, the terms "older persons", "the aged", "the elderly", "the third age", "the ageing" are also interchangeable. Besides, the term "fourth age" is also employed to denote persons more than 80 years of age. Choosing the most suitable term constitutes a first challenge. It is the term "older persons" (in French, *personnes âgées*; in Spanish, *personas mayores*) which is employed in UN General Assembly resolutions 47/5 and 48/98. GNCHR deems that the most faithful Greek translation of this term is the equivalent of "older persons"⁴.

In order to define a person as "older", age is the main criterion. Regarding this issue, the problem concerning the definition of an older person presents the same difficulties as defining the notion of the child. However, there is no common approach towards setting an age limit after which a person is considered older. Generally, international texts concerning the protection of older persons' human rights avoid setting a strict definition and, thus, do not define the age limit beyond which a person is considered older⁵. The UN Population Fund considers older persons to mean those over 60 years old. According to the data from a relevant discussion within the World Health Organisation, in western world the age limit of 60-65 years may occasionally coincide with the pension age limit. Eurostat, for instance, considers "older persons" to mean those over 65 years old, since 65 is the most common age of retirement while the trend towards later retirement is evident.

Nevertheless, it is noted that age is not the sole criterion for defining a person as older. In certain regions of the planet, the persons' ability to actively participate in society is of crucial importance⁶. Moreover, persons' vulnerability could

1. These observations were adopted unanimously by the GNCHR Plenary on 20.11.2014. Rapporteurs: E. Varhala, GNCHR second Vice President, Aik. Tsampi and R. Fragkou, GNCHR Legal Officers.

2. See United Nations Social Development Network, *First ever index to measure wellbeing of older people launched*, 10.1.2014, available from: <http://unsdn.org/first-ever-index-to-measure-wellbeing-of-older-people-launched/>.

3. See Eurostat, *Population structure and ageing*, May 2014, available from: http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Population_structure_an_ageing.

4. UN, ICESCR Committee, *General Comment No. 6, The economic, social and cultural rights of older persons*, Annex IV, (11.24.1995), par. 9.

5. *Ibidem*.

6. See WHO, *Definition of an older or elderly person, Proposed Working Definition of an Older Person in Africa for the MDS*

also constitute a criterion for defining them as “older”. It must be noted, however, that older persons are a heterogeneous population group. This is frequently associated with the “paradox of powerful-vulnerable people”, since older persons may be well-off and powerful on the one hand but isolated and weak on the other⁷.

In light of the aforementioned introductory observations and in the context of its institutional role as an advisory body to the State for human rights protection, the Greek National Commission for Human Rights (GNCHR), taking into consideration the lack of a universally binding legal text which protects and promotes older persons’ rights, deems necessary to address proposals and recommendations regarding the need for effective institutional protection of this particularly vulnerable social group⁸.

To this end, GNCHR makes a first attempt towards a more focused approach on the protection of older persons’ rights on international and European level, as well as on national level (II). This approach highlights the most important challenges the State and the society have to face regarding the protection of older persons’ rights, rendering their guarantee crucial, particularly at a time when the wider society is undergoing a most deep social, political and financial crisis and social protection programmes are more and more afflicted (III). Finally, the GNCHR inaugurates the examination of this subject, addressing recommendations to the State, while examining the ne-

cessity of adopting an international binding text on the protection of older persons’ rights (IV).

II. Recognition of older persons’ rights

A. On an international level

On an international level, an abundance of texts recognise the universality of human rights, prohibiting any kind of discrimination on the grounds of age, sex, disability, religion, sexual orientation or ethnic origin. In many of these texts, explicit reference is made to the need to respect and protect older persons’ rights.

Article 25 (1) of the Universal Declaration of Human Rights (hereafter UDHR), the provisions of which recognise every person’s right “to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond its control”.

Although, the **International Covenant on Economic, Social and Cultural Rights** (hereafter ICESCR) does not include an explicit reference to older persons’ rights, Article 9 dealing with “the right of everyone to social security, including social insurance” implicitly recognises the right to old-age benefits⁹. Nevertheless, taking into account that ICESCR provisions fully apply to every member of human society, it is accepted that older persons have the right to fully enjoy the rights established by the Covenant. More specifically, it is worth mentioning the recognition *inter alia* of everyone’s right to work (Articles 6-7), social security (Article 9), an adequate standard of living for himself and his family (Article 11), the enjoyment of the highest attainable standard of physical and mental health (Article 12) or, even, education (Article 13)¹⁰.

Project, available from: <http://www.who.int/healthinfo/survey/ageingdefolder/en/> and especially the thereto referred Gorman M., «Development and the rights of older people», in Randel J, et al. (ed.), *The ageing and development report: poverty, independence and the world’s older people*, London, Earthscan Publications Ltd., 1999, pp. 3-21.

7. Fr. Mégret, «Human Rights of Older persons: a growing challenge», *Human Rights Law review*, Vol. 11/ 2011, pp. 45-47.

8. Indeed, for this purpose GNCHR organised a consultation on 30 June 2014 in a joint session of its second Sub-Commission (Social, Economic and Cultural Rights) and its fourth Sub-Commission (Promotion of Human Rights), with the participation of the Greek Ombudsman (Cycle of Social Protection) as well as a representative of the organisation 50+ Hellas. GNCHR is grateful to all actors and their representatives for the really interesting exchange of opinions which has allowed for a clearer view on the issues concerning third age.

9. UN, ICESCR Committee, General Comment No. 6, *The economic, social and cultural rights of older persons*, Annex IV, (24.11.1995), par. 10.

10. The ICESCR was sanctioned by Law 1535/1985 (OGG A 25/27.2.1985).

In response to the need to strengthen the protective framework regarding third age, the UN Committee on Economic, Social and Cultural Rights adopted in 1995, **General Comment No. 6 on the economic, social and cultural rights of older persons**. The Comment in question expresses the original interpretation of the obligations assumed by States Parties towards older persons, particularly emphasizing that the omission of age as one of the prohibited grounds of discrimination set by the Covenant should not be seen as an intentional exclusion. It is noted that when the ICSECR and the UDHR were adopted "*the problem of demographic ageing was not as evident or as pressing as it is now*"¹¹.

In any case and in order to remove any doubt regarding the prohibition of discrimination on the grounds of age, the same UN Committee further strengthened the rights of third age by adopting in 2009, **General Comment No. 20 on non-discrimination in economic, social and cultural rights**. In Paragraph 29 it is stated that "*age is a prohibited ground of discrimination in several contexts*". The Committee places particular emphasis on the "*need to address discrimination against unemployed older persons in finding work or accessing professional training or re-training*", as well as the need to protect older persons living in poverty with unequal access to universal old-age pensions¹².

UN's activity on economic, social and cultural rights is greatly linked to the activity undertaken by the **International Labour Organisation (hereafter ILO)**¹³. The most important International Labour Convention (hereafter ILC) on guaranteeing social security and combatting poverty is **ILC 102 On Social Security (Minimum Standards) 1952**¹⁴, since it sets the so-

cial security minimum standards for every sector, in terms of every country's economic reality and depending on current salaries. Besides, a specific section of the Convention is dedicated to *Old-Age Benefit*¹⁵, while later conventions aim at improving the ILC 102 minimum standards per social risk, such as ILC 128 on Invalidity, Old-Age and Survivors' Benefits (1967)¹⁶ or ILC 130 on Medical Care and Sickness Benefits (1969)¹⁷.

In the **International Covenant on Civil and Political Rights** (hereafter ICCPR), there is once again no explicit reference to older persons. Still, the universal character of the protection provided to all members of human society entails its immediate application on older persons as well. Article 26 of the ICCPR is of particular interest recognising "*equal and effective protection against discrimination on any grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*". Even though "age" is not explicitly mentioned among the prohibited grounds of discrimination, it is suggested that it is included in the broader scope of the term "*other status*".

Despite the universal character of human rights, many are the UN instruments adopted in order to provide protection to particular social groups. Although none of them focuses on older persons, certain texts explicitly mention the prohibition of discrimination on the grounds of age. More specifically, the **Convention on the Elimination of all Forms of Discrimination against Women** recognises, in Article 11(1)(e) regarding the States Parties' obligation to eliminate discrimination against women in the field of employment, "*the right to social security, par-*

11. UN, ICESCR Committee, General Comment No. 6, *The economic, social and cultural rights of older persons*, op.cit., par. 11.

12. UN, ICESCR Committee, General Comment No. 20, *Non-discrimination in Economic, Social and Cultural Rights*, E/C.12/GC/20, (7.2.2009), par. 29.

13. It is estimated that about 70 ILO Conventions are directly related to putting into effect the ICESCR rights.

14. ILO, C102 - *Social Security (Minimum Standards) Convention, 1952 (No. 102)*, available from: <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::>

P12100_ILO_CODE:C102. It was sanctioned by Law 3251/1955 (OGG A 140/6.2.1955).

15. Part V. *Old-age benefit (Articles 25-30)*.

16. ILO, C128 - *Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128)*, available from: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::55:P55_TYPE,P55_LANG,P55_DOCUMENT,P55_NODE:CON,en,C128,/Document.

17. ILO, C130 - *Medical Care and Sickness Benefits Convention, 1969 (No. 130)*, available from: http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C130.

particularly in cases of retirement, unemployment, sickness, invalidity and old age, and other incapacity to work"¹⁸. In the same direction, the International **Convention on the Protection of the Right of All Migrant Workers and the Members of their Families**, which prohibits in Article 7 the discrimination in the exercise of rights, explicitly includes "age" among the prohibited grounds of discrimination.

Among the most important international instruments in the field of human rights protection, the International **Convention on the Rights of Persons with Disabilities** (hereafter ICRPD)¹⁹ possibly offers the most effective protection to older persons. Indeed, the fact that the text of the Convention does not include a definition for "disability" marks a turn from the medical model of disability to a model which is more human rights oriented²⁰. More specifically, **Article 25(b)**, regarding the right of persons with disabilities to the enjoyment of the highest attainable standard of health, particularly mentions older persons and the States Parties' obligation to provide those health services needed. In the same context, **Article 28(2)(b)** provides the parties' obligation to secure an adequate standard of living for the persons with disabilities and their families, noting

to this end that it is necessary to ensure access by these persons, and particularly by persons with disabilities, to social protection programmes and poverty reduction programmes. Finally, older persons are also explicitly mentioned in **Articles 13** (Access to justice) and **16** (Freedom from exploitation, violence and abuse).

Several non-binding policy texts regarding older persons also contribute a great part to the creation of a framework protecting older persons' rights. These texts essentially aim at delimitating older persons' needs and designing policies for problems which emerge in modern society due to demographic ageing. We indicatively mention the **Vienna International Plan of Action for Ageing** (1983) adopted in the First World Assembly on Ageing²¹, the **Proclamation of Ageing by the UN General Assembly** (1992)²² and, even more, the **Madrid International Plan of Action on Ageing** (2002)²³.

18. *The Convention on the elimination of all forms of discrimination against women entered into force on 3 September 1981. Greece sanctioned it by Law 1342/1983 (OGG A 39/4.1.1983).*

19. *The International Convention on the Rights of Persons with Disabilities and the Optional Protocol were adopted with the UN General Assembly's Decision 61/611 in New York on 13 December 2006 and came into force on 4 May 2008. Greece signed the Convention on 30.3.2007 and the Protocol on 27.9.2010, while they were both sanctioned by Law 4074/2012 "Sanctioning of the UN Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention on the Rights of Persons with Disabilities" (OGG A 88/4.11.2012) and came into force on 30.6.2012. See at: <http://treaties.un.org/>. The International Convention on the Rights of Persons with Disabilities is the first human rights convention to be open for signature by regional integration organisations (Article 44 of the ICRPD). European Union (hereafter EU) signed it on the first day it was opened for signature (30 March 2007) and it has since been signed by the 28 EU member States.*

20. See Arlene S. Kanter, «The United Nations Convention on the Rights of Persons with Disabilities and its Implications for the Rights of Elderly People Under International Law», *Georgia State University Law Review*, Vol. 25, Issue 3, Spring 2009, p. 549.

21. *United Nations, World Assembly on Ageing, Vienna International Plan of Action on Ageing, 26 July-6 August 1982, available from: <http://www.un.org/es/globalissues/ageing/docs/vipaa.pdf>. The Vienna International Plan of Action on Ageing was adopted by the United Nations General Assembly and its includes 62 Recommendations which encourage to develop and apply policies on an international, regional and national level aiming at improving the life of older persons.*

22. *United Nations, General Assembly, Proclamation on Ageing, A/RES/47/5, 42nd plenary meeting, 16 October 1992, available from: <http://www.un.org/documents/ga/res/47/a47r005.htm>. The text of the Proclamation on Ageing was adopted by the UN General Assembly on 16 October 1992 and includes 18 Recommendations that follow 5 moral principles: dignity, independence, participation, care and self-fulfilment. The Proclamation aims at safeguarding inter alia the appropriate national policies and programmes for the elderly, which shall respond to their particular characteristics, the needs and abilities of older women and shall encourage older men to develop their social, cultural and emotional abilities. Its major pillar is raising society's awareness and the collaboration between all generations in order to achieve a balance regarding the economic, social and cultural development.*

23. *United Nations, Second World Assembly on Ageing, Political Declaration and Madrid International Plan of Action on Ageing, Madrid, 8-12 April 2002, available from: <http://undesadspd.org/Portals/0/ageing/documents/Fulltext-E.pdf>. The Madrid International Plan of Action on Ageing was adopted by the UN General Assembly with the purpose of promoting the incorporation of the issue of elderly societies in national policies by means of distributing a series of recommendations and the establishment of five regional UN committees on ageing.*

B. On European level

On European level, apart from **Article 14 of the European Convention on Human Rights**, which provides for the enjoyment of the rights and freedoms set forth in the Convention without discrimination, special attention to the social protection of older persons is also given by the Council of Europe instrument which specifically protects social rights: the **European Social Charter (ESC)**²⁴. The importance given to older persons' rights is clear and is expressed in Article 23 of the Revised ESC, as well as in **Article 4 of the Additional Protocol to the ESC** which share the same content:

"With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular:

1. *to enable elderly persons to remain full members of society for as long as possible, by means of: a. adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life; b. provision of information about services and facilities available for elderly persons and their opportunities to make use of them;*

2. *to enable elderly persons to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of a provision of housing suited to their needs and their state of health or of adequate support for adapting their housing; b. the health care and the services necessitated by their state;*

3. *to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in the institution".*

24. Greece signed the European Social Charter on 18 October 1961 and sanctioned it on 6 June 1984 by Law 1426/1984 of 21 March 1984 "Sanctioning of the European Social Charter" (OGG A 32/3.21.1984). On the contrary, Greece has yet to ratify the Revised European Social Charter, which it has signed since 3 May 1996.

Another important, legally binding, text on social protection is the **European Code of Social Security**, whose provisions require a minimum satisfactory standard of living to be secured for every person so as to essentially enjoy the right to social security. Besides, the Committee of Ministers of the Council of Europe has specified that States would be seen as failing to fulfill their responsibilities under the European Code of Social Security, in the event that social security benefits were so low as to push the workers below the poverty line²⁵.

The promotion of older persons' rights is also pursued by another body of the **Council of Europe: The Committee of Ministers**. Its **Recommendation on the promotion of human rights of older persons** stresses the need to promote, protect and guarantee full and equal enjoyment of human rights and fundamental freedoms for all older persons, and to promote respect for their inherent dignity²⁶. Previous Recommendations of the Committee of Ministers move along the same lines, as, for instance, the **Recommendation on the imperative need of reducing the risk of vulnerability of elderly migrants and improving their welfare**²⁷, the **Recommendation on ageing and disability in the 21st century: sustainable frameworks to enable greater quality of life in an inclusive society**²⁸,

25. Council of Europe, Committee of Ministers, Resolution CM/ResCSS(2012)8 on the application of the European Code of Social Security and its Protocol by Greece, 9.12.2012 and Committee of Ministers of the Council of Europe, CM/ResCSS(2013)21 on the application of the European Code of Social Security and its Protocol by Greece, 10.16.2013, available from: <https://wcd.coe.int/ViewDoc.jsp?id=1970639&Site=CM>.

26. Council of Europe, Committee of Ministers, Recommendation CM/REC (2014)2 to member States on the promotion of human rights of older persons, 19 February 2014, available from: <https://wcd.coe.int/ViewDoc.jsp?id=2162283&>.

27. Council of Europe, Committee of Ministers, Recommendation CM/REC (2011)5 to member States on reducing the risk of vulnerability of elderly migrants and improving their welfare, 25 May 2011, available from: [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Rec\(2011\)5&Language=lanEnglish&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Rec(2011)5&Language=lanEnglish&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864).

28. Council of Europe, Committee of Ministers, Recommendation CM/REC (2009) 6 to member-States on ageing and

or the **Recommendation concerning elderly people**²⁹.

The **Parliamentary Assembly of the Council of Europe** has also been extensively concerned with the social protection of older persons due to the rise in demographic ageing and non-discrimination on the grounds of age by issuing a number of relevant recommendations and resolutions. We indicatively mention the Committee's Resolution 1958 (2013) on *Combating discrimination against older persons on the labour market*³⁰, Resolution 1793 (2011) on *Promoting active ageing – Capitalising on older people's working potential*³¹, Recommendation 1796 (2007) on *The situation of elderly persons in Europe*³², Recommendation 1749 (2006) and Resolution 1502 (2006) on *Demographic challenges for social cohesion*³³, Recommendation 1591 (2003) on *Challenges of social policy in Europe's ageing*

disability in the 21st century: sustainable frameworks to enable greater quality of life in an inclusive society, 8 July 2009, available from: [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Rec\(2009\)6&Language=lanEnglish&Site=COE&BackColorInterageing=net=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Rec(2009)6&Language=lanEnglish&Site=COE&BackColorInterageing=net=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864).

29. Council of Europe, Committee of Ministers, Recommendation REC (94) 9 to member States concerning elderly people, 10 October 1994, available from: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=534538&SecMode=1&DocId=514346&Usage=2>.
30. Council of Europe, Parliamentary Assembly, Resolution 1958 (2013) on Combating discrimination against older persons on the labour market, 4 October 2013, available from: <http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=20231&Language=EN>.
31. Council of Europe, Parliamentary Assembly, Resolution 1793 (2011) on Promoting active ageing – capitalising on older people's working potential, available from: <http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=17961&Language=en>.
32. Council of Europe, Parliamentary Assembly, Recommendation 1796 (2007) on The situation of elderly persons in Europe, available from: <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta07/erec1796.htm>.
33. Council of Europe, Parliamentary Assembly, Recommendation 1749 (2006) on Demographic challenges for social cohesion, available from: <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta06/EREC1749.htm> kai Resolution 1502 (2006) on Demographic challenges for social cohesion, available from: <http://www.assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta06/ERES1502.htm>.

*societies*³⁴ or Recommendation 1619 (2003) on *The rights of elderly migrants*³⁵.

Within the European Union, age as a ground of discrimination is found in the **Amsterdam Treaty** (1997) which introduced Article 13 in the **Treaty of the European Union** (hereafter TEU) as an enabling provision for the Council to "take action" towards combating discrimination on the grounds of age in EU policies and actions³⁶. The provision for a special legislative process in order to take measures regarding combating discrimination is repeated in **Article 19 of the Treaty on the Functioning of the European Union** (hereafter TFEU), while **Article 10 of the same Treaty** explicitly provides that the EU should aim to combat discrimination "based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation". Still in the context of EU law, age is included among the prohibited grounds of discrimination, which are set in **Article 21 of the EU Charter of Fundamental Rights** (hereafter CFR), while **Article 25 of the CFR explicitly mentions the "rights of the elderly to live a life of dignity and independence and to participate in social and cultural life"**. The purpose of the aforementioned provision is to guarantee full access to work, education and health services for every person, as well as their participation in their country's political, social and cultural life³⁷.

34. Council of Europe, Parliamentary Assembly, Recommendation 1591 (2003) on Challenges of social policy in Europe's ageing societies, available from: <http://assembly.coe.int/Documents/AdoptedText/ta03/EREC1591.htm>.

35. Council of Europe, Parliamentary Assembly, Recommendation 1619 (2003) on The rights of elderly migrants, available from: <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta03/EREC1619.htm>.

36. In fact, it is worth mentioning that in Articles 13 TEU or 19(1) TFEU, from the two provisions of the European law on human rights which have been used as their source of inspiration – Article 14 of the ECHR and Article E of the Revised European Social Charter – "age" has been chosen as a ground of discrimination in the provision introduced in the EU law. Language, colour, political beliefs and social origins are prohibited grounds of discrimination provided in Articles 14 and E, respectively, of the ECHR and the Revised ESC. See in this respect P. Stangos, "Discrimination on the grounds of age and the challenge of intergenerational solidarity in the Greek and European law", *Review of Labour Law*, Vol. 73, Iss. 15, p. 979.

37. The Charter of Fundamental Rights (CFR) was "proclaimed" by the Parliament, the Council and the Committee, at the

In fact, even though Article 25 of the EU Charter of Fundamental Rights is included in Title III on *Equality*, its importance for society can only be understood in conjunction with the very next Title on *Solidarity* and the fundamental social rights set out under the latter.

In 2000, the **EU Council issued Directive 2000/78/EC on equal treatment in employment and occupation**³⁸, the first EU Directive to aim at combating age discrimination. It constitutes, in fact, a decisive step towards the establishment of a general framework against discrimination on the grounds of religion, beliefs, age or sexual orientation, underlying the need for taking appropriate measures for the social and economic inclusion of older persons. Recognising that discrimination on the grounds of age can undermine the achievement of EU goals, especially the achievement of a high employment rate and social protection, the rise of the standard of living and quality of life, the economic and financial cohesion and solidarity, the Directive coincides with the guidelines of 2000 on employment and occupation, which were adopted by the Helsinki European Council on 10-11 December 1999 and underline the need to place greater emphasis on supporting old-age workers in order to increase their participation in professional life.

In order to prohibit any discrimination on the exclusive grounds of age, the judgment of the Court of Justice of the European Communities in the case *Werner Mangold v. Rudiger Helm*³⁹ is of decisive importance. Indeed, **the**

Court took a step further with *Mangold*, recognising autonomously the principle of non-discrimination on the grounds of age as a general principle of Community law.

More specifically, observing that the principle of non-discrimination on the grounds of religion or beliefs, special needs, age and sexual orientation is founded, as appears from the first and fourth explanatory recital of Directive 2000/78, in various international instruments and in the constitutional traditions common to the Member States (Paragraph 74 of the judgment), the Court concluded that “the principle of non-discrimination on the grounds of age must [...] be regarded as a general principle of Community law”⁴⁰.

The Court insists on prohibiting age discrimination with the same severity applied in every other ground of discrimination and the relevant case law is extensive⁴¹.

More specifically, the Court moved along the same lines in the cases *Bartsch v. Bosch and Siemens Hausgeräte (BSH) Altersfürsorge GmbH*⁴² and *Seda Küçükdeveci v. Swedex GmbH and Co. KG*⁴³, where by confirming the existence of a “general principle of Community law” prohibiting age discrimination, invested the national judge with a central role in securing the precedence of EU law, rendering him/her responsible for safe-

European Council of Nice, on 7 December 2000 (2000/C 364/01), but it did not acquire binding force. Since 1st December 2009, with the Lisbon Treaty entering into force, it has acquired the same legal force as the Treaties (new Article 6(1) TFEU). The text was separately published in the EU Official Journal (EU C 303/02, 12.14.2007, EU C 83/02, 30.3.2010).

38. Council Directive 2000/78/EC of 27 November 2000, on establishing a general framework for equal treatment in employment and occupation, Official Journal No. L 303 of 12/2/2000, pp. 16-22, available from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0078:en:HTM>.

39. ECJ, Grand Chamber, Case C-144/04, *Werner Mangold v. Rudiger Helm*, 22 November 2005, available from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62004CJ0144:EN:HTML>.

40. *Idem*, par. 75.

41. We indicatively mention: ECJ, Case C-411/05, *Palacios de la Villa v. Cortefiel Servicios SA*, 23 October 2007, available from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62005CJ0411:EN:HTML>; Case C-388/07, *The Incorporated Trustees of the National Council on Ageing (Age Concern England) v. Secretary of State for Business, Enterprise and Regulatory Reform*, 5 March 2009, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62007CJ0388:EN:HTML>; Case C-88/08, *David Hütter v. Technische Universität Graz*, 18 June 2009, available from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62008CJ0088:EN:HTML>.

42. ECJ, Grand Chamber, Case C-427/06, *Birgit Bartsch v. Bosch und Siemens Hausgeräte (BSH) Altersfürsorge GmbH*, 23 September 2008, available from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62006CJ0427:EN:HTML>.

43. CJEU, Grand Chamber, Case C-555/07, *Seda Küçükdeveci v. Swedex GmbH & Co. KG*, 19 January 2010, available from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62007CJ0555:EN:HTML>.

guarding the legal protection provided by the EU law to individuals and the guarantee of the full effectiveness thereof, by not applying any provision of the national legislation which is contrary to the principle in question⁴⁴.

At the same time, **AGE Platform Europe** has already been established as early as January 2001; a European Network of Organisations for people aged 50+ representing more than 30 million older persons in Europe. The purpose of AGE is to express and promote the interests of EU citizens aged 50+ and to raise public awareness for the issues they are most concerned with⁴⁵. Furthermore, thanks to the support of the DAPHNE III Programme of the European Commission, AGE prepared in collaboration with a network of 11 organisations from all over Europe⁴⁶ the **European Charter of the Rights and Responsibilities of older persons in need of long-term care and assistance**⁴⁷ as well as an **Accompanying Guide**⁴⁸, which mentions every single right included in the European Charter, explaining its meaning and application. In short, the Charter aspires to become a useful text of reference which shall define the fundamental principles and rights necessary for the well-being of every person depending on others for support and care due to their age, illness or disability. Its basic priority is the respective public awareness and the promotion of exchanging

good practices among both Member States and other countries⁴⁹.

Recognising that population ageing constitutes one of the greatest social and economic challenges of the 21st century for European societies and estimating that in 2015 more than 20% of Europeans will be over 65 years old, the **European Commission** adopted the **European Partnership of Innovation on Active and Health Ageing**⁵⁰, which sets a target of increasing the health lifespan by 2 years by 2020. It is mentioned that this partnership aims at improving the life of older persons, assisting them in participating in society and reducing the pressure health and care systems receive, contributing, thus, to the ultimate purpose of a sustainable development.

C. On national level

In Greece, "*respect and protection of the value of the human being constitute the primary obligations of the State*" and they are constitutionally guaranteed (Article 2(1) of the Constitution). The same applies to non-discrimination which is guaranteed by means of an explicit constitutional provision on equality before the law (Article 4(1) of the Constitution), the total protection of life, honour and freedom for all persons living within the Greek territory irrespective of nationality, race or language and of religious or political beliefs (Article 5(2) of the Constitution) or even the right to receive legal protection by the courts (Article 20(1) of the Constitution). It is also important to note that most of the abovementioned provisions belong to the non-revisable provisions.

More specifically, the protection and respect of older persons' rights are guaranteed by Article 21(3) of the Greek Constitution, which speci-

44. See Case Bartsch, par. 25 and Case Küçükdeveci, par. 51.

45. For more information see the webpage of the Platform: <http://www.age-platform.eu/about-age>.

46. European Partners: AGE Platform Europe, coordinator of the programme and EDE – European Association for Directors and Providers of Long-Term Care Services for the Elderly. National Partners: 50+ Hellas (Greece), ANBO (the Netherlands), BIVA (Germany), Commune de St Josse (Belgium), Fondation nationale de Gérontologie (France), FIPAC (Italy), Mestna Zveza Upokojencev (MZU, Slovenia), NIACE (UK), Swedish Association of Senior Citizens (SPF, Sweden) and ZIVOT 90 (Czech Republic).

47. European Charter of the Rights and Responsibilities of older people in need of long-term care and assistance, EUSTaCEA project, Daphne III programme, June 2010, available from: http://www.age-platform.eu/images/stories/22204_AGE_charte_europeenne_EN_v4.pdf.

48. Accompanying Guide to the European Charter of the Rights and Responsibilities of older people in need of long-term care and assistance, EUSTaCEA project, Daphne III programme, November 2010, available from: http://www.age-platform.eu/images/stories/22495_EN_06.pdf.

49. European Charter of the Rights and Responsibilities of older people in need of long-term care and assistance, op.cit., pp. 3-5.

50. European Commission, Communication from the Commission to the European Parliament and the Council, Taking forward the Strategic Implementation Plan of the European Innovation. Partnership on Active and Healthy Ageing, Brussels, 29.2.2012, COM(2012) 83 final, available from: http://ec.europa.eu/health/ageing/docs/com_2012_83_en.pdf.

fies that "the State shall care for the health of citizens and shall adopt special measures for the protection of [...] old age [...]", while, at the same time, securing the unimpeded and effective exercise of the "rights of the human being as an individual and as a member of society" and the "principle of the welfare state rule of law" is defined in Article 25(1) as obligatory.

With regard to the legislative recognition of the obligation to promote and respect older persons' rights in Greece, Law 3304/2005 on the *Application of the principle of equal treatment regardless of racial or ethnic origins, religious or other beliefs, disability, age or sexual orientation*⁵¹, by means of which Directives 2000/43/EC (on implementing the principle of equal treatment among persons irrespective of racial or ethnic origin) and 2000/78/EC (on establishing a general framework for equal treatment in employment and occupation) were introduced into the Greek legal order, constituted a turning point for the promotion of the principle of equality and the protection of human rights in Greece. With this Recommendation, in fact, by the bodies for the promotion of the principle of equal treatment (Article 19), "vulnerable population groups" which tend to present higher rates of poverty and unemployment than the rest of the population, are given the chance to seek another path beyond justice, which due to slowness and costs, is not always the most effective one⁵².

Apart from Law 3304/2005, which constitutes the basic legislative tool for combatting discrimination, special reference should be made to Law 2345/1995 on *Organised care services provided by social welfare agencies and other provisions*⁵³, which provides a special regulatory framework for the institutional care offered to older persons in retirement homes.

Finally, Law 3500/2006 *On combatting domestic violence*⁵⁴ provides a more specialised

legislative framework of protection to every family member who may suffer violence, older persons included. It is worth mentioning, in fact, Article 22, which provides for the granting of legal aid to victims of domestic violence seeking urgent protective measures in order to deal temporarily with the situation due to the particular incident and cannot afford to pay the necessary legal costs.

III. Challenges in the protection of older persons in Greece

In the light of the abovementioned aspects, a justified concern is raised. In circumstances of deep and prolonged financial crisis in conjunction with a fiscal and financial policy unilaterally oriented to strict fiscal austerity, reduction or suppression of social expenditure and the dismantling of the institutional framework of labour relations, the question which arises is whether the care provided to older persons respects the aforementioned principles of international and European law.

There is no doubt that the financial crisis afflicting Greece is unprecedented in both intensity and duration⁵⁵. According to a recent Opinion by **OKE (Economic and Social Council of Greece)** regarding *The social safety net for maintaining social cohesion*, poverty rate in our country is significantly increasing with 34.6% of the Greek population being threatened by poverty or social exclusion⁵⁶. According to Eurostat's official estimations on national income, in 2013 the Greek Gross Domestic Product (GDP) has shrunk by 20.6% in comparison with 2009 (or,

51. OGG A 16 1.27.2005.

52. National Centre for Social Research – Institute of Social Policy (NCSR-ISP), Research Programme "Establishment of an Observatory on Combating Discrimination", *The Institutional framework for combating discrimination*, N. Sarris (ed.).

53. OGG A 213/10.12.1995.

54. OGG A 232/10.24.2006.

55. See in this respect Athens University of Economics and Business, Policy Analysis Research Unit, *Poverty amidst the crisis in Greece*, Newsletter 1/2012, M., Matsaganis, C., Leventi, E., Kanavitsa (ed.), available from: http://www.paru.gr/index.php?lang=en&page=newsletters/2012_1 as well as *Poverty in Greece: trends in 2013*, Newsletter 5/2013, M., Matsaganis, C., Leventi (ed.), pp. 3-4, available from: http://www.paru.gr/index.php?lang=en&page=newsletters/2013_5.

56. Economic and Social Council of Greece (OKE), *The Social Safety Net as an Instrument of Social Cohesion: Proposals and Policy Measures Own-Initiative Opinion*, March 2014, p. 2, available from: <http://www.eesc.europa.eu/ceslink/resources/docs/opinion-of-the-greek-national-council-on-social-security-nets-en.pdf>.

even, 23.2% in comparison with 2007)⁵⁷, while the **Policy Analysis Research Unit of the Athens University of Economics and Business** stresses that poverty rate on the basis of a standard limit has soared to 39% in 2012 and 44% in 2013⁵⁸. As a result, we note intense phenomena of marginalisation, particularly for vulnerable social population groups, such as older persons.

Besides, as pointed out in a research conducted by the Athens University of Economics and Business, "the crisis did not create protection gaps, it just highlighted their tragic consequences"⁵⁹. Poverty in Greece is mainly due to the social protection system's failure to activate support mechanisms for the income in society. Taking thus into account that guaranteeing a decent standard of living for older persons largely depends on access to social benefits, such as health services or social care, it is easy to understand the degradation that their standard of living has suffered⁶⁰.

In its Report on Social Welfare Programmes in Greece, the **Organisation for Economic Co-operation and Development (OECD)** reaches the same conclusions, recognizing that "the social context also remains highly challenging, with implications for both social stability and growth", drawing attention to the fact that "the social pressures generated by the deep recession and strong fiscal retrenchment are already significant, and it is likely that they will intensify in the short to medium term"⁶¹.

More specifically, regarding older persons' social protection, the **European Committee of Social Rights (ECSR) of the Council of Europe**, in its Conclusions about the application of Article 4 of the Additional Protocol of 1998 of the ESC by Greece, published in January 2014, concludes that "the situation in Greece is not in conformity with Article 4 of the Additional Protocol to the 1961 Charter on the grounds that there is no legislation protecting elderly persons against discrimination on grounds of age outside the employment field"⁶². As far as Article 13 of the ESC on the right to social and medical assistance is concerned, ECSR notes that access to social services may be free of charge for the most vulnerable social groups, among which are older persons, but its effectiveness, as well as the sufficiency of the resources, have been frequently challenged in the past⁶³.

Besides, as the ECSR never fails to mention, its role is to evaluate not only in law but also in practice whether the obligations that derive from the Charter are met⁶⁴. This occasionally proves to be impossible because Greek authorities do not provide more specific information regarding the prevention of abuse for older persons, the services and facilities offered to older persons or the families which take care of them, the health services provided or, even the institutional care provided by retirement homes⁶⁵.

Although, as mentioned, a general regulatory framework for combating discrimination has been established since 2005 in the Greek legal order, according to a research conducted by

57. Eurostat, Real GDP growth rate - volume, available from: <http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&plugin=1&language=en&pcode=tec00115>.

58. See Athens University of Economics and Business, Policy Analysis Research Unit, as Poverty in Greece: trends in 2013, Newsletter 5/2013, M., Matsaganis, C., Leventi (ed.), pp. 6-7, available from: http://www.paru.gr/index.php?lang=en&page=newsletters/2013_5.

59. See Athens University of Economics and Business, Policy Analysis Research Unit, Poverty and social policy in (a) crisis: the case of Greece, Newsletter 6/2013, M., Matsaganis, (ed.), p. 2, available from: http://www.paru.gr/index.php?lang=en&page=newsletters/2013_6.

60. See Athens University of Economics and Business, Policy Analysis Research Unit, Poverty in Greece: trends in 2013, op. cit., p. 4.

61. OECD Public Governance Reviews, Greece: Reform of Social Welfare Programmes, 2013, p. 17, available at:

http://www.oecd-ilibrary.org/governance/greece-social-welfare-programmes_9789264196490-en.

62. European Committee of Social Rights, Conclusions XX-2 (2013), Greece, Articles 3, 11, 12, 13 and 14 of the 1961 Charter and Article 4 of the 1988 Additional Protocol, January 2014, pp. 48, available from: <http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/GreeceXX2en.pdf>.

63. European Committee of Social Rights, Conclusions XIX-2 (2009), Greece, Articles 3, 11, 12, 13, 14 and Article 4 of the Additional Protocol of the Charter, January 2010, available from: http://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/State/GreeceXIX2_en.pdf.

64. More specific ECSR observations are laid down in the following chapters on particular issues.

65. ECSR, Conclusions XX-2 (2013), Greece, op. cit., pp. 40-43.

the **European Commission**, citizens in Greece consider (to a greater extent in comparison with the EU majority) that all forms of discrimination for which they were asked are common in their country. The ground of "age" is among the aforementioned forms of discrimination with quite a high rate, reaching 43%. Furthermore, according to the same research, as far as employment is concerned, if the candidate is aged over 55, this constitutes an important factor – disadvantage for his/her hiring for 54% of the persons asked, while on the same subject, 82% of the persons asked answered that the age over 55, as a ground of discrimination in the labour market is highlighted due to the financial crisis⁶⁶.

GNCHR stresses that the choice to examine in depth the following subjects does neither undermine the importance of the remaining older persons' rights, nor undervalue the still pending issues in our country regarding other crucial rights. Given, however, the imperative need to analyse the most important and urgent challenges for the protection of older persons' rights in Greece, GNCHR shall focus on:

A. Civil and political rights

Autonomy and participation

The population increase for 50+ persons, the insecurity regarding work and social security as well as the failure to fruitfully use their knowledge and experience results in the marginalisation and the exclusion of a large workforce and its contribution to society. This is a great challenge with respect to the protection of older persons: what they are mostly being denied nowadays is their equal participation in public life. They are thus condemned in gradual isolation and degradation.

As direct consequences of their marginalisation come the violation of their autonomy and the deprivation of the possibility to participate in public life. Their accessibility to public spaces is

limited, if not non-existent, while older persons usually face a hostile environment, not adapted to the third age's particular needs.

Furthermore, another aspect of the social exclusion of older persons is connected to the shift of public and private services towards digital technology (e-banking, e-commerce, e-learning, e-health). The applications of digital technology have in principle influenced the State's operation positively, but they have been introduced without consideration for the particular needs of population groups who are not objectively able to access them. As far as older persons are concerned, this results in the creation of a new kind of "digital exclusion" (or "digital gap"), which includes important social implications, since older groups are more vulnerable to this danger due to non-access to digital means and even more so, to the applications of new technologies. The digital gap can potentially accumulate new inequalities, which shall reinforce and aggravate the currently existing ones, as, for instance, the marginalisation and the socio-digital exclusion. These inequalities have serious impact on education, health, social welfare, access to labour market and the use of public administration services while they are frequently linked to very important implications of administrative nature, such as the imposition of administrative penalties⁶⁷.

These observations are further corroborated by the research of the Special Eurobarometer, according to which the rate of Greek citizens considering their country "non-friendly towards third age" is high (67%)⁶⁸.

The insufficiency of the provisions addressed to older persons seems to be absolute, especially towards persons of the so-called "fourth age"⁶⁹ who find themselves by definition in a worse po-

66. European Commission, *Special Eurobarometer, Discrimination in the EU in 2012*, June 2012, QC1, QC4, QC5, QC6, QC10, available from: http://ec.europa.eu/justice/discrimination/files/eurobarometer393summary_en.pdf.

67. See in the respect 50+ Hellas, *Positions and Suggestions for an Active and Health Ageing in Greece*, April 2013.

68. European Commission, *Special Eurobarometer 378, Active Ageing*, January 2012, p. 107, available from: http://ec.europa.eu/public_opinion/archives/ebs/ebs_378_en.pdf.

69. The "fourth age" includes, according to the suggested definition, older persons, usually more than 80 years of age that have restricted ability to self-care. The age limit is always a relevant factor. See in the respect supra, p. 4.

sition than the rest of older persons, since a person in this vulnerable period of his/her life finds it impossible to perform self-care due to biological deterioration, illnesses and the increase in accidents. In order for an older person to continue living in decency and self-respect, he/she is in need of support when his/her social, emotional and financial self-sufficiency is being restricted. At this point, since in the current circumstances the family is not able to satisfyingly meet the needs of older persons in Greece, the State and the local authorities ought to assume responsibility for their decent protection and living.

Strengthening independence and encouraging older persons' social participation are of fundamental importance; it has been proven that there is a connection between the reduction of older persons' physical abilities and their subjective sense of isolation.

In Greece, an interesting good practice is implemented on safeguarding older persons' autonomy at home, since programmes such as "Help at home" and "Teleassistance at Home" enables the direct communication of older persons, living alone and unable to perform self-care, with their friends and relatives as well as with services of immediate intervention in order for them to feel less vulnerable and insecure and to reside in their place of choice⁷⁰. The GNCHR, at this point, seizes the opportunity to express its concern about the fact that the operation of such an important work of social policy essentially depends on European programmes for its funding. These services ought to be integrated in a framework of public, free-of-charge health and welfare services which shall be steadily provided and funded by the State budget.

Moreover, since 2009, "Parents' Schools" operate in Greece under the auspices of the General Secretariat for Lifelong Learning of Ministry of Education. More than 5000 trainees have attended 295 seminars on the status of older persons in society, their particular needs and the

difficulties they face as well as on the ways in which society can respond⁷¹.

The GNCHR, recognising the need to respect older persons' dignity and their inalienable right to lead their life in an independent and autonomous way, associates itself at this point with the Council of Europe Recommendations on **The promotion of human rights of older persons**⁷². Furthermore, the GNCHR estimates that in order to support active ageing and older persons' social participation, the institutionalisation of the above social protection systems is very important even though not sufficient in itself.

Informed consent in healthcare

The decrease in the mobility and autonomy of older persons combined with their increased needs for long-term health provision and the traditionally "paternalistic" model of doctor-patient relations, which up until recently was dominant in our country, frequently creates problems in the application of the principle of patient's consent to the medical act. Balancing the protection of older persons and their autonomy does not always seem to be feasible.

The respect of the principle of autonomy of older persons, however, should not be in constant conflict with the need to safeguard their protection. The Oviedo Convention for Human Rights and Biomedicine constitutes the first binding instrument of international law to integrate "consent upon information" for any medical act. Apart from the Convention, in Greek law exist explicit provisions including both the Code of Medical Ethics (CME – Law 3418/2005)⁷³ and more specific legislative texts⁷⁴. The precondition of the patient's consent (Articles 11-12 of Law 3418/2005)⁷⁵ does not simply constitute a patient's right, as provided for by Law

70. Ministry of Justice, General Secretariat of Transparency and Human Rights, National Plan of Action for Human Rights, March 2014, pp. 207-209.

71. Council of Europe, Committee of Ministers, Recommendation CM/REC (2014)2 to member States on the promotion of human rights of older persons, *op. cit.*, p. 4.

72. *Idem*; Council of Europe, Committee of Ministers, Recommendation CM/REC (2014)2 to member States on the promotion of human rights of older persons, *op. cit.*, pp. 3-4.

73. OGG A 287/28.11.2005.

74. On assisted reproduction, transplantation etc.

75. OGG A 287/28.11.2005.

2071/1992⁷⁶, but it is an essential obligation of the doctor towards the patient before attempting any medical act. Moreover, Article 12(1) of Law 3418/2005 explicitly introduces a prohibiting provision according to which *verbatim* “the doctor is not allowed to carry out any medical act without the patient’s previous consent”. This implies that informing and subsequently receiving the patient’s consent is a necessary pre-condition of the legality of a medical act⁷⁷.

Nevertheless, as it is characteristically outlined in a relevant Opinion by the Greek National Bioethics Commission, the aforementioned example on the Code of Medical Ethics provisions itself proves that the traditional model of doctor-patient relations has not been completely abandoned in Greece. According to another provision “the doctor, when exercising medicine, acts in total freedom, in the context of the generally accepted rules and practices of medical science”, maintaining the “right to choose the treatment method which is deemed to considerably prevail over another one, for a specific patient based on the modern rules of medical science” (Article 3(3) of Law 3418/2005).

The restriction in the doctor-patient communication time, the vagueness regarding the appropriate extent of the information, the insufficient doctor training regarding the relations they ought to develop with their patients and the lack of the general public’s familiarisation with the rights and options of everyone addressing health services are factors that, combined with the reduced autonomy of older persons, impede and in many cases render practically impossible the full enjoyment of every older person’s right to individualised information, advice and consent upon information.

Furthermore, the tendency not to provide information to older patients, but to inform instead their families has been fiercely criticised. Such a tendency implies that older persons in

need of care remain passive receptors without being involved in the decision making process regarding issues which affect them. However, if the patient is able to consent⁷⁸ and has not refused to be informed, exercising thus the right of ignorance⁷⁹, this practice, even when due to the fear of undermining the patient’s psychological stability, breaks the fundamental connection between information and consent, risking to cause the patient distress⁸⁰.

Protection from violence and abuse

Older persons’ abuse is being more and more recognised as a major social problem not only on an international or a European level⁸¹, but also in our country, despite the serious lack of data regarding the size of the problem. As stressed by the Greek Ombudsman’s representative in the relevant deliberation which took place with the participation of different stakeholders, unfortunately, in Greece, data about cases of older persons’ abuse are exceptionally limited. This is due to the fear of older persons to testify their experience, as well as to the absence of national policy for systematically recording these cases of violence and abuse at the expense of older persons. The types of older persons’ abuse are many and more than one usually take place simultaneously: physical abuse, psychological abuse – which includes emotional, mental and verbal abuse – financial abuse, sexual abuse, social abuse, as well as neglect⁸².

78. According to the prevailing opinion in our country, patients’ consent is independent from their legal capacity. A strong consent pre-conditions the patients’ ability to fully understand the current situation the moment they give their consent as well as when the medical act is carried out.

79. According to the provisions of Article 11(2), Medical Code of Conduct, patients have the right to not get informed (right to ignorance) and to ask the doctor to only inform another or other persons that they shall indicate.

80. *Idem*, p. 15.

81. See in this respect World Health Organisation, Regional Office for Europe, European report on preventing elder maltreatment, 2011, pp. 1-9, available from: http://www.inpea.net/images/WHO_EU_Report_Elder_Mistreatment_2011.pdf.

82. See in this respect J.J.F. Soares, H. Barros, Fr. Torres-Gonzales, El. Ioannidi-Kapolou, G. Lamura, J. Lindert, J. de Dios Luna, G. Macassa, M.G. Melchiorre, M. Stank,

76. OGG A 123/15.7.1992.

77. Greek National Bioethics Commission, *Consent in the Patient-Physician Relationship, Opinion and Report*, April 2010, p. 13, available from: <http://www.bioethics.gr/index.php/en/gnomes/88-consent-in-the-patient-physician-relationship>.

Regarding physical abuse, the cases annually recorded demonstrate the problem of insufficient or non-existent monitoring not only in retirement homes, but, even more so, in home care. Statistical data show that approximately 70% of those exercising violence to older persons are either family members or persons very close to them and most of them are either their partners or their children⁸³. It is worth mentioning that during the first 36 months of its operation (4.12.11 – 4.31.14) the Greek National Hotline SOS 10-65 received 595 calls regarding complaints of older persons' abuse⁸⁴.

B. Social and Economic Rights

Right to social insurance and security

In its recent Recommendation on the rights of older persons, the Committee of Ministers of the Council of Europe mentions that older persons should receive appropriate resources enabling them to have an adequate standard of living and participate in public, economic, social and cultural life⁸⁵. The enjoyment of the right to social insurance and security is of fundamental importance towards ensuring an adequate standard of living.

ABUEL. *Abuse and Health Among Elderly People, 2010*, p. 22, available from: <http://www.hig.se/download/18.3984f2ed12e6a7b4c3580003555/ABUEL.pdf>.

83. N. Georgantzi, *Elder abuse and neglect in the European Union UN Open-ended Working Group on Ageing, 21-24 August 2012*, available from: <http://social.un.org/ageing-working-group/documents/ElderAbuseNGOEWG2012.pdf>.

84. According to a research conducted by partners of the Press Office of NGO LifelineHellas, from the published cases of abuse of older persons, it appears that for the time period 2010-2014 (to date) the following data arises, which are not absolute of course, but paints a picture of the size of the problem: 27 older persons were murdered, 390 older persons were victims of violence, 7 older women were victims of sexual abuse and 192 older persons were victims of financial abuse. See LifelineHellas, Press Release, "World Elder Abuse Awareness Day. Help exists! And it's available to all! 1065: National SOS Hotline for old persons".

85. Council of Europe, Committee of Ministers, Recommendation CM/REC (2014)2 to member States on the promotion of human rights of older persons, 19 February 2014, par. 21.

On the other hand, the International Covenant on Economic, Social and Cultural Rights guarantees in a general way the right to social security (Article 9)⁸⁶. The Committee of Economic, Social and Cultural Rights in General Comment No 6 on the economic, social and cultural rights of older persons, taking into account the ILO Conventions on social security as well (C102 – Social Security (Minimum Standards) Convention, 1952 and C128 - Invalidity, Old-age and Survivors' Benefits Convention, 1967)⁸⁷, stresses that States parties must take appropriate measures to establish general regimes of compulsory old-age insurance, starting at a particular age, to be prescribed by national law⁸⁸. In fact, the Committee highlights that in order to implement the provisions of Article 9 of the Covenant, States parties should, within the limits of available resources, provide non-contributory old-age benefits and other assistance for all older persons, who, when reaching the age prescribed in national legislation, have not completed a qualifying period of contribution and are not entitled to an old-age pension or other social security benefit or assistance and have no other source of income⁸⁹.

At this point, the GNCHR stresses that, according to a survey conducted by the Small Enterprises' Institute of the Hellenic Confederation of Professionals, Craftsmen and Merchants (IME GSEVEE), income coming from pensions is the main, and perhaps the only, support for a great

86. According to Article 9 "The States Parties to the present Covenant recognise the right of everyone to social security, including social insurance".

87. ILO, R202 - Social Protection Floors Recommendation, 2012 (No. 202), Recommendation concerning National Floors of Social Protection, available from: http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID,P12100_LANG_CODE:3065524,en:NO and ILO, R162 - Older Workers Recommendation, 1980 (No. 162), Recommendation concerning Older Workers, available from: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:R162.

88. UN, ICESCR, General Comment No. 6, *The economic, social and cultural rights of older persons*, par. 27

89. UN, ICESCR, General Comment No. 6, *The economic, social and cultural rights of older persons*, op. cit., par. 30. See also UN, ICESCR Committee, General Comment No. 19 on the right to social security, par. 15.

number of households (48.6%)⁹⁰. In one out of two households in Greece, old pensioners support the unemployed members of their families rendering the protection of the social security system more imperative than ever.

Furthermore, according to a recent study by INE-GSEE (Trade Union Labour Institute), the changes in population which have been taking place in recent years have a direct and powerful impact on the labour market and the social security system. Nowadays, older persons live longer and healthier lives with respect to previous generations. In 2010, the life expectancy (Greece) at the age of 65 years old was 17 years for men and 21 years for women. Moreover, a newborn boy's chance of reaching the age of 65 is over 80%, while the corresponding chance for a girl is over 90%. This development means that the rise in life expectancy denotes the payment of pension benefits for even longer periods. The ageing of the population and the consequent decrease of working age have an impact, either direct or indirect, on the structure of the workforce, the circumstances of offer and effectiveness in the labour market along with the long-term viability of the Social Security System⁹¹.

Besides, a recent analysis published by ILO points out in the most vivid terms the need of meeting population challenges by means of promoting employment and social protection, setting as priorities the expansion of pension coverage and the securing of effective access to health and care for older persons⁹².

The GNCHR notes, however, that, in Greece, interventions on social security, in the context of the consecutive austerity measures, attempt to address the impact of the demographic deficit by means of drastically reducing pension benefits

instead of structuring a long-term dynamic fiscal policy, which will protect the Social Security System with new resources coming from economic development.

The GNCHR notes that the Social Security System has been seriously afflicted due to extensive fiscal interventions and austerity measures, resulting in seriously jeopardizing the social security rights of older persons⁹³.

In this context, the GNCHR observes that the social state in Greece is addressed as the "subject of the crisis" which is "responsible" for the fiscal derailment⁹⁴, while it is actually the "object" of the crisis, being constantly weakened and dismantled by regulations which cut down benefits and social rights, thus violently raising retirement age and rendering the pre-conditions for social security benefits stricter, especially for groups in need of particular and constant social protection.

Austerity measures adopted in the context of Greece's fiscal adaptation programme contribute, apart from the drastic and constant cuts in social security benefits which they caused, to the radical restructuring of the Country's Social Security System. This restructuring occurs, on the one hand, by means of the State's gradual withdrawal from the obligation of co-funding the Social Security System regarding the main and supplementary pensions (restricted since

90. IME GSEVEE Survey, *Household's Income – Expenditure*, 23.1.2014, available from: <http://www.imegsevee.gr/imesurveys/796-households-income-expediture>.

91. INE-GSEE, *Social Insurance and the Impact of Population Ageing on Greece's social insurance system in 2013-2050*, Athens, 9.12.2013.

92. ILO, *Social protection for older person: key policy trends and statistics / International Labour Office, Social Protection Department*. - Geneva: ILO, 2014, available from: http://www.ilo.org/wcmsp5/groups/public/---dgreports/--dcomm/documents/publication/wcms_310211.pdf.

93. A representative example, which has also been highlighted in the consultation of 30.6.2014 by the Greek Ombudsman, concerns the issue of the pre-conditions for granting pension to expatriate uninsured very old persons. The modifications brought upon by Law 4093/2012 lead to full pension forfeiture for uninsured very old persons who belong to a particularly vulnerable population group. As mentioned in a Decision by the Greek Ombudsman, a great number of uninsured very old persons, already pensioners, who receive a small pension from their countries or have not completed a 20-year stay in Greece, have been deprived of the provision of pension since 1.3.2013. The Greek Ombudsman also highlights that in view of the particularly low pension that repatriated expatriates receive, pension forfeiture for uninsured very old persons shall raise issues of decent living. See about the Greek Ombudsman's recommendations on the issue: *The Greek Ombudsman's intervention on the pre-conditions for granting pension to expatriate uninsured very old persons*, June 2013.

94. See M. Matsaganis, *Social policy in hard times*, Kritiki Publications, Chapter 1.

1.1.2015 to funding “main” pensions only⁹⁵) and, on the other hand, by means of drastic parametric changes⁹⁶ at the expense of insurance rights and expectations of the insured. When actors of social insurance do not receive a satisfying funding, the future of pension rights is not secured.

The GNCHR highlights that the issue of social insurance is an open social issue, which must be constantly addressed in the context of the constant social dialogue and with respect to certain fundamental principles. In the context of the relevant OKE Opinion⁹⁷ as well, the GNCHR stresses the greatness of these principles, which are articulated as follows:

a. Social security is public, universal and obligatory for all workers, either Greek or legally residing aliens.

b. The State guarantees the viability, operation, stable funding and the social character of our country’s health, welfare and pension system.

c. The social insurance system must be socially fair, financially viable, it must promote intergenerational solidarity and should be governed by the principle of equal treatment of the country’s citizens.

d. The reform of the social security system must be connected to the restructuring of the tax system towards a more fair distribution of the tax burden.

e. The reform of the social security system must be connected to an active and effective policy for increasing employment.

f. Policies in the field of social security must also evaluate the growth parameters of the adopted measures. This is because the reform of the social security system has an impact on crucial sizes of the economy, such as development, employment and competitiveness, which shall define in their own turn the potential of the social security system itself.

95. Article 37 Law 3863/2010 (OGG 115/15.7.2010/A), Article 3 Law 3865/2010 (OGG A 120/21.7.2010).

96. For example, direct cuts in pensions which have triggered successive cumulative cuts up to 50%, the rise of retirement age from 60 to 67 years of age, the extension of the contribution period from 35 to 40 years.

97. Economic and Social Council of Greece (OKE), Opinion No. 241/5.7.2010 on the draft law of subsequent Law 3863/2010.

g. The administration of social security organisations of main insurance must be based on an equal three-way representation of the State, employers and workers.

h. The need to be effective, as well as the aforementioned principle of equality impose the intensification of efforts towards limiting social security contribution evasion and the control of undeclared employment. Both of them are negative phenomena which characterise the Greek social security system.

i. The viability of our social security system is also connected to our country’s demographic problem which constitutes an issue of major influence. Addressing this issue would entail the immediate formation of effective policies. So far, nothing has been done towards this direction.

j. The various changes in the Social Security System must not overturn mature expectations⁹⁸. They should, nonetheless, upgrade the system and improve the State-citizen relation so as to develop and enhance social security conscience.

Regarding the adoption of a basic social security system for non-beneficiaries of social benefits, the GNCHR highlights that social assistance and support is of supplementary/assisting character and it is unthinkable to replace social security which must preserve its universal character⁹⁹. In the context of the above issues, the GNCHR recalls the relevant observations of international bodies. As noted by the ECSR, “the cumulative effect of the restrictions (...) is bound to bring about a significant degradation of the standard of living and the living conditions of

98. See also European Court of Human Rights case-law on the protection of “legitimate expectation” in the context of protecting the right to property. The Court, broadening the scope of Article 1 of the First Additional Protocol, includes “legitimate expectation” in the notion of “good” for the effective enjoyment of the right to property: ECHR, *Pine Valley Developments Ltd and Others v. Ireland*, 29.11.1991, Series A no. 222, p.23 and 51, *Prince Hans-Adam II de Liechtenstein v. Germany* [GC], No 42527/98 par. 82-83, CEDH 2001-VIII, *Kopecný v. Slovakia* [GC], No 44912/98 par. 35, CEDH 2004 IX.

99. ILO, R202 - Social Protection Floors Recommendation, 2012 (No. 202), Recommendation concerning National Floors of Social Protection Adoption: Geneva, 101st ILC session (14 Jun 2012), available from: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:3065524:NO.

many of the pensioners concerned"¹⁰⁰. The ESCR also stresses that the income of older persons should not be lower than the poverty threshold. However, an important percentage of granted pensions fall below this limit. The increasing level of unemployment is presenting a challenge for social security and social assistance systems as the number of beneficiaries increases while tax and social security revenues decline.

The ECSR highlights that Greece has not yet established that efforts have been made to maintain a sufficient level of protection in favour of the most vulnerable members of society, even though the effects of the adopted measures risk bringing about a large scale of pauperisation of a significant segment of the population¹⁰¹. The ECSR *concludes* that the restricting measures in question, which appear to deprive a segment of the population of an essential part of its living resources, have been applied without taking into account the legitimate expectation of the pensioners. This legitimate expectation ensures the adoption of amending measures for the beneficiaries in the field of social security, which shall take into account their vulnerability, their permanent financial expectations and finally their right to enjoy an effective access to social protection and social security¹⁰².

In the same direction, the ILO observes that existing pension thresholds are insufficient to prevent poverty in old age. In fact, it indicates that the rates of relative poverty and material deprivation have deteriorated more for people over 65 than for the population on average, stressing Greece's need to monitor this phenomenon¹⁰³. According to Eurostat, between 2010

and 2011, the percentage of older persons over 65 who fell below the poverty threshold has increased by 2.2 %¹⁰⁴.

The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) in its 2013 Report towards the International Labour Conference (ILC) refers to the positions of GNCHR – as expressed in its Recommendation on the impact of the financial crisis on human rights (2011) – and observes violations on behalf of Greece regarding International Labour Conventions of Article 95 (on the protection of wages) and Article 102 (on the social security minimum standards)¹⁰⁵. The CEACR condemns Greece in particular for not taking into account the GNCHR Recommendations on the impact of austerity measures. These recommendations are also taken into account by the Committee of Ministers in the Council of Europe finding violations of the European Code of Social Security by Greece¹⁰⁶.

The CEACR, in its 2014 Report on International Labour Convention No 102, recalls the observations made in previous reports and deems that they have not been taken into account by the Greek Government resulting in serious deterioration of the current state of affairs. In particular, the CEACR condemns the fact that, due to

100. ECSR, *Federation of employed pensioners of Greece (IKA-ETAM) v. Greece*, Complaint No. 76/2012, 12.7.2012, par. 78.

101. *Idem*, par. 81.

102. ECSR, *decisions on the complaints No. 76-80/2012*, 12.7.2012, available from: http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints_en.asp.

103. ILO, *Application of International Labour Standards 2014 (I)*, Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 103rd Session, 2014, available from: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_235054.pdf.

104. ILO, *Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 102nd Session, 2013*, available from: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_205472.pdf.

105. CEACR, *Protection of Wages Convention, 1949 (No. 95) - Greece*, adopted 2012, published 102nd ILC session (2013), available from: [http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3088061](http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3085303:NO%20%CE%BA%CE%B1%CE%B9%20CEACR,%20Social%20Security%20(Minimum%20Standards)%20Convention,%201952%20(No.%20102)and%20CEACR,%20Social%20Security(MinimumStandards)Convention,1952(No.102)-Greece,adopted2012,published102ndILCsession(2013)).

106. Committee of Ministers, Council of Europe, *Resolution CM/ResCSS(2012)8 on the application of the European Code of Social Security and its Protocol by Greece*, 12.9.2012 and Committee of Ministers, Council of Europe, *Resolution CM/ResCSS (2013)21 on the application of the European Code of Social Security and its Protocol by Greece*, 16.10.2013.

austerity measures, the country has been led to an unprecedented economic and humanitarian crisis and observes that the financial results of the economic adjustment programme threaten the viability of the national social security system resulting in the undermining of the goals related to social protection, as provided by Convention 102 and the Code of Social Security of the Council of Europe¹⁰⁷.

Based on the CEACR Report and with an explicit reference to the respective observations of the ECSR and the Committee of Ministers of the Council of Europe, Greece was directly (double footnote case) referred for inspection to the Committee on the Application of Standards – CAS – of the 2014 International Labour Conference. CAS in its Report¹⁰⁸ observed that *“the continuous contraction of the social security system in terms of coverage and benefits has affected all branches of social security and in some instances resulted in reducing the overall level of protection below the levels laid down in Articles 65-67 of the 102 Convention”*.

Finally, the GNCHR also highlights the quite recent judgment of the First Chamber of the Greek Council of State regarding the cuts in pensions in Greece¹⁰⁹. The judgment deems that cuts in main pensions by social security organisations do not collide with the constitutional mandates and due to the issue’s great importance, the case was referred to the Plenary for final judgment. Nonetheless, the opinions of the minority of the judgment, which highlight that *“State funding of the social security system is not allowed by the Constitution to fall under a point where it does not provide a satisfactory standard of social security”*, are also noted. In

fact, the minority of the Greek Council of State also highlights the need for the interventions to the country’s social security system to be attempted upon impact assessment and evaluation on the pensioners’ standard of living¹¹⁰. This has been repeatedly stressed by the GNCHR in its Recommendations¹¹¹.

110. *“Even when the Country faces very adverse financial circumstances, which require extended structural changes to the State along with the simultaneous imposition of strict fiscal and other measures in order to cover the Country’s fiscal deficit, which entail particularly heavy burdens for the citizens, so as for the legislator’s interventions to the Country’s security system to be considered as combatible with the Constitution for securing its viability (inherently structural changes in the organisations of social security, redefining the conditions for granting any kind of provisions etc.), whose self-evident consequence is the limitation of the extent and amount of any insurance provisions whatsoever, the interventions must be attempted upon planning, respecting the particular provisions of the Constitution; they must be attempted, that is, in a rational manner, which is reflected in a previous, overall study which has been compiled on the basis of specific data and upon calculating the overall consequences brought upon these interventions to the provisions of the insured.”* Furthermore, *“it is required that the legislator’s interventions to the Country’s security system be justified, in the sense that it must be clear that they are attempted upon the previous evaluation of all financial or other, either direct or indirect, burden which has been imposed to the insured and after constant evaluation, especially of successive interventions, of the consequences entailed, cumulatively, on their standards of living, on the basis of a previous, overall study and calling upon particular data, which are drawn from economic, actuarial, statistical studies, which must be compiled by independent authorities, such as the National Actuarial Authority, the Hellenic Statistical Authority etc.”*

111. See the recent GNCHR, *“GNCHR 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 which was sent to the European Committee of Social Rights of the Council of Europe”*, 9.10.2014, *op.cit.* and GNCHR, *“Recommendation and decisions of international bodies on the conformity of austerity measures to international human rights standards”*, 27.6.2013, *op.cit.*, *“Recommendation: On the imperative need to reverse the sharp decline in civil liberties and social rights”*, 8.12.2011, *op.cit.* and *“The need for constant respect of human rights during the implementation of the fiscal and social exit strategy from the debt crisis”*, 7.6.2010, *op.cit.* In fact, the minority of the Council of State in its 3410/2014 judgement explicitly refers to the GNCHR decisions on the impact of austerity measures on human rights protection: *“Regarding the impact of the adverse situation Greek economy has come to, due to the constant austerity measures which have been imposed by*

107. CEACR, *Social Security (Minimum Standards) Convention, 1952 (No. 102) - Greece, adopted 2013, published 103rd ILC session (2014)*, available from: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::N0::P13100_COMMENT_ID:3150771 and CEACR, *Social Security (Minimum Standards) Convention, 1952 (No. 102) - Greece, adopted 2012, published 102nd ILC session (2013)*, *op.cit.*

108. ILO, *Committee on the Application of Standards Report (2014)*, http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_246782.pdf.

109. Council of State 3410/2014.

Right to work

The GNCHR deems crucial to mention older persons' right to work. Article 6 of the ICESCR establishes the right to work, a right on which the Committee on economic, social and cultural rights has focused in General Comment No 6 on economic, social and cultural rights of older persons. Both this Committee¹¹² and the Committee of Ministers of the Council of Europe¹¹³ along with the ILO¹¹⁴ highlight the need to eliminate discrimination in employment in both the private and the public sector. States must guarantee *inter alia* the right of older persons to access work, to maintain their current employment, to work in conditions of safety up to their retirement and to participate in trade unions.

In fact, the GNCHR stresses the great importance of protecting every older person's individual right to work. It is noted, however, that in the State's overall choices on a social policy level, this right must be balanced against the obligation to respect intergenerational solidarity. The protection of the right of older persons to work must not exclude the protection of youth's right to work, while provisions towards facilitating youth's work must not lead to jeopardizing older persons' work.

The ECSR also stresses this exact balance on the merits of the complaint of organisations of pensioners against Greece, which was lodged before it on the grounds of violation of Article 12(3) of the ESC. The Committee noted *obiter dictum* how inconsistent are, for a national economy plagued by youth unemployment, the decisions on the restriction of pension rights in cases where the level of pension benefits is a

sufficiently high one and on the restriction in respect of holiday bonuses for all pensioners without exception. Workers who are aware that their pensions have been drastically cut are thus motivated to hold on to their jobs and deprive younger generations of these positions¹¹⁵.

The GNCHR stresses that respect towards older persons' right to work must not be exhausted in the proposal for adopting policies of "active ageing" of the population, which are also promoted by the European Union. This policy is summarised in the prolonging of senior pensioners in the workforce or in their return to the labour market. However, they receive reduced pensions and salaries, so as to become an attractive mass of people for the labour market, contributing to the renunciation of every shade of intergenerational justice¹¹⁶.

Besides, sterile adoption of "good practices"¹¹⁷, based on the experience of other countries, does not guarantee their effectiveness in Greece. For the assessment of how "good" a practice actually is for the protection of older persons' rights in Greece, it is the Greek legal framework and the Greek reality which must be taken into consideration.

Right to health and care

In a recent report, the ILO¹¹⁸ stresses that fiscal consolidation measures taken in response to the financial crisis reversed progress towards universal health coverage by sharpening inequalities in access to health care and by increasing exclusion from it. In Greece, according to OECD, *per capita* health spending fell significantly by

means of the laws of the memorandum and their impact on the Country's security system, see inter alia, the Recommendations of 2.8.2011 and 7.26.2013 of the Greek National Commission for Human Rights (GNCHR) [...]". The same applies to the judgment no 3663/2014 of the Council of State (Chamber A).

112. UN, ICESCR Committee, General Comment No.6, *The economic, social and cultural rights of older persons*, *op.cit.*, par. 22-25.

113. Council of Europe, Committee of Ministers, Recommendation CM/REC (2014)2 to member States on the promotion of human rights of older persons, *op. cit.*, par. 26-28.

114. See ILO, *Older Workers Recommendation No. 162*.

115. ECSR, *Federation of employed pensioners of Greece (IKA-ETAM) v. Greece*, *op.cit.*, par. 77.

116. P. Stagos, "Discrimination on the grounds of age and the challenge of intergenerational solidarity in the Greek and European law", *Review of Labour Law*, Vol. 73, Year 2014, p. 995.

117. J. E. Stiglitz, *Joseph Stiglitz and the World Bank: The Rebel Within*, Anthem Press, 2001, p. 203.

118. ILO, *World Social Protection Report 2014/15: Building economic recovery, inclusive development and social justice*, International Labour Office - Geneva: ILO, 2014, p. 113, available from: http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_245201.pdf.

11.1% between 2009 and 2011¹¹⁹. This has had a direct negative impact on the accessibility and affordability of health services.

Combined with the drastic reduction in pension benefits, the right to health of a significant segment of older persons in Greece is not secured in practice¹²⁰. The GNCHR notes that the same goes for older persons' care as well.

Due to lack of proper resources or/and due to the intense phenomenon of families being supported by the pensioners' resources in Greece, older persons' care in our Country is mainly provided at home. This, even though governed by the principle of care within the community¹²¹, generates a series of problems which the State is called upon to resolve. Among these problems, the GNCHR particularly highlights the lack of quality control of the care provided along with the provision of care services by untrained individuals. In the same context, it is important for the State to examine the issue of sociopolitical support to the families taking care older persons.

The GNCHR stresses the need to secure services and structures of respite care of older persons. The abolishment of institutions, however, such as the Workers' Housing Organisation, which provided certain services to insured older persons, social services and entertainment activities, calls for concern regarding the protection of these benefits.

Moreover, the ECSR recalls that health care for older persons in Greece is part of the primary health care system rendered to the population in general, while the specially provided health services to older persons are also important¹²². In this direction, the GNCHR stresses the need to implement programmes for mental health of older persons who are in need of psychological

support, to guarantee sufficient palliative care as well as training programmes for people taking care of older persons. It is also important to improve the accessibility and quality of long-term geriatric care along with the coordination of social health and care services for older persons.

Regarding the institutional care of older persons provided in retirement homes¹²³, the GNCHR reminds the importance of the independence not only of the retirement homes inspection system, but also of the body which controls the observation of basic care and services standards of the institutions and homes vis-à-vis the administration every institution/home under inspection¹²⁴.

C. Prohibition of Discrimination

Prohibition of discrimination on the grounds of age is not provided *expressis verbis* in most human rights protection international texts. As mentioned in General Comment No 6 on economic, social and cultural rights of older persons, the omission of an explicit provision is not an intentional choice, but on the contrary is best explained by the fact that, when these instruments were adopted, the problem of demographic ageing was not as evident or as pressing as it is now¹²⁵.

Of course, both Article 19 of the TFEU and Article 21 of the CFR explicitly prohibit discrimination on the grounds of age.

The GNCHR stresses that the presence of a coherent legislative framework against discrimination on the grounds of age has a fundamental importance, particularly when it is nowadays observed in Europe that discrimination on the

119. *Ibidem*.

120. UN, ICESCR Committee, General Comment No. 14 on the right to the highest attainable standard of health, par. 25.

121. See for the definition of care networks, P. Hert kai M. Eugenio, "Specific Human Rights for Older Persons", EHR-LR, 2011, p. 415.

122. ECSR, Conclusions XX-2 (2013), Articles 3, 11, 12, 13 and 14 of the 1961 Charter and Article 4 of the 1988 Additional Protocol (Greece).

123. Regarding the legal framework on the operation and the conditions of operation of these institutions see indicatively N 2345/1995 (OGG A 213/12.10.1995), Ministerial Decision 81551/2007 (OGG B 1136/6.7.2007), Law 3852/2010 (OGG A 87/7.6.2010).

124. See Council of Europe, Committee of Ministers, Recommendation CM/REC (2014)2 to member States on the promotion of human rights of older persons, *op.cit.*, par. 42.

125. UN, ICESCR Committee, General Comment No. 6, The economic, social and cultural rights of older persons, *op.cit.*, par. 11. See also UN, ICESCR Committee, Non-discrimination in Economic, Social and Cultural Rights, *op.cit.*

grounds of age is the most common ground of discrimination¹²⁶.

In Greece, Law 3304/2005 establishes the general framework for combatting discrimination in the field of employment, according to Directives 2000/43/EC of the Council of 29 June 2000 and 2000/78/EC of the Council of 27 November 2000 implementing the principle of equal treatment. Age discrimination is explicitly mentioned in Law 3304/2005.

However, the GNCHR highlights that the abovementioned legislative framework is not considered sufficient for combating discrimination on the grounds of age¹²⁷. The GNCHR notes, moreover, that Law 3304/2005 concerns exclusively the field of employment. This is also highlighted by the ECSR¹²⁸. Even though a great number of cases of discrimination against older persons concern their right to work for a fact, this discrimination concerns most of their rights.

The GNCHR has already stressed the need to amend a series of articles of this law concerning the field of implementation of equal treatment, positive action, professional requirements and different treatment on the grounds of age, so that these provisions comply with the letter of Directives 2000/43 and 2000/78. Moreover, it is necessary to amend a number of articles of this law towards facilitating the empowerment of NGOs not only to appear before judicial authorities, recognising the favourable (only) *res*

judicata, but also to lodge an appeal before an administrative authority. It is within this wider context that the State should address the issue of discrimination against older persons.

The GNCHR also expresses its concern regarding the implementation of the principle of equal treatment in Greece, especially in times of financial crisis. And this because many of the austerity measures adopted in Greece (especially related to employment and social security) are connected to age and entail unfavourable treatment solely based on age, introducing, thus, an unjustifiable direct discrimination in violation of Directive 2000/78¹²⁹. In fact, in some cases indirect discrimination on the grounds of sex and multiple indirect discrimination on the grounds of sex and age are highly likely, since, for instance, most pensioners below 55 years of age are women who have retired with fewer years of service on the grounds that they were mothers of underage children¹³⁰. This has been also highlighted by the ILO¹³¹.

In fact, Law 3304/2005 does not provide for the prohibition of multiple discrimination which has been repeatedly stressed by the GNCHR, underlining the need for its amendment¹³². Regarding older persons' rights in particular, the GNCHR stresses that prohibition of multiple discrimination is particularly important. Older persons are often victims of discrimination not only on grounds of age, but also (indicatively) on

126. P. Stagkos, "Discrimination on the grounds of age and the challenge of intergenerational solidarity in the Greek and European law", *Review of Labour Law*, Vol. 73, Year 2014, p. 978.

127. GNCHR, "Comments regarding Law 3304/2005 'Implementation of the principle of equal treatment irrespective of racial or ethnic origin, religious or other beliefs, disability, age or sexual orientation' and recommendations for its amendment", 2010 Annual Report, pp. 39-48 and GNCHR, "Comments on the Draft law 'Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation- Harmonisation of Legislation with Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006", 2008 Annual Report.

128. ECSR, *Conclusions XX-2 (2013), Articles 3, 11, 12, 13 and 14 of the 1961 Charter and Article 4 of the 1988 Additional Protocol (Greece)*, available from: <http://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/State/GreeceXX2en.pdf>

129. S. Spiliotopoulou - Koukoulis, "Austerity measures and human rights: judgements of international bodies, EU law and examples of Greek case-law.", *Review of the Social Security Network*, Iss. 2/644, par. 173,181,182,189.

130. *Idem*, par. 83, 176, 190.

131. ILO, *Report on the High Level Mission to Greece (Athens, 19-23 September 2011)*, par. 1-8, available from: http://www.ilo.org/global/standards/WCMS_170433/lang--en/index.htm.

132. GNCHR, "Comments regarding Law 3304/2005 'Implementation of the principle of equal treatment irrespective of racial or ethnic origin, religious or other beliefs, disability, age or sexual orientation' and recommendations for its amendment", 2010 Annual Report and GNCHR "Comments on the Draft law 'Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation- Harmonisation of Legislation with Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006", 2008 Annual Report.

grounds of gender, ethnic origins, sexual orientation, nationality, religion or disability. Actually, Article 8 of the ICRPD provides for the States' obligation to take measures so as to "to combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life".

Finally, the GNCHR notes that attention must also be paid to combatting stereotypes and prejudices against older persons which lead to discrimination against them (ageism)¹³³. This phenomenon is linked to the fact that older persons are regarded as persons who have ceased to be persons or the same persons they were or as persons belonging to a separate and inferior group, merely because they have passed certain phases in their life¹³⁴. The negative effect of these stereotypes on the enjoyment of older persons' fundamental rights must not be underestimated.

IV. Review of Recommendations

Recognising the important human, social and financial contribution of older persons to society and taking into account the need to secure and promote the principle of respect and intergenerational solidarity, both on individual and family as well as on institutional level, either private or public, the GNCHR calls for the State to take more specific measures in order to protect this particularly vulnerable social group and to see to their effectiveness. Besides, it has previously expressed its deep concern about the serious impact of the financial crisis and the subsequent austerity measures taken on guarantying older persons' right to a sufficient income allowing them a decent living¹³⁵.

133. Working Paper prepared by Ms Chingsung Chung, Human Rights Advisory Committee, A/HRC/AC/4/CRP.1, 4.12.2009, par. 8.

134. R. Butler, "Age-ism: Another form of bigotry", *The Gerontologist*, 1969, p. 243.

135. GNCHR, "The GNCHR Recommendation and decisions of international bodies on the conformity of austerity measures to international human rights standards", 27.5.2013, available from: http://www.nchr.gr/images/English_Site/AusterityMeasuresHR/gnchr.austeritymeasures.2013.pdf. Furthermore, in a recent text on the right to water, GNCHR highlights the need to ensure the older persons' access to water in the context of re-

Taking into account that discussion concerning the issue of the protection of older persons' rights is in process on a national level, the GNCHR develops a first series of Recommendations towards the State in the light of the due care, in practice, for the equal enjoyment of human rights and for raising society's awareness towards this direction.

A. Civil and political rights

Autonomy and participation

The GNCHR, recognising every person's right to self-determination, deems necessary to highlight the absolute need:

- To ensure the full implementation of older persons' right to respect of human dignity, physical and mental well-being and private and family life.
- To ensure the full enjoyment of legal capacity on an equal basis with every other member of society and the unimpeded access to justice.
- To strengthen older persons' ability to interact with their environment and their full participation in the social, cultural and educational scene, as well as in the political life. Occupation with new technologies as a systematic lifelong learning activity at an older age widens opportunity for employment, offer and participation of older persons in the social scene. Moreover, it is necessary to ensure every citizen's equal participation in the information society without exclusion. Digital inclusion contributes to the creation of this society and is necessary for reasons of social justice.

Informed consent in healthcare

The GNCHR, in line with a previous Opinion issued by the Greek National Bioethics Commission¹³⁶, highlights that, in order to safeguard

specting their right to health. See GNCHR "The Right to Water. GNCHR Recommendations for its effective protection", 20.3.2014, available from: http://www.nchr.gr/images/English_Site/PERIVALLON/GNCHR_Right_to_water.pdf.

136. Greek National Bioethics Commission, *Consent in the Patient-Physician Relationship*, op.cit.

older persons' protection, the following are deemed necessary:

- To ensure respect to the right of every older person or every person of his/her choice, once the right not to know has not been exercised, to the provision of individualised, appropriate and gradual, on the basis of the patient's particular mental state, information in order to have a complete and comprehensible image of his/her state of health and the existing options of treatment and care; and to safeguard respect to the older person's right to respect information.
- To ensure respect of the older person or every person of his/her choice to provide consent to every decision regarding care and medical treatment.
- To establish older persons' right to receive proper support during decision making and exercising their legal capacity.
- To enrich both the proper education of doctors and other health professionals and the education and awareness of citizens with regard to older persons' autonomy.

Protection from violence and abuse

The GNCHR, in line with the conclusions reached by the World Health Organisation, stresses that older persons' abuse is a major issue both socially and medically and its prevention is an issue related to human rights and social solidarity¹³⁷. To this end, it considers that insisting particularly on the following points is of crucial importance:

- To safeguard all humans' inalienable right to security, without living in fear of abuse or neglect and to strengthen older persons' protection from any kind of physical abuse, maltreatment or neglect along with any kind of sexual abuse and maltreatment. This protection is deemed necessary to refer to care provision not only in the context of care facilities and institutions, but also at home.
- To raise awareness of the medical, hospital and paramedical staff, as well as anyone

137. See World Health Organisation, Regional Office for Europe, *European report on preventing elder maltreatment*, op.cit., p. 9.

providing care and treatment to older persons, in order to facilitate the detection and timely addressing of cases of violence, abuse or neglect involving older persons.

- To enhance protection measures for those reporting cases of violence, abuse or neglect so as to encourage both older persons and any other care provider to file a complaint regarding such issues.
- To intensify support and help for older persons who have fallen victims of violence, abuse or neglect and take appropriate measures for their unimpeded access to justice.
- To raise public awareness towards problems encountered by older persons and their protection, especially regarding a form of abuse which particularly afflicts our country: financial material abuse¹³⁸.

B. Social and economic rights

Right to social security and safety and right to work

In light of the State's general responsibility to sustainably fund and manage the social security system and safeguard a decent standard of living according to what is prescribed by the 102 ILC, the GNCHR calls for the State's attention to the following points:

- To safeguard a financially and institutionally healthy structure for the social security system and take all the necessary measures to this effect. In the context of the respective ILO recommendations, this could involve maintaining financial balance, safeguarding the effective collection of contributions and taxes, taking into account the financial situation not only of the country, but also of the persons under protection, preparing actual and economic studies so as to assess the impact of the reforms on provisions,

138. Greece is amongst the five EU countries which have emphasised the financial/material abuse. See "The European Reference Framework Online for the Prevention of Elder Abuse and Neglect (EuROPEAN)", *The European Reference Framework Online for the Prevention of Elder Abuse and Neglect. Background, Good Practices and Recommendations, 2009-2011*, p. 7, available from: <http://www.forumseniorov.sk/European%20Reference%20Framework.pdf>.

contributions or taxation, safeguarding the provisions prescribed by 102 ILC and avoiding further burdening persons of limited resources¹³⁹.

- To adopt programmes of fiscal adaptation and evaluation of their social impact in a way that the most appropriate reforming paths are selected and certain income and age groups, such as old-age pensioners, are not disproportionately afflicted¹⁴⁰.

- To ratify the 128 ILC on *Invalidity, Old-age and Survivor's Benefits*.

- To respect older persons' right to decent work in light of intergenerational solidarity as well.

Right to health and care

Recognising that health and long-term care, including prevention and early intervention, must not be considered an expense but an investment benefitting all age groups, the GNCHR recommends:

- To protect the right to health so as to ensure access to health services without discrimination, even when they are provided by third parties to all older persons. The health protection of older persons shall combine prevention, cure and rehabilitation¹⁴¹.

- To establish the cohesive horizontal networking of health and welfare services in order to achieve their effective cooperation¹⁴².

139. ILO, *Third item on the agenda: Information and reports on the application of Conventions and Recommendations, Report of the Committee on the Application of Standards, Provisional Record, 103rd Session, Geneva, May-June 2014*, p. 86.

140. ILO, *Application of International Labour Standards 2014 (I), Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 103rd Session, 2014*, op. cit.

141. UN, ICESCR Committee, *General Comment No. 14 On the right to the highest attainable standard of health*, par. 25 and UN, ICESCR Committee, *General Comment No. 6, The economic, social and cultural rights of older persons*, par. 34-35.

142. GNCHR has highlighted this point in its recent decision on the protection of childhood: GNCHR, "Recommendations of the Greek National Commission for Human Rights (GNCHR) on the Protection of Childhood, Health and Welfare", 8.5.2014 and Council of Europe, *Committee of Ministers, Recommendation CM/REC (2014)2 to member States on the promotion of human rights of older persons*, op.cit., par. 31.

- To ensure appropriate training for both health and welfare professionals, as well as unofficial care providers to older persons.

- To adopt new programmes for older persons' care and strengthen the ones already in place within the community (e.g. "Help at Home" Programme) in order to allow them to reside at their own home for as long as they wish. The development of actions towards older persons care must be characterised by stability and secure continuity and coherence both in the context of the services provided and in safeguarding the workforce. Assisting families in care of older persons must also be taken into account.

- To ensure access to institutional care for older persons who do not wish to reside at home or receive care services there. The GNCHR also recommends ensuring the independence of the monitoring of retirement homes so as to achieve respect for all human rights of older persons residing there, as well as to encourage the development of institutional care in small units according to the standards of care within the community.

- To ensure the effective operation of a palliative care provision system as prescribed by the Council of Europe in its respective Recommendation¹⁴³.

- To appoint an independent monitoring mechanism regarding older persons with disabilities in order to promote, ensure and monitor the implementation of the UN Convention on the rights of older persons with Disabilities as prescribed by Article 33(2) of this Convention.

C. Equality and non-discrimination

Having observed the need to combat exclusion and social discrimination and taking into account the need to promote social justice and protection, equality and solidarity, the GNCHR deems necessary to insist on the following:

- To strengthen the legislative framework and take measures for combatting discrimination on grounds of age. Combatting discrimination on grounds of age must become intersectoral.

143. Council of Europe, *Recommendation Rec (2003) 24 of the Committee of Ministers to member states on the organisation of palliative care*.

ral and concern both direct or indirect, as well as multiple types of discrimination.

- To enhance the collection of sufficient statistical data by the competent authorities in order to evaluate discrimination on grounds of age. Especially when it comes to indirect discrimination, statistical data constitutes an essential pillar for capturing it.
- To combat stereotypes and prejudice against older persons leading to discrimination against them (ageism).

D. Necessity for an International Convention on Older Persons' Rights

Both on academic¹⁴⁴ as well as on UN¹⁴⁵ level, there is an extensive debate on the necessity of adopting an international Convention on older persons' rights. Despite the objections on the aforementioned perspective¹⁴⁶, the GNCHR

144. I. Doron, I. Apter, "The Debate Around the Need for an International Convention on the Rights of Older Persons", *The Gerontologist*, 2010, pp. 586-593, Fr. Mégret, "Human Rights of Older persons: a growing challenge", *op.cit.*, p. 37 et seq., P. Hert, M. Eugenio, "Specific Human Rights for Older Persons", EHRLR, 2011, pp. 400-404, D. Rodriguez-Pinzon, C. Martin, "The international human rights status of elderly persons", *American University International Law Review*, 2003, pp. 915-1008, K. Tang, J. Lee, "Global social justice for older people: The case for an international convention on the rights of older people", *British Journal of Social Work*, 2006, pp. 1135-1150.

145. See especially Human Rights Council, Advisory Committee, *The Necessity of a Human Rights Approach and Effective United Nations Mechanism for the Human Rights of the Older Person*, A/HRC/AC/4/CRP.1, 2010 and UN Expert Group, *The report of the Expert Group Meeting Rights of older persons*. Bonn, Germany: UN, 2009, available from: <http://www.un.org/esa/socdev/ageing/documents/egm/bonn09/report.pdf>

146. Opponents of the perspective to adopt an international convention on older persons' rights pose a number of arguments, focusing both on the lack of necessity for such an international text and on the negative impact it might have on older persons' rights. Some of these arguments regard the following points: a) Given the universality of every group's human rights, there is no reason for special protection for older persons' rights, b) The creation of such a convention entails political compromise, resulting in steps backwards in certain areas, c) A new convention does not answer the problem of insufficient respect towards older persons' rights, especially taking into consideration the already existent weaknesses of the mechanisms monitoring the implementation of other international conventions, d) The current soft law on older persons' rights is comprehensive and cohesive

encourages Greece's contribution to adopting a binding international text on older persons' rights on the basis of the following thoughts:

a) Despite the existence of a rich soft law framework, it is necessary to institutionalise a binding legal framework for States, which shall create positive obligations as well.

b) Adopting an International Convention shall contribute to the visibility of problems regarding older persons' rights, often underestimated when it comes to applying human rights international law.

c) Adopting the Convention shall encourage the effective and systematic monitoring of the implementation of older persons' rights by international and national bodies, as well as by NGOs.

d) On a symbolic level, adopting such a Convention sends a message of concern for older persons' rights, fighting against stereotypes accompanying older persons (ageism).

e) The Convention's contribution in raising public awareness globally concerning protection of older persons' rights and education on relevant issues shall be important.

In this context, the GNCHR recommends to the Greek State:

- To support the adoption of an International Convention on Older Persons' Rights on a diplomatic level, along with the establishment of a mechanism for both monitoring its implementation and examining individual complaints. This international text shall revolve around the human rights rhetoric and not older persons' needs, so as to avoid perpetuating stereotypes according to which older persons are weak and dependent.

- To safeguard the participation of older persons themselves, via their representative organisations as well, in the process of preparing a binding international text.

- Furthermore, before adopting an International Convention on Older Persons' Rights, the GNCHR recommends to the State:

enough to protect older persons' rights and to strengthen current international law on human rights protection. Global community's efforts and resources need to focus on applying this soft law (ex. the Madrid Plan of Action).

- To include information regarding the protection of older persons' rights in Greece in the reports it sends to international bodies monitoring the implementation of UN Conventions on human rights and to the UN Human Rights Council in the context of the UPR. The same is recommended on a European level.

- To secure the effective protection of older persons' rights through the European and international human rights protection mechanisms (mainstreaming the rights of older persons).

- To support the work of the UN Independent Expert on the rights of Older Persons.

7. GNCHR Observations on the draft law by the Ministry of Internal Affairs entitled “*Transposition in the Greek legal order of Directives 2011/98/EC on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State and 2014/36/EC on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers, provisions regarding citizenship issues and other provisions*”*

I. Introductory observations

The draft law of the Ministry of Internal Affairs entitled: “*Introduction in the Greek legal order of Directives 2011/98/EC on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State and 2014/36/EC on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers, provisions regarding citizenship issues and other provisions*”, along with its explanatory report were sent to the GNCHR. The GNCHR was subsequently asked to address its observations on the aforementioned draft law, which is to be introduced in the Parliament within the next days.

The GNCHR welcomes the fact that the draft law was communicated to it for its observations and, in the framework of its advisory role to the State on human rights issues, as defined in Article 1 of its founding Law 2667/1998 (OGG A 281/18.12.1998), states the following observations regarding the draft law.

The GNCHR notes, however, that insofar as it is called to respond to the aforementioned re-

* *The observations were unanimously adopted by GNCHR Plenary in its session of 12.11.2014. Rapporteurs: K. Papaioannou, GNCHR President and Aik. Tsampi, GNCHR Legal Officer.*

quest by the Ministry of Internal Affairs within a short deadline, its observations focus on the matters of principle raised, in consistency and continuity with the positions it has always adopted regarding these issues. At the same time, the GNCHR has traditionally stressed the need for its timely information on the legislative work, which is imperative in order to facilitate its response in a manner appropriate to its institutional mission. This necessity becomes more imperative in the present period which is characterised by dense and complex legislative work.

Besides, the present draft law is called to regulate a big number of issues, among which citizenship issues and, at the same time, to incorporate two European Directives into the Greek legal order.

In this context, the GNCHR also stresses that the cumulative regulation of a big number of issues by a single legislative text may degrade its quality and undermine legal certainty.

II. Specific observations

PART I of the draft law: Provisions regarding Immigration Policy

Article 4(2) of the draft law

Article 4(2)(1-2) of the draft law adds to the Immigration and Social Inclusion Code (Law 4251/2014) a new “19(A)” Article which includes, almost intact, the provisions of Article 1 of the Joint Ministerial Decision (JMD) 30651/2014 (OGG 1453/5.6.2014/B) “*Defining category of residence permit on humanitarian grounds, as well as the type, the procedure and the specific requirements for its granting*”¹, regulating the

1. *The GNCHR prompted by the present legislative initiative brings to the fore a probably unintentional omission in the letter of the JMD 30651/2014 and calls for the State to rectify the respective provision for reasons of legal certainty. More specifically, it is the provision of Article 2(B)(1b). While in Article 1(1)(b) of the JMD it is provided that citizenship shall be granted for humanitarian reasons to victims of and essential witnesses for a number of criminal cases (namely those mentioned in Articles 187, 187(a), 309 and 310 of the Criminal Code and in Articles 1 and 2 of Law 927/1979 (OGG 139/A) or punished as a felony offence and committed against life, health, physical integrity, property, real estate as well as personal and sexual freedom) once a*

regime for granting and renewing residents permits on humanitarian grounds.

This provision was initially included in Article 19 of the draft law "Immigration and Social Inclusion Code" (later to become Law 4251/2014). This article concerned 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 crimes, under the condition that a criminal prosecution had been exercised for these crimes and until a final court decision was issued.

By means of an amendment to Article 19, introduced to Parliament during the voting procedure of the draft law, it was provided that "*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 plaintiff shall be judged for the offences set out in the seventh chapter of the Criminal Code 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*".

The GNCHR had expressed its deep concern regarding the aforementioned amendment pointing out that it violates fundamental human rights, especially the presumption of innocence and the rights of access to Justice and equal penal treatment². The Council of Europe Commis-

sioner for Human Rights had also expressed his deep concern³.

Finally, Article 19 of draft law "Immigration and Social Integration Code" was withdrawn, as a whole, during the legislative proceedings before the Parliament. Issues regarding the protection of victims of and essential witnesses for racist crimes were later regulated by means of the abovementioned JMD 30651/2014.

The GNCHR observes that since Article 4(2) of the present draft law (1-2) adds to the Immigration and Social Integration Code (Law 4251/2014) the provisions of Article 1 of JMD 30651/2014, **the protection of victims of and essential witnesses for criminal acts will be guaranteed by means of a Law** (Article 4(2) (1b) of the draft law), which is welcomed.

According to the explanatory report of the draft law, the introduction of the JMD provisions in the Immigration and Social Inclusion Code is imperative "for reasons of codifying legislation". The GNCHR recognises the value of codifying legislation for legal certainty, but it also stresses that this introduction **guarantees the appropriate legal value of the protection of victims and essential witnesses of racist crimes**.

The GNCHR points out that it is necessary that the State clearly expresses the necessity of combating racist crimes and exhausts every possible regulatory means by way of legislation, especially at a time of recession, during which crimes committed on the grounds of national or ethnic origin, religion, colour, disability, sexual orientation or gender identity seem to be rebounding⁴.

The GNCHR notes that hate crimes cannot be effectively addressed without guarantees for the ability to report them. The introduction by the present draft law of the provisions regarding the protection of alien victims in the Immigration and Social Inclusion Code, promulgat-

preliminary investigation has been ordered regarding them or criminal prosecution has been exercised. In Article 2(B) (1b) which sets out the supporting documents for the initial granting of residence permit, it is only provided to file a document "by the competent prosecution authority that criminal prosecution has been exercised for the commission of a criminal act, provided by the provisions of Articles 1 and 2 of Law 927/1979 and Article 16(1) of Law 3304/2005". Thus, reference to the remaining criminal acts of Article 1(1)(b) of the JMD and to the case where criminal prosecution has not been exercised but a preliminary investigation has been ordered instead, is omitted.

2. GNCHR, "Press Release - 24 March 2014", available from: http://www.nchr.gr/images/English_Site/NEWS/GNCHR

Press Release Article 19 Migration Code.pdf.

3. Council of Europe, Commissioner for Human Rights. Public Statement, available from: <http://on.fb.me/1gphOxQ>.

4. See also Racist Violence Recording Network, 2013 Annual Report, available from: http://rvrn.org/wp-content/uploads/2014/04/Report2013_EN.pdf.

ing, thus, a special regime of residence permit for victims and essential witnesses for the time deemed necessary to prosecute and convict the perpetrators, constitutes a positive step in this direction.

The GNCHR also highlights the **need to strengthen the above legislative framework** so as to a) refrain from prosecuting persons entering illegally and b) prohibit the arrest and administrative detention of the reporting witness for the period between pressing charges and issuing the special prosecutor's act. Thus, victims will not experience both the consequences of such criminal proceedings and those of a possible secondary victimisation when they turn to the competent authorities in order to press charges, while they will also be encouraged to lodge the relevant complaints⁵.

PART II of the draft law: Provisions regarding Citizenship Issues

The present draft law does not aim at systematically and comprehensively regulating and addressing citizenship issues. As appears from its explanatory report, the draft law regulates specific citizenship issues which are limited to the following three categories: a) Issues arising after the judgment no 460/2013 of the Council of State Plenary which declared certain provisions of the Law 3838/2010 unconstitutional, b) Practical issues regarding the functioning of citizenship services and c) Issues regarding the codification of legislation on citizenship.

The GNCHR observes that the present draft law attempts to belatedly fill in the **legal vacuum** created by the Council of State's judgment which found unconstitutional the provisions regarding the award of Greek citizenship to second generation immigrants. The GNCHR deems absolutely necessary the regulation, **without any further delay**, of issues regarding citizenship of second generation immigrants⁶.

5. Racist Violence Recording Network, Press release on recent legislative amendment on combating racist crimes, 10.6.2014, available from: <http://rvrn.org/2015/01/press-release-on-recent-legislative-amendment-on-combating-racist-crimes/>.

6. The GNCHR welcomed the fact that Law 4251/2014 "Im-

The GNCHR further observes that the provisions of the draft law entail one more amendment to the Greek Citizenship Code (hereafter the GCC)⁷. Although these provisions regulate some important issues, they overlook a number of others, which have not received the appropriate attention, not even in the context of **the previous legislative proceedings, on which the GNCHR has already expressed its views**⁸.

The GNCHR stresses that the citizenship issues should be addressed in a comprehensive and careful manner, as they are connected to human rights protection.

In this context, the GNCHR calls once again⁹ upon the State to sign and ratify the **UN Convention on the Reduction of Statelessness** (1961, in force since 1975) as well as to ratify the **Convention of the Council of Europe on Nationality** (1997, in force since 2000), which Greece has already signed since 6.11.1997.

The GNCHR in view of the present draft law recalls its well-established position regarding citizenship issues and underlines

migration and Social Integration Code and other provisions" (OGG 80/4.1.2014/A) provided the granting of a 5-year residence permit to "third-country adult nationals who have been born in Greece or have successfully completed six years of Greek school in Greece, before reaching 21 years of age and legally reside in the Country" (Article 108). The GNCHR welcomes the granting of long-term residence permit to second-generation immigrants, observing, of course, that the ability to acquire Greek citizenship is the fundamental condition for their full and essential integration. See GNCHR, "Observations on the Draft of the Second Periodic Report of the Hellenic Republic for the International Covenant of Civil and Political Rights (ICCPR)", op.cit.

7. The Greek Citizenship Code was ratified by Law 3284/2004 (OGG 217/10.11.2004/A) which has been amended by Presidential Decree 92/2006 (OGG 95/8.5.2006/A), Law 3731/2008 (OGG 263/23.12.2008/A) and especially with Law 3838/2010 (OGG 49/24.3.2010) which was amended by Law 3870/2010 (OGG 138/9.8.2010) and Law 3938/2011 (OGG 61/31.3.2011).

8. GNCHR, "Comments on the Draft by the Ministry of Internal Affairs, Decentralisation and e-Government entitled: Political participation of non-citizens of Greek origin and third-country nationals who reside legally and long-term in Greece", 2010 and GNCHR, "Loss of Greek Nationality by Virtue of Former Article 19 of the Greek Nationality Code and the Procedure for its Reacquisition", 2003.

9. See the relevant GNCHR observations from 2003, GNCHR http://www.nchr.gr/images/English_Site/ITHAGENEIA/Citizenship_Article_19%202003.pdf, 2003.

the following issues regarding specific provisions of the draft law:

Article 5(1) of the draft law

Acquisition of the Greek citizenship by an alien, upon declaration and application, on the grounds of attending school or University/Technological Educational Institute in Greece

In its 2010 Observations on the draft law by the Ministry of Internal Affairs, Decentralisation and E-Government "**Political participation of non-citizens of Greek origin and third-country nationals who reside legally and long-term in Greece**" (successively Law 3838/2010 (OGG 49/24.3.2010/A: **Current provisions for Greek citizenship and political participation of repatriated Greeks and legally resident immigrants and other regulations**))¹⁰, the GNCHR has welcomed the aforementioned legislative initiative as a particularly important step towards effective integration of immigrants residing legally in the country and working in Greece for a long time and in particular regarding the effective intergation of their children born or raised in Greece.

The GNCHR has held that this **initiative was in the right direction** and based on two fundamental pillars as far as immigration issues are concerned: respecting and promoting human rights of every person residing in the territory, while ensuring social cohesion and border security. That legislative initiative was attempting to ensure the full enjoyment of the rights of people legally and for a long time participating in the Greek society and contributing to the general well-being, while it was making clear the Greek State's position on irregular immigration¹¹.

10. GNCHR, "Comments on the Draft by the Ministry of Internal Affairs, Decentralisation and e-Government entitled: *Political participation of non-citizens of Greek origin and third-country nationals who reside legally and long-term in Greece*", 2010 Annual Report, p. 33 et seq. See also GNCHR, "Observations concerning Law 3386/2005 (OGG 212/A) *Entering and residing of third-country nationals in the Greek State*, Annual Report 2005.

11. See also GNCHR, "Observations on the Draft of the Second Periodic Report of the Hellenic Republic for the International Covenant of Civil and Political Rights (ICCPR)" 2013.

By Article 1 of Law 3838/2010, the new Article 1(A) was added to the GCC on acquiring Greek citizenship "Upon declaration and application, due to birth or school attendance in Greece". According to this provision, the children of third-country nationals born in Greece, the so-called "second generation" immigrants, could acquire Greek citizenship under certain conditions. The GNCHR has stressed that this development constituted a significant step. It was the first time that the right of soil (*jus soli*) was introduced in the Greek citizenship law, based up to then only on the right of the blood (*jus sanguinis*). The right of soil (*jus soli*) is found as *per se* or in conjunction with *jus sanguinis* in many legal systems¹².

By judgment 460/2013, the Council of State's Plenary declared unconstitutional the provision of Articles 1(A) of the Greek Citizenship Code and 24 of Law 3838/2010¹³. Respectively, the decisions of the Ministry of Internal Affairs on granting citizenship to aliens born in Greece by an alien parent – residing in the country upon at least 5 years or due to school attendance in Greece – were also cancelled.

Article 5(1) of the present draft law regarding Greek citizenship replaces the provisions of Article 1(A) of the GCC. The award of the Greek citizenship is no longer provided by "declaration and application on the grounds of birth or schooling in Greece", but by "declaration and application on the grounds of attending school or University/Technological Educational Institute in Greece". According to the explanatory memorandum, the proposed regulation "takes into account" the aforementioned judgment of the Council of State.

12. GNCHR, "Comments on the draft law by the Ministry of Internal Affairs, Decentralisation and e-Government entitled: *Political participation of non-citizens of Greek origin and third-country nationals who reside legally and long-term in Greece*", *op.cit.*

13. The provisions of Articles 14-21 of Law 3838/2010 on the participation of aliens in municipal elections were also judged unconstitutional. In a recent decision, the GNCHR noted that it is about time the issue of aliens participating in municipal elections be addressed in the context of a constitutional reform. See GNCHR, "Observations on the Draft of the Second Periodic Report of the Hellenic Republic for the International Covenant of Civil and Political Rights (ICCPR)", *op.cit.*

The draft law proposes for the award of the Greek citizenship the combination of the formal criterion of legal residence in the country with the substantive criterion of integration in the Greek society through education.

More specifically, the draft law's provision in question provides that: "*A third-country national legally residing in Greece can be awarded the Greek citizenship upon relevant declaration and application filed by himself/herself before the competent authority of Decentralised Administration of his/her municipality of residence once he/she meets at least one of the following conditions: (I) to have successfully attended at least nine years of Greek school in Greece or (II) to have successfully attended six years of secondary Greek school in Greece or (iii) to have successfully completed his/her studies in a Department or Faculty of Greek University or Technical College and to hold a diploma issued by a Greek high school in Greece.*"

At the same time, the draft law provides that the declaration and application of registration is filed once the applicant has reached 16 years of age. In this case citizenship is awarded upon reaching the age of adulthood. It is noted that the aforementioned regulations do not distinguish between children born in Greece and those born in a third country and later on raised in Greece.

The GNCHR observes that thereby the draft law **excludes both alien children born in Greece and those raised in Greece from being awarded citizenship during childhood**. Therefore, a minor having successfully completed at least nine years of Greek school in Greece is provided with the possibility to file a declaration and application (upon reaching 16 years of age) but he/she is not granted the right to be awarded Greek citizenship on the grounds of being a minor, even though he/she meets the conditions laid down in the draft law.

Regarding this provision, the draft law's explanatory report mentions that "in virtue of Article 129 of the Civil Code a minor can have limited legal capacity from the age of 16. In this case, citizenship shall be awarded once the applicant has reached adulthood".

The GNCHR stresses that the acquisition of citizenship is not linked to the spirit of the Civil Code's provisions regarding legal capacity. The GNCHR observes that, on the one hand, the acquisition of citizenship is not synonymous to legal capacity and, on the other hand, the Civil Code provisions regarding limited legal capacity aim at protecting the minor's legal interest. The GNCHR has already stressed that what the acquisition of Greek citizenship entails is the acquisition of the status of Greek citizen. The status of citizen marks the bond between an individual and a particular State. This bond is based on the will of the former to be part of a specific State by accepting its laws and values and by joining its political community¹⁴.

Besides, according to Article 134 of the Civil Code "*A minor having reached 16 years of age is able to have legal capacity from which solely legitimate benefit can derive*". Even if the acquisition of citizenship is considered to entail both obligations and rights for the minor¹⁵, this should not exclude the minor of 16 years of age, especially in the context of Greek legal order where a minor having reached 15 years of age is granted the possibility to conclude an employment contract (according to Article 136 of the Civil Code "*A minor having reached 15 years of age can, upon his/her legal guardians' general consent, conclude an employment contract as an employee. [...]*").

In this context, the GNCHR deems it necessary that any references to age limits regarding the declaration and application of registration, as well as the acquisition of Greek citizenship must be removed. **Being a minor cannot constitute a ground for limiting the right of acquiring Greek citizenship**, in particular in light of the constitutional protection of childhood (Article 21(1) of the Constitution) and the internation-

14. GNCHR, "*Comments on Draft of the Ministry of Internal Affairs, Decentralisation and e-Government entitled: Political participation of non-citizens of Greek origin and third-country nationals who reside legally and long-term in Greece*", *op.cit.*

15. See A., Takis, "*The 'right' to citizenship and the democratic legislator's power in naturalisation*", available at <http://www.constitutionalism.gr/site/2303-to-dikaiwma-stin-itageia-kai-i-exoysia-toy-dimok/>.

al obligations of the country (see International Convention on the Rights of the Child, ratified by Law 2101/1992 (OGG 192/2.12.1992/A)).

Instead of the wording *"The declaration and the application are filed by the time the applicant reaches the age of 16 years, provided that the applicant meets one of the aforementioned conditions. In case the applicant is an adult, the Greek citizenship is acquired from the date of the publication of the summary of the acquisition decision in the Official Government Gazette. In case the applicant is a minor, Greek citizenship is acquired after reaching adulthood"*, **the GNCHR proposes the following wording:** *"the Greek citizenship is acquired starting from the date of the publication of the summary of the acquisition decision in the Official Government Gazette"*.

In conclusion, the GNCHR observes that this new regulation regarding the acquisition of the Greek citizenship hampers citizenship legislation from its primary mission as a tool for accelerating, facilitating and ensuring the social integration of children born or raised in Greece. In particular, regarding second-generation immigrants born in Greece by parents who have been integrated into Greek society, **the present regulation favours their entrapment into the alien status during their childhood.** Concerning alien children born in Greece and immediately registered to a Greek school, the acquisition of Greek citizenship is possible only upon successfully completing 9 years of schooling or 6 years of secondary education or after completing studies in a Greek university/technological educational institute and under the condition that the applicant has reached the age of 18, as the law provides for any other alien child. In this sense, the notion of integration in the political community is perceived in a problematic and undifferentiated way. This is also demonstrated by the fact that acquiring the Greek citizenship for a child born and raised in Greece is much more time-consuming and arduous compared to its parents who entered the country as adolescents or adults.

In times when social cohesion is threatened and multiple cases of xenophobic or racist treat-

ment against young people residing in the country ever since birth, participating in the Greek education and contributing to Greek society in various ways are observed, the excessively restrictive and dilatory policy of the State regarding the acquisition of citizenship by second-generation immigrants entails additional risks for the social cohesion.

Rejection of the application due to penal impediment

The present draft law provides that an application for Greek citizenship *"is rejected in case of penal impediment according to Article 5(1)(b) or for reasons of public or national security according to Article 5(B)"* of the GCC.

The GNCHR finds that **the wording of Article 5(1) (b) of the GCC, added under Law 3838/2010, should be re-examined**, under the light of the GNCHR observations, formulated prior to its adoption¹⁶.

The GNCHR has highlighted that the wording of Article 5(1) (b) of the GCC, numbering quite a large number of offences, does not clarify the *ratio* of the provision. In particular, it should be mentioned that offences dramatically varying in gravity – such as the offence of high treason and the offence of theft – entail the exact same adverse consequences regarding acquiring citizenship. The draft law, also, provides a great number of offences, which if committed and regardless of the sentence imposed and the time of the Penal Court's Decision, do not allow requirements of citizenship to be met. This is a burdensome and disproportionate measure.

The GNCHR considers that a **general provision providing that the applicant** must not have been irrevocably convicted in the 20 years prior to the submission of the citizenship application should be foreseen. Moreover, the GNCHR calls the State to carefully review the list of offences included in Article 5(1) (b) of the GCC. Only the most serious offences should be retained, such as crimes against the interest of

16. GNCHR, *"Comments on the Draft of the Ministry of Interior, Decentralisation and e-Government entitled: Political participation of non-citizens of Greek origin and third-country nationals who reside legally and long-term in Greece"*, *op.cit.*

the Greek State¹⁷ and international crimes¹⁸, the commission of which justifies the *prima facie rejection* of a citizenship application.

The GNCHR believes that, in doing so, the *ratio* of the provision will become explicit. It is also reminded that an extract of the applicant's criminal record for judicial use is asked *ex officio* by the competent body for the examination of the citizenship application. In any event, as the obligation to justify any negative decision is introduced, the administration has the opportunity to state as a reasonable cause for the refusal to grant Greek citizenship the applicant's conviction for an offence. Consequently, the GNCHR considers the rewording of the relevant provision necessary.

Article 5(6) of the draft law

Repeal of the possibility to submit Objections

The present draft law **repeals the applicant's possibility to submit objections** before the Citizenship Council in case of a negative advisory opinion delivered by the competent Citizenship Committee.

The explanatory report states as a reason of the repeal the abusive use of the Objections' procedure. More specifically, it is mentioned that despite the fact that all persons with a negative decision were appealing, a very few number of appeals were actually accepted. The report also mentions that "given the great volume of objections, the Citizenship Council needs more time in order to review all these applications than the time needed in order for the alien to have the right to submit a new citizenship application".

The GNCHR considers that the repeal of the possibility to submit objections deprives the applicants of their right to have their application re-examined. The serious delay before the Citizenship Council, which eliminates *de facto* the value of appealing, should lead the legislature to

17. Such as violations against the democratic State (Articles 134 of the Criminal Code et seq.) and treason against the Country (Articles 138 of the Criminal Code et seq.).

18. As they are laid down in the Statute of the International Criminal Court.

review the mode of operation and organisation of the administrative body in question and no to *de jure* restrict the aforementioned right.

Article 5(7) of the draft law

Submission of new citizenship application

Article 5(7)(3) of the draft law redefines the time limit within which it is possible to submit a new citizenship application in case of a rejection decision. The draft law provides that a new application can be lodged in two years from the date of the rejection decision, instead of one year that was provided in Article 6 of Law 3838/2010.

The GNCHR observes that the explanatory report of the draft law does not mention sufficient reasons for justifying this change. Moreover, as the draft law provides for the aforementioned repeal of the possibility to submit objections in case of a negative advisory opinion, the GNCHR recommends that the possibility to submit a new application for citizenship "*once **one year** from the date the rejection decision of the previous application was issued has elapsed*" should be retained.

Article 6 of the draft law

Establishment of a Committee for drafting the Greek Citizenship Code

The GNCHR has stressed the **value of systematising and codifying legislation** in order to protect legal certainty. In this direction, it welcomes the initiative of establishing a Committee for drafting the Greek Citizenship Code.

The GNCHR's participation in the Committee for drafting the Greek Citizenship Code

The explanatory report of the draft law proposes the GNCHR's participation in the Committee for drafting the Greek Citizenship Code, since the GNCHR "*indicates one of its members in the Citizenship Committees operating in the Country's Decentralised Administrations*".

Indeed, by virtue of the provisions of Article 12 of GCC¹⁹ (Law 3284/2004, OGG A 217), a Cit-

19. As amended by Article 8 of Law 3838/2010 "Current provisions for Greek citizenship and political participation of

izenship Committee is established in every single Decentralised Administration. This Committee should issue an advisory opinion, by delivering an opinion on whether the substantive requirements of a citizenship application are met. One of the members of this Committee, along with his/her alternate, is indicated by the GNHCR, according to its rule of procedure.

The GNCHR welcomes its participation in the Committee for drafting the Greek Code of Citizenship, within its mandate as the independent advisory body to the State on matters pertaining to human rights protection, according to its founding Law 2667/1998.

repatriated Greeks and legally residing immigrants and other regulations” and was replaced by Article 26(1-2) of Law 3938/2011 “Establishment of an Office for Incidents of Misconduct in the Ministry of Citizen Protection and other provisions”.

B. Public Statements

GNCHR Public Statement¹ on the procedure regarding the establishment of the Appeals Committees under Law 3907/2011

The Greek National Commission for Human Rights (GNCHR) expresses its deep concern about the most serious and multiple consequences of the obvious legality issues arising from the recent procedure regarding the establishment of the Appeals Committees under Law 3907/2011, as amended.

Pursuant to this legislation, the GNCHR, in response to an invitation by the competent Ministry for Public Order and Citizen Protection, drew up, by the deadline provided by law, a list of suggested members for 8 Appeals Committees, following a relevant selection procedure conducted by a Selection Committee composed of eminent members of the GNCHR. After several months of undue delay, during which the international protection of second degree was actually non-existent, while the GNCHR had not been officially informed, Ministerial Decision No 9541/25.9.2014 (OJ 583/25.9.2014) was issued, which resulted in:

1. The establishment of the Committees with the participation of persons not included in the list submitted by the GNCHR, by the deadline provided by law.

2. The increase of the number of Appeals Committees by two, without the GNCHR having ever been asked to contribute thereto by suggesting additional Chairmen and members, as provided by law in order for these Committees to be legally established. It must be pointed out that the law provides that in only two cases (expiry of the deadline for submitting the list or failure of the GNCHR to draw up the list) the Appeals Authority or the Minister for Public Order and Citizen Protection is competent to conduct the selection procedure, obligatorily applying the same criteria as the GNCHR, so as to ensure the protection of the rights of the applicants for international protection.

In the above cases, however, the aforementioned exceptional conditions for the continuation of the procedure without the GNCHR contribution were not met. Therefore, it is obvious that the Ministry acted beyond its lawful competence, exercising unlimited discretion and following a procedure that raises serious questions of legality and of operational and substantive independence of the Appeals Committees. It is clear that the participation of the GNCHR (as well as of the Office of the UN High Commissioner for Refugees) in the establishment of these Committees, as provided by law, is precisely aimed at avoiding such phenomena.

The GNCHR attaches particular importance on the institution of international protection and has issued a series of relevant Decisions and Recommendations. To this effect, it has also demonstrated in practice its active support to the new Asylum Service and has actively participated in the procedures laid down by law, thus expressing its trust, particularly in the work of the Appeals Authority. Unfortunately, recent acts on the part of the Ministry for Public Order and Citizen Protection have seriously undermined the GNCHR's trust in the new Appeals Committees.

The GNCHR, in the context of its institutional role as an independent advisory body to the State on Human Rights issues, will continue to closely monitor the issues of international protection.

1. Adopted unanimously by the Plenary of the GNCHR at its session of 9 October 2014.

C. Press Releases

1. Press Release on the need to essentially investigate the circumstances of the Farmakonisi tragedy (4.2.2014)

The Greek National Commission for Human Rights (GNCHR), the independent advisory body to the State specialised in human rights issues, feels the need to both express its deepest sympathies and concern for the continued loss of human lives at sea and highlight the need to effectively investigate the circumstances of the recent Farmakonisi tragedy. In fact, it is imperative to ensure the transparency and independence of both the internal investigation in the context of official inquiry and the judicial investigation of complaints regarding any illegal practices of repulsion at sea and refoulement of aliens.

The GNCHR wishes to express its concern about the statements of competent institutional actors which could potentially create the impression that the need to investigate such events is questioned or that it is attempted to anticipate the outcome of the investigation. Furthermore, the GNCHR wishes to stress that the best defence of our country's image, when criticisms and recommendations by international monitoring bodies are formulated, is to reinforce accountability and to fully comply with the provisions of the Law.

More generally, the GNCHR recognises the strong immigration pressure the country receives due to its geographical position, the difficulty to control sea transport and its proximity to the main countries of origin. However, it repeats the opinion it has already expressed in its Observations¹ of 5.12.2013: It is imperative to essentially and deeply investigate the claims and testimonies included in reports by international and European bodies, according to which operations of repulsion and refoulement of third country nationals constitute standard policy for addressing the immigration problem in our country. These practices, which are contrary to the interna-

tional, European and national legal framework on international protection of asylum seekers or recognised refugees entitled to obtaining protection in our country, constitute a flagrant violation of human rights.

Returning to its oral statement of 27 May 2014 on Report of the UN Special Rapporteur on the Human Rights of Migrants, the GNCHR highlights the need to strengthen solidarity and distribute responsibilities in a fairer way among EU member States regarding managing migration waves². For the effective protection of human rights, which is one of EU fundamental values, providing Greece with financial support is not enough. It is imperative that the asylum system be redesigned, focusing on the protection of human dignity and human rights and not on practices of "storing" people in specific member States.

2. Press Release: Withdrawal of Article 19 from the draft Law "Immigration and Social Inclusion Code" (24.3.2014)

The Greek National Commission for Human Rights (GNCHR), the independent advisory body to the State specialised in human rights issues, was greatly surprised at the procedure that was followed for voting, and subsequently withdrawing of Article 19, as a whole, from the draft Law "Immigration and Social Inclusion Code".

Article 19 of the above draft law 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 intro-

1. GNCHR, "GNCHR Observations on the Draft of the Second Periodic Report of the Hellenic Republic for the International Covenant on Civil and Political Rights (ICCPR)", 5.12.2013.

2. UN General Assembly, Human Rights Council, 23d session, Submission by the Greek National Commission for Human Rights (NCHR) on the Report of the Special Rapporteur on the human rights of migrants, François Crépeau, Mission to Greece, 27 May 2013.

duced, 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 plaintiff shall be judged for the offences set out in the eleventh chapter of the Criminal 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 plaintiff 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 plaintiff shall be judged*”), irrespective of the existence of sufficient indications that the plaintiff committed the above offences, in breach of the above supra-legislative rules.

➤ It is introducing an **exception** to Article 74 of the Criminal Code currently in effect, as this article was replaced by Article 23 of Law 4055/2012 in compliance with requirements of the Constitution and EU law (see the explanatory report to the draft law which became Law 4055/2012). Indeed, while Article 74 of the Criminal Code, in its previous version, allowed deportation by virtue of judicial decision in case of conviction 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 Criminal Code, to which

the amendment refers, are misdemeanours, for which the Criminal 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 Criminal Code is fully ensured by the Criminal Code, while the rights of all persons involved are guaranteed.

3. Press Release by the Greek National Commission for Human Rights (GNCHR) on the death of a detainee in Nigrita prison (4.7.2014)

The Greek National Commission for Human Rights, the independent advisory body to the State specialised in human rights issues, taking into consideration the heinous acts in Nigrita prison, recalls the following principles which are fundamental to European culture:

- Everyone has the right to life as well as to physical and mental integrity, which all state authorities have the duty to protect.
- Everyone has the right to a fair trial and, in case of criminal conviction, to detention conditions which guarantee his/her physical and mental integrity and protect him/her from any inhuman or degrading treatment.
- The death penalty has been abolished for all crimes and it cannot be replaced by self-redress.

The GNCHR recalls that Greece has been repeatedly condemned by the European Court of Human Rights for inhuman detention conditions.

The State is obligated, apart from fully investigating the heinous acts in Nigrita prison and punishing the perpetrators as provided by our legislation, to take effective measures for purging our correctional system of state authorities that violate the aforementioned principles.

Finally, it is highlighted that the accumulated and chronic problems of the correctional system have led to a situation of security and violation of fundamental human rights in our country's prisons.

4. Press Release by the Greek National Commission for Human Rights (GNCHR) on the draft law "Regulations of Criminal and Correctional Law and other provisions" (3.7.2014)

The Greek National Commission for Human Rights (GNCHR), the independent advisory body to the State for Human Rights issues, following the introduction for voting to Parliament's Plenary of the draft law "Provisions on Criminal and Correctional Law and other provisions", expresses its deep concern about the restriction of detainees' rights in type C detention centres in breach of the principles of proportionality and equality, and also about the general violation of the Rule of Law principles.

Indicatively, the GNCHR expresses its concern about the following provisions of the draft Law:

- *The restriction of a series of detainees' rights in type C detention centres and especially the deprivation of the possibility of leaves, the possibility of restricting visiting rights, the non-application of the semi-free living provisions, the possibility of depriving communication (by phone or correspondence).*

- *The possibility of detention in the aforementioned centres for a particularly long period of time.*

- *The possibility of detaining in these centres not only the convicted but also the indicted, in breach of the presumption of innocence.*

- *The provision for tightening the parole, in breach of the principle of non-retroactivity of criminal law.*

- *The ambiguity regarding the introduction of exceptions to visiting rights under Article 53 of the Correctional Code, which could potentially lead to the exclusion of visiting rights in type C detention centres even for the Greek Ombudsman, the National Preventive Mechanism (NPM) against torture and other cruel, inhuman or degrading treatment or punishment.*

- *The possibility of detaining detainees of type B detention centres in sections of type C detention centres for the purpose of work, without allowing communication with the rest of the detainees.*

The GNCHR recalls with great concern the repeated condemnations of Greece by the European Court of Human Rights (ECtHR) for the accumulated and chronic problems of the Greek correctional system. Furthermore, it highlights that the draft Law under vote not only does not comply with the fundamental constitutional principle of the Rule of Law, but it also blatantly fails to meet the country's fundamental obligation to comply with these ECtHR judgements.

The GNCHR fulfilling its institutional role as the advisory body to the State in human rights issues, is prepared to assist the Ministry of Justice, Transparency and Human Rights towards reforming the country's correctional system and improving the current state of lack of safety and violation of fundamental human rights in the country's correctional facilities. The GNCHR estimates that, unfortunately, the proposed measures do not serve these purposes and it stresses the imperative need to include the streamlining of criminal justice and the decongestion of prisons in a fundamentally organised correctional policy.

Having been repeatedly concerned with the intricate problems of correction, the GNCHR refers to its recommendations about the effective and respectful to human rights issue of detention conditions in Greek correctional facilities.

- GNCHR, "Recommendations regarding Conditions of Detention in Greece", 2001 Annual Report

- GNCHR, "Detention Conditions in Greece", 2002 Annual Report

- GNCHR, "Comments on the draft first report of Greece to the United Nations Human Rights Committee", 2003 Annual Report
- GNCHR, "Decision regarding Detainees' Rights and Detention Conditions in Greek Prisons", 4.10.2008, 2007 Annual Report
- GNCHR, "Detention Conditions in Police Stations and Detention Facilities for Aliens" 2010 Annual Report
- GNCHR, "Findings of the in situ visit undertaken by the National Commission of Human Rights and the Greek Ombudsman in detention facilities for aliens in the Evros Region" 2011 Annual Report

5. Press release: Educational leaves for prisoners: "Education seen as hope, not threat, for social reintegration" (3.12.2014)

Prompted by hunger strikes by prisoners protesting about the limited granting of educational leaves, the GNCHR suggests that the State globally examine the issue of prisoners' access to education with utmost sensitivity.

It is clearly a matter of State responsibility the taking of necessary measures for the protection of public safety. However, in the process of legislating, imposing and applying these measures, it is appropriate that the State primarily take into account the role of education as a crucial path towards social reintegration, for a correctional system does not seek to take revenge but aspires to correct social behaviour. In this context, factors such as the prisoners' age and behaviour must also be taken into consideration when it comes to examining requests to education access.

PART III.
CONTRIBUTIONS TO NATIONAL AUTHORITIES AND
INTERNATIONAL MONITORING BODIES

A. Contributions to National Authorities

1. Letter by the GNCHR's President, Mr K. Papaioannou, to the Chief of the Hellenic Police Force, concerning the training programme for the personnel of the Departments and Offices Combating Racist Violence within the Hellenic Police (24.7.2014)

The Greek National Commission for Human Rights (GNCHR), in its capacity as coordinator of the Racist Violence Recording Network (RVRN), intend to proceed, together with the Office of the UN High Commissioner for Refugees in Greece, to the development of a training programme for the personnel of the Departments and Offices Combating Racist Violence within the Hellenic Police. The programme will include among others: legal issues, best practices addressing the phenomena, a comparative overview of the European legal and political framework, intercultural issues etc. Experts from organisations-members of the Network, academics, as well as experts on issues of anti-racist violence will be involved, to the extent possible, in the training program.

Additionally, we consider particularly important to call upon the Greek authorities responsible for the special training of police officers to officially request the assistance of the Office for Democratic Institutions and Human Rights (ODIHR), an organisation with years of expertise in developing education and training programs designed to combat hate crimes. The participation of the ODIHR will contribute in meeting the educational needs of Departments and Offices Combating Racist Violence within the Hellenic Police, particularly regarding the participation of senior police officers from countries which have already developed effective police mechanisms to tackle racist crime. To this end, we are at the disposal of the Ministry of Public Order and Citizen Protection to better coordinate our actions.

On behalf of the coordinators of the Racist Violence Recording Network (RVRN).

2. Letter by the GNCHR's President, Mr K. Papaioannou, to the Minister of Justice, Transparency and Human Rights, Mr Ch. Athanassiou, on the need for a valid registration and timely publication of the minutes of the trial of members of the Golden Dawn (14.10.2014)

The Greek National Commission for Human Rights (GNCHR), in its capacity as the independent advisory body to the State on matters pertaining to human rights protection and by virtue of its founding Law 2667/1998, wishes to raise your awareness on a major issue of public interest, particularly in the light of the principle of publicity of a trial of extremely significant interest.

In particular, Mr Minister, it is the need for a valid registration and timely publication of the minutes of the trial of members of the Golden Dawn, which is expected to start within the next period. This trial intersects human rights in various aspects and the GNCHR deems necessary the recording and publication of its minutes on a daily basis.

In this context, we highlight the need for the Ministry of Justice, Transparency and Human Rights to take the relevant initiative and as well as the necessary actions.

Mr Minister, we are at your disposal for more clarifications on the matter as well as for further cooperation in the field of human rights.

3. Letter by the GNCHR's President, Mr K. Papaioannou, to the Director of the Human Rights Division of the Ministry of Foreign Affairs, Ms E. Galathianaki, regarding the request for information from the Office of the High Commissioner for Human Rights (OHCHR) on best practices for combating racism, racial discrimination, xenophobia and related intolerance in football (21.10.2014)

Following your request for information (ref. no: AΣ41720/30.9.2014) – data and best practices – on best practices for combating racism, racial discrimination, xenophobia and related intolerance in football, we would like to point out that the Greek National Commission for Human

Rights (GNCHR), as the independent advisory body to the State on matters pertaining to human rights protection, has repeatedly addressed the issue of racist violence, not only in special reports but also when submitting comments on draft laws related to racism issues. Moreover, in cooperation with the Office of the UN High Commissioner for Refugees in Greece, the GNCHR established, in 2011, the Racist Violence Recording Network (RVRN) for the systematic recording of racist violence incidents.

With regard to the issue of addressing racism in football, the GNCHR has also made comments and taken positions, which are included in its 2012 Report on racist violence, in the sub section entitled *Racist Violence in Sport and in Particular in Football*, which you will find attached herewith, both in Greek and English, for you to study and draw your conclusions.

However, it should be clarified that the GNCHR, by both its nature and mission as an advisory body, has no particular data or relevant information on best practices.

Finally, you will also find attached herewith, for your information, the annual report of the Racist Violence Recording Network.

We are at your disposal for any additional information or clarification.

B. Contributions to International Inspection Bodies

1. Contributions to international fora

1.1 GNCHR Written Observations on the Second Periodic Report of the Hellenic Republic on the implementation of the International Covenant on Civil and Political Rights (ICCPR) (22.12.2014)

I. Introduction

On 3.9.2013, the Ministry of Foreign Affairs of the Hellenic Republic sent a Draft of the Second Periodic Report of the Hellenic Republic to the Greek National Commission for Human Rights (hereinafter GNCHR) regarding the implementation of the International Covenant on Civil and Political Rights. In accordance with its founding Law (Law 2667/1997), the GNCHR delivered an opinion regarding this Draft Report.

After examining the content of the Draft Report (hereinafter Report), the GNCHR submitted to the Ministry of Foreign Affairs its observations which had been unanimously adopted by its Plenary (5.12.2013)¹. The Ministry of Foreign Affairs took into consideration some of the GNCHR's observations before submitting the Second Periodic Report of the Hellenic Republic (CCPR/C/GRC/2, 17.1.2014) to the Human Rights Committee (hereinafter HRC).

In view of the upcoming adoption of a list of issues on the second report by Greece to the HRC, which will take place at the HRC's next (113th) session in March 2015, in Geneva, the GNCHR submits to the HRC written information prior to the adoption of the list of issues regarding the implementation of the Covenant.

The information herein provided reflects opinions expressed in reports adopted by the GNCHR Plenary until December 2014.

The GNCHR particularly stresses that the

1. GNCHR, "Observations on the Draft of the Second Periodic Report of the Hellenic Republic for the International Covenant on Civil and Political Rights (ICCPR)", 5.12.2013, available from: http://www.nchr.gr/images/English_Site/EllinikesEktheseis/English_Observations_on_Draft_Report.pdf.

submission of the Report on the implementation of the Covenant comes at a time when Greece is plagued by a deep financial crisis. The GNCHR recalls that already since 2010 it has drawn the attention of the State to "*The need for constant respect of human rights during the implementation of the fiscal and social exit strategy from the debt crisis*", whilst a year and a half later it issued a Recommendation "*On the imperative need to reverse the sharp decline in civil liberties and social rights*". The most recent GNCHR document is its "*Recommendation and decisions of international bodies on the conformity of austerity measures to international human rights standards*", adopted by the Plenary on 27.6.2013².

We also note that the European Network of National Human Rights Institutions (ENNHRI) sent, in January 2014, open letters to Mr J.-M. Barroso, then President of the European Commission, and Mr M. Draghi, President of the European Central Bank (ECB), "*On the upcoming Troika visit to Greece*", to which the above 2010 and 2011 GNCHR Recommendations were *inter alia* attached. In these letters, ENNHRI drew attention to the adverse effects of the crisis and austerity measures on the enjoyment of human rights, in particular social rights, in our country. ENNHRI recalled that the EU Member States are bound by human rights obligations and that both EU Member States and EU institutions are bound by the EU Charter of Fundamental Rights (hereinafter the EU Charter). It stressed that "only by connecting macro-economic decision-making processes and human rights can we decelerate, perhaps even invert, the transformation of the financial crisis into a humanitarian crisis" and called on the European Commission and the ECB to carry out a systematic *ex ante* human rights impact assessment of all austerity measures; to make sure they do not lead to human rights violations; and to integrate human rights institutions and experts in the process of macro-economic decision-making³.

2. All GNCHR's reports on the impact of financial crisis on the enjoyment of human rights are available from: <http://www.nchr.gr/index.php/en/2013-04-03-10-23-48/2013-04-03-10-41-02>.

3. The ENNHRI open letters and the attachments thereto are

In this regard, the GNCHR cannot but highlight the need to refer to the impact of the deep financial crisis and the financial austerity measures, which have seriously affected the rights guaranteed by the Covenant.

In particular, the GNCHR once more expresses its deep concern that "*the avalanche of unpredictable, complicated, conflicting and constantly modified 'austerity measures' of immediate and often retroactive effect, which exacerbate the general feeling of insecurity*", as deplored in its Recommendation of 8.12.2011, is continuing and constantly growing. Therefore, the Greek legislation does not have the "quality" required by the European Convention on Human Rights (hereinafter ECHR).

The GNCHR 2011 Recommendation "*On the imperative need to reverse the sharp decline in civil liberties and social rights*" was quoted by the European Committee of Social Rights (hereinafter ECSR) in seven decisions finding violations of the European Social Charter by Greece⁴. The ECSR's example was followed by other European and international bodies, such as the Council of Europe (hereinafter CoE) Committee of Ministers⁵, the CoE Commissioner for Human Rights⁶,

available from: <http://www.nchr.gr/index.php/en/2013-04-03-10-23-48/2013-04-03-10-41-02>.

4. ECSR 23.05.2012, Complaints Nos. 65/2011, General Federation of Employees of the Public Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece and 66/2011, General Federation of Employees of the Public Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece, as well as ECSR 07.12.2012, Complaints Nos. 76/2012, Federation of employed pensioners of Greece (IKA-ETAM) v. Greece, 77/2012, Panhellenic Federation of Public Service Pensioners (POPS) v. Greece, 78/2012, Pensioners' Union of the Athens-Piraeus Electric Railways (I.S.A.P.) v. Greece, 79/2012, Panhellenic Federation of pensioners of the Public Power Corporation (POS-DEI) v. Greece, 80/2012, Pensioners' Union of the Agricultural Bank of Greece (ATE) v. Greece.

5. Council of Europe, Committee of Ministers, Resolution CM/ResCSS(2013)21 on the application of the European Code of Social Security by Greece (Period from 1 July 2011 to 30 June 2012), adopted by the Committee of Ministers on 16 October 2013 at the 1181st meeting of the Ministers' Deputies, available from: [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/ResCSS\(2013\)21&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/ResCSS(2013)21&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383).

6. Council of Europe, Commissioner for Human Rights, Safe-

the ILO Committee of Experts on the Application of Conventions and Recommendations (hereinafter CEACR)⁷ and 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, Dr. Cephas Lumina⁸.

It is in the light of the above that the GNCHR's more specific observations on the respect for the rights dealt with in the Greek Report under examination must be read.

II. Specific Observations on the Report of the Hellenic Republic

Articles 2 and 26

Civil Unions

On 18.12.2013⁹, following the judgment of the Grand Chamber of the European Court of Human Rights (hereinafter ECtHR) of 7 November 2013, in the case *Vallianatos and others v. Greece*, the GNCHR sent a letter to the Minister of Justice, Mr Charalambos Athanasiou, by which it recalled its previous positions regarding the necessity for legal recognition of same-sex civil unions. Also, in view of the Minister's statement during the discussion of the anti-racism draft law in the competent Parliamentary Committee that

guarding human rights in times of economic crisis, November 2013, p. 52, available from: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2530030&SecMode=1&DocId=2144886&Usage=2>.

7. CEACR, in *Reports to the International Labour Conference (ILC) 2013 finding violations of ILO Conventions Nos. 95 (protection of wages) and 102 (social security minimum standards) by Greece*.

8. 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, Cephas Lumina, in his *Report Mission to Greece (22-27 April 2013), to the UN Human Rights Council 25th Session, 11 March 2014 (A/HRC/25/50/Add.1)*.

9. GNCHR, "The National Commission for Human Rights invites the Minister of Justice, Mr Charalambos Athanasiou to take a legal initiative regarding the recognition of same-sex civil unions", 18.12.2013, available from: http://www.nchr.gr/images/English_Site/NEWS/same-sex%20civil%20union%20final.pdf.

the Ministry should take into account the ECtHR judgment, GNCHR invited the Minister to take a legal initiative for the recognition of same-sex civil unions. Moreover, the GNCHR noted that in its judgment, the Grand Chamber of the ECtHR repeatedly quoted and took into consideration the positions of the GNCHR (see paras. 12, 15, 21-24, 87 and 89 of the judgment).

Education and non-discrimination

The GNCHR Plenary unanimously adopted at its 9 October 2014 session a report on the "International Convention on the Rights of Persons with Disabilities: Problems regarding its implementation"¹⁰, which reads as follows:

"The GNCHR considers the ratification of the United Nations Convention on the Rights of Persons with Disabilities (Convention) and its Optional Protocol (Protocol) by Greece an important step for the protection of fundamental human rights in our country. However, it deems it necessary to point out indicatively some serious problems arising from the Law sanctioning the Convention and the implementation of the Convention in practice, with a view to readdressing the issue at a later date.

1. The Convention and the Protocol were sanctioned on 31 May 2012¹¹ by Law 4074/2012; they were then ratified and entered into international force for Greece on 31 June 2012, in accordance with Article 45(2) of the Convention and Article 13(2) of the Protocol. Therefore, since 31 June 2012, Greece is subject to the monitoring of the implementation of the Convention conducted by the Committee for the Rights of Persons with Disabilities (Committee), which was established pursuant to Article 34 of the Convention. Furthermore, since 31 June 2012, the Committee is competent to receive and consider "communications" from or on behalf of individuals or groups

10. GNCHR, "International Convention on the Rights of Persons with Disabilities: Problems regarding its implementation", 9.10.2014, available from: <http://www.nchr.gr/images/pdf/apofaseis/amea/EfarmoghDSAA.pdf>.

11. For the ratification status of the Convention on the Rights of Persons with Disabilities and its Optional Protocol see: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=68&Lang=en.

of individuals subject to the Greek State's jurisdiction claiming to be victims of a violation of the Convention (Article 1 of the Protocol).

A. Obligations imposed by the Convention regarding the monitoring of national implementation

2. Article 33 of the Convention imposes on States Parties the following obligations regarding the monitoring of national implementation:

a) "States Parties, in accordance with their system of organisation, shall designate one or more focal points within government for matters relating to the implementation of the present Convention, and shall give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels" (Article 33(1)).

b) "States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights" (Article 33(2)).

c) "Civil society, in particular persons with disabilities and their representative organisations, shall be involved and participate fully in the monitoring process" (Article 33(3)).

B. Inadequate compliance with the obligations imposed by the Convention

a. Inadequate legislative compliance

3. Article 3 of Law 4074/2012 reads as follows: "By decision of the Prime Minister, in accordance with Article 33(1) of the United Nations Convention on the Rights of Persons with Disabilities, a focal point is designated in the government for monitoring the implementation of the Convention along with a coordination mechanism for facilitating related action." This

enabling provision constitutes inadequate compliance with the obligations undertaken by the Greek State upon ratification of the Convention, as it enables the Prime Minister to implement Article 33(1) of the Convention only and not the remaining paragraphs thereof.

4. Pursuant to this enabling provision, the Prime Minister issued Decision No. 426/02.20.2014 "Designation of a focal point for monitoring the implementation of the United Nations Convention on the rights of persons with disabilities (Law 4074/2012, OGG A 88) along with a coordination mechanism for facilitating related action" (OGG B 523/2.28.2014). In the Sole Article of this decision, a focal point is designated for monitoring the implementation of the Convention along with a coordination mechanism for facilitating related action. This focal point shall be the Ministry of Labour, Social Security and Welfare and more specifically the Ministry's Directorate of International Relations of the General Directorate of Administrative Support. Moreover, the decision reproduces verbatim Article 33(3) of the Convention (above No. 2(c)).

5. Thus, due to the inadequacy of the enabling statute, independent mechanisms, which shall promote, protect and monitor the implementation of the Convention, have not been established, as required by Article 33(2) of the Convention. A specific mechanism may be established or this mission can be assigned to an existing independent body; it is sufficient for this body to be independent and to dispose of the necessary means (adequate specialised staff and funding) for executing this mission. This omission constitutes a serious violation of the Convention as it considerably reduces its effectiveness. Therefore, the enabling statutory provision must be completed.

6. Besides, the word for word reproduction of Article 33(3) of the Convention in the aforementioned Prime Minister's Decision is pointless. A statutory provision enabling an administrative authority to take particular measures which shall grant civil society, in particular persons with disabilities and their representative organisations, the possibility to be involved and to fully partici-

pate in the monitoring process of the Convention is necessary.

b. Examples of inadequate compliance in practice

7. The substantive provisions of the Convention establish the rights of persons with disabilities and impose relevant obligations on States Parties. Among these rights is the right to access, on an equal basis with others, public or private facilities and services which are open or provided to the public; *inter alia*, roads, transportation, buildings, housing, medical facilities, workplaces, monuments, sites of cultural importance etc. (Article 9 and Article 30(1) of the Convention), a right which is of outmost importance for preventing social exclusion of these persons. It is obvious to everyone that, in Greece, many if not most of the facilities and services in question are very difficult or impossible to access for persons covered by the Convention.

Consequently, GNCHR addresses the following, first and urgent, recommendations to the State regarding the implementation of the Convention:

- To promulgate additional enabling statutory provisions enabling administrative measures for the implementation of Article 33(2 and (3) of the Convention.
- To take measures in order to render public or private facilities and services accessible to persons with disabilities, as required by the Convention.

Besides, the GNCHR addressed specific "Recommendations regarding the Draft law on Special Education",¹² in which the following were *inter alia* stressed:

The current national framework of protection of the right to education for persons with special educational needs: a challenge for equal inclusion or one more lost opportunity?

12. Adopted unanimously by the GNCHR Plenary on 10 July 2014. Rapporteurs: K. Papaioannou, GNCHR President, E. Varchalama, GNCHR Second Vice-President, Aik. Tsampi and R. Fragkou, GNCHR Legal Officers. It is also noted that the present Recommendations have been developed in collaboration with the Deputy Ombudsman in charge of children's rights, G. Moschos.

In Greece, the right to education is a constitutional right which enjoys increased guarantees. More specifically, Article 16(2)-(4) of the Constitution provides for the right to free education for all and fixes the number of years of compulsory education to at least nine. In addition to respecting and ensuring the right to free access to education, the State is explicitly required to support those in need of assistance or special protection, such as the young, the elderly and the disabled¹³.

More specifically, Article 21(6) of the Constitution responds to the need to strengthen the protection of persons belonging to vulnerable groups, so that the effective enjoyment of their rights and real equality may be achieved, by providing that "*people with disabilities have the right to benefit from measures ensuring their self-sufficiency, professional integration and participation in the social, economic and political life of the country.*" However, the objectives of this provision cannot be fulfilled unless measures guaranteeing effective access to education for children with disabilities are adopted and implemented. Nevertheless, the implementation of this provision is inadequate, as the relevant legislation is fragmented and adopted without any strategic planning.

Moreover, the integration of children with special educational needs in the educational system is provided by Law 2817/2000, which requires integration classes in parallel with individualised special educational support. This institutional framework was completed by Law 3699/2008. More specifically, Article 1(1) of Law 3699/2008 stipulates that "*the State commits itself to establishing and constantly upgrading the compulsory character of special education as an inherent part of compulsory and free public education and to guaranteeing the provision of free public special education to persons with disabilities of all ages and at all stages of education.*" Therefore, the incorporation of special education into general public and free education, which is provided in Article 2(1) of Law 3699/2008, constitutes a fundamental obligation of the State.

13. Article 21(3) of the Constitution.

Moreover, Law 3699/2008 states in Article 6(4) that education shall be provided within special education school units to students for whom attending general schools or integration classes is particularly difficult. It is, however, doubtful whether, in the current circumstances, the educational system is able to provide essential education to persons with special educational needs within general schools.

Special Education in Greece

In the light of the above, the concern constantly expressed by interested actors, is whether the Greek educational system complies with the principles of international and European law regarding special education.

GNCHR observes that, even though the problems related to special education persist, Greek legislation is characterised by institutional gaps in this respect, with the result that it does not adequately ensure that disabled children fully enjoy their established right to education. It is not only the content of Greek legislation that raises concerns, but also its inadequate implementation. In practice, discrimination against these children persists, while the way in which their special needs are addressed, in order for their rights to be respected on an equal basis with their peers, is not effective.

In its *Conclusions* of 24 October 2008, the European Committee of Social Rights, examining the annual reports of States Parties to the European Social Charter (ESC) has considered that Greece does not comply with the requirements of Article 15(1) of the ESC, as no legislative steps were taken towards establishing the lifelong learning of persons with disabilities. More specifically, the Committee has noted that there was no particular provision for persons with disabilities neither in the public educational system nor later regarding the establishment of the right to vocational training, reintegration and social integration. In fact, in the same Report, the Committee of Social Rights highlighted the lack of and failure to present more specific statistical data that would allow an appraisal of the

compliance of Greece with ESC requirements¹⁴. The situation does not seem to have significantly improved, since in the most recent *Conclusions* (7 December 2012), the Committee considered that the absence of the information required for the evaluation of the condition of persons with disabilities in Greece and their ability to access education, amounts to a breach of the reporting obligation entered into by Greece under the 1961 Charter¹⁵.

Pending receipt of the information requested, the Committee defers its conclusion. The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Greece under the 1961 Charter. The Government consequently has an obligation to provide the requested information in the next report on this provision

The current economic and social crisis is exacerbating the chronic problems observed in the education of children with special needs. GNCHR has already voiced its concern for the discriminatory impact of austerity measures at multiple levels and for the sharp decline in social rights¹⁶.

According to the Unicef Report on *The State of the World's Children 2013*, the bond between poverty and disability is strong. More specifically, household survey data from 13 low- and middle-income countries showed that children with disabilities aged 6-17 years are significantly less likely to be enrolled in school than their peers without disabilities¹⁷.

14. Council of Europe, European Committee of Social Rights, *Final Observations XIX-1*, 24 October 2008, Articles 15,15(1), p. 12, available from: http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/GreeceXIX1_en.pdf.

15. Council of Europe, European Committee of Social Rights, *Final Observations XX-1*, 7 December 2012, Article 15(1), p. 22, available from: http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/GreeceXX1_en.pdf.

16. See GNCHR, "GNCHR Recommendation and decisions of international bodies on the conformity of austerity measures with international human rights standards", *op.cit.*, GNCHR, "Decision on the need for constant respect of human rights during the implementation of the fiscal and social exit strategy from the debt crisis", *op.cit.* and GNCHR, "GNCHR Recommendation: On the imperative need to reverse the sharp decline in civil liberties and social rights", *op.cit.*

17. More specifically, it is stated that "as long as children with

In a recent Report, the Greek Ombudsman, a body entrusted with the promotion of equal treatment¹⁸, draws attention to this state of affairs and mentions a series of characteristic examples of chronic problems. Some of them are the school year delay in special schools, the constantly delayed hiring of substitute teachers instead of permanent educational and special educational staff, the significant delay or the non-appropriate provision for parallel support, and the lack of realisation thereof, especially in kindergarten school and primary education, the insufficient staffing of integration classes and special schools, especially in the periphery, which result in hindering the equal access to education for many children with disabilities or/and special educational needs.

Another cause for concern is the State's insufficient, hesitant and delayed response to reactions coming from a part of the school community aiming at discouraging the enrollment and integration of children with special needs in general education. The State shares a wider responsibility concerning combating the marginalisation of children with disabilities. The significant divergence between the rates of children's attendance of special kindergarten classes and the corresponding rates of attendance of elementary classes is yet another cause for concern¹⁹. The absence of relevant special quality indexes does not allow the identification of the factors that discourage parents from enrolling their children in kindergarten. As a result, important aspects of the marginalisation in the education of children with disabilities are left unseen.

disabilities are denied equal access to their local schools, governments cannot reach the Millennium Development Goal of achieving universal primary education (MDG 2), and States parties to the Convention on the Rights of Persons with Disabilities cannot fulfill their responsibilities under Article 24". See Unicef, The state of the World's children 2013. Children with disabilities, May 2013, available from: <http://www.unicef.gr/uploads/filemanager/PDF/info/swcr13.pdf>, p. 20 et seq.

18. The Greek Ombudsman, Special Report 2013, p. 108.

19. KANEP-GSEE, *The fundamentals of education - 2010*, Vol. A, January 2011, available in Greek language at: <http://www.kanep-gsee.gr/ereynes-meletes-ekdoseis/ethsies-ektheseis-ekpaideushs/ethsia-ekthesh-gia-thn-typikh-ekpideysh-2010>, pp. 15 and 20.

Unicef notes in its recent Report on the *State of World Children 2013* that "exclusion denies children with disabilities the lifelong benefits of education: a better job, social and economic security, and opportunities for full participation in society." On the contrary, the same Report places particular emphasis on the potential contribution of investments in the educational system of children with disabilities to the future productivity of these children as members of the workforce²⁰. Unfortunately, in Greece the lack of supporting infrastructure for children with disabilities extends to the fields of training, lifelong learning and professional integration, thus widening their social exclusion. This illustrates the lack of association between education and professional prospects, which cannot be deemed to be covered by legislation on compulsory hiring of persons with disabilities in the workplace²¹. GNCHR expresses its concern about the absence of data regarding the vocational training of children with disabilities, even within the context of third-degree studies.

Articles 3 and 23

Work and gender equality²²

The GNCHR has repeatedly expressed in the recent past, its position on issues related to employment and gender equality in Greece, especially during the period covered by the Report²³.

20. See UNICEF, *The state of the World's children 2013. Children with disabilities*, op.cit., p. 37. It is also mentioned that one year of schooling increases an individual's earnings by 10%. See United Nations Educational, Scientific and Cultural Organisation, *Building Human Capacities in Least Developed Countries to Promote Poverty Eradication and Sustainable Development*, UNESCO, Paris, 2011, p. 8.

21. Law 2643/1998 (OG A 220/9.28.1998), as amended and in force.

22. See GNCHR, "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", 9.4.2014, available from: http://www.nchr.gr/images/pdf/apofaseis/ellinikes_ektheseis_en_ell_org/CoE/GNCHR_Observations_24thReportf.pdf.

23. GNCHR, "Comments on the Draft law «Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation-Harmonisation of Legislation with Directive 2006/54/EC of the European Parliament and of the Council of 5

Since no progress has been made ever since, the GNCHR repeats the following remarks:

The GNCHR welcomed the adoption of Law 3896/2010, which transposed Directive 2002/73/EC on equal treatment of men and women in employment and the fact that several of its observations regarding the relevant Draft law were taken into account. It noted, however that this Law is inadequate in certain respects. Firstly, the definition it provides for "vocational training" is neither clear nor consistent with EU law, something which undermines legal certainty.

Moreover, Article 19 on "Positive Measures" does not comply with Article 116(2) of the Greek Constitution which imposes an obligation on all state authorities²⁴. According to well-established jurisprudence of the Council of State Supreme Administrative Court), this constitutional provision "obliges the legislator and all other state authorities to adopt in all fields the positive measures in favour of women that are appropriate and necessary for achieving the best possible result" with a view to minimising inequalities and with the ultimate goal to achieve substantive gender equality²⁵. Furthermore, Article 116(2) of the Greek Constitution stipulates that the positive measures should aim to eradicate "inequalities" (a term which is broader than the term «discrimination» used in Article 19 of Law 3896/2010)²⁶.

Furthermore, the GNCHR noted, in its observations on the Draft law for the transposition of Directive 2002/73/EC (which became Law 3488/2006), that there is no autonomous individual right to parental leave for male and female workers²⁷ and that Article 3(4) of this law regarding the protection of maternity does not comply with the provisions of Article 21(1) and (5) of the Greek Constitution, which guarantee the effective protection of maternity²⁸.

Especially in the private sector, women undergo unfavourable treatment during the hiring and negotiation process, not only when they are pregnant or have just given birth to a baby, but also when they have young children or are married and at child-bearing age²⁹.

"Application of the Principle of Equal Treatment Irrespective of Racial or Ethnic Origin, Religious or Other Beliefs, Disability, Age or Sexual Orientation", 2003: The Greek Constitution, Article 4(2), guarantees substantive gender equality (Council of State judgment No. 1933/1998). On the occasion of the constitutional revision of 2001, the provision of Article 116(2) allowing derogations was repealed and replaced with a provision which requires positive measures as a means for achieving gender equality and the abolishment of all inequalities in practice, especially those affecting women. Consequently,, as of the entry into force of the revised Constitution (18.4.2001), all provisions allowing derogations were null and void, while any provision introducing derogations in the future shall be invalid. This is why neither Law 3488/2006 transposing Directive 2002/73/EC, nor Law 3896/2010 transposing Directive 2006/54/EC, allow derogations from gender equality in employment. Besides, both these Directives allow member States to introduce or maintain national provisions more favourable than their own and do not allow the reduction in the level of protection of workers in the areas which they cover. The GNCHR underlined that "according to fundamental principles of international and European law as well as to the explicit provisions of the Directives, the provisions of Article 116(2) of the Greek Constitution prevail as more protective".

July 2006», 2008, available from: http://www.nchr.gr/images/English_Site/ERGASIA/paratiriseis_od_2006%2054%202008.pdf; GNCHR, "Comments on the Draft law "Implementation of the Principle of Equal Treatment for Men and Women as Regards Access to Employment, Vocational Training and Promotion, and Working Conditions", 2006, available at http://www.nchr.gr/images/English_Site/ERGASIA/Nomosxedio%20gia%20ish%20metaxeirish%202006.pdf and GNCHR, "Observations on the 7th Greek Report (2005-2008) to the Committee on the Elimination of the Discrimination Against Women (CEDAW)", 2010, available from: http://www.nchr.gr/images/English_Site/EllinikesEktheseis/NCHR_CEDAWeng.pdf.

24. Article 116 (2): "Adoption of positive measures for promoting equality between men and women does not constitute discrimination on grounds of sex. The State shall take measures for the elimination of inequalities actually existing, in particular to the detriment of women".

25. Council of State, decisions Nos 2831/2003, 2832-2833/2003, 3027-3028/2003, 3185, 3187-3189/2003 and 192/2004.

26. See as noted by the GNCHR in Comments on Draft law titled

27. GNCHR, Resolution on the Reconciliation between Professional and Family Life in view of the transposition of EU Directive 2002/73/EC into Greek law, 2005: http://www.nchr.gr/images/English_Site/NomothetikesProtaseis/NationalLegislation/Professional_family_life%202006.pdf.

28. Article 21(1): "The family, being the cornerstone of the preservation and the advancement of the Nation, as well as marriage, motherhood and childhood, shall be under the protection of the State" and Article 21(5): "Planning and implementing a demographic policy, as well as taking of all necessary measures, is an obligation of the State".

29. GNCHR, Resolution concerning the Reconciliation between Professional and Family Life in view of the Incorporation of EU Directive 73/2002/EC into Greek Legislation, 2005, available from: http://www.nchr.gr/images/English_Site/

The GNCHR has also underlined that the legal framework (Law 3488/2006 and Law 3896/2010, which transpose Directives 2002/73/EC and 2006/54/EC, respectively)³⁰ is inadequate for ensuring effective judicial protection to victims of discrimination, most of whom are women. In particular, legal entities are not granted standing to engage in their own name in legal proceedings for the protection of the rights of the victims.

The GNCHR is constantly repeating a general observation, regarding the provisions transposing the EU gender equality Directives: the procedural provisions (mainly on the standing of legal entities and the burden of proof) are not incorporated into the relevant Codes of Procedure. As a consequence, they remain unknown to judges, lawyers and the persons concerned. Therefore, the transposition of the EU Directives is inadequate, since it does not establish the required legal certainty and transparency which would allow the victims of discrimination to be aware of their rights and to claim them before the courts and other competent authorities, as required by the Court of Justice of the EU.

Despite the adoption of Law 3896/2010 and the measures mentioned in the Greek Report under examination, the deregulation of employment relationships due to the growing financial crisis and the successive austerity measures continue to aggravate the position of women in the labour market, rendering them even more vulnerable. Taking into account the recent concluding observations of the UN Committee on the Elimination of Discrimination against Women³¹, the GNCHR expresses its concern for the mar-

ginalisation of women in the labour market as reflected inter alia in the high female unemployment rates. The application of Law 4042/2011 and the drastic pension cuts regarding widows and other categories of women have also had a negative effect.

Furthermore, the reversal of the hierarchy of CAs and the weakening of the National General CA and the sectoral CAs affect women in particular, mainly regarding equality in pay, and thus lead to the widening of the pay gap, as CAs used to be the best means to promote and protect uniform pay and employment conditions, without any discrimination.

Another source of concern is the continuous reduction of the (already insufficient) day-care structures for children and dependent persons as well as other social structures, which limit women's ability to take up employment or keep them in jobs with reduced rights, at the same time perpetuating gender stereotypes, as men are not encouraged to participate in such care. The harmonisation of family and professional life should be a matter for both men and women. There is also a disturbing rise in discriminatory practices, especially on multiple grounds, to the detriment of women employed within the framework of sub-contracting or temporary employment. In such cases, women are especially targeted if they are engaged in trade union activity³².

The CEACR expresses its concern at the "disproportionate impact" of the crisis and austerity measures on women and the widening of the pay gap to their detriment. The CEACR stresses in particular that "the combined effect of the financial crisis, the growing informal economy and the implementation of structural reform measures adversely affected the negotiating power of women, and would lead to their over-representation in precarious low-paid jobs". The CEACR, with reference to the information received from the Greek Ombudsman, (hereinafter the Ombudsman) observes that since the vast majority of employees in the wider public sec-

NomothetikesProtaseis/NationalLegislation/Professional_family_life%202006.pdf.

30. GNCHR, "Comments on the Draft law "Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation-Harmonisation of Legislation with Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006", available from: http://www.nchr.gr/images/pdf/apofaseis/isothta_fullwn/EEDA_YpErgasias_2006.54_2010.pdf and http://www.nchr.gr/images/pdf/apofaseis/isothta_fullwn/paratiriseis_sx.Nomou_2006_54.pdf.

31. Committee on the Elimination of Discrimination against Women, Concluding Observations: Greece, CEDAW/C/GRC/CO/7 (26.4.2013), par. 28.

32. GNCHR, *Workers' rights and conditions of work in the framework of sub-contracting*, available from: http://www.nchr.gr/images/pdf/apofaseis/ergasia/fin_EEDA_ergolavikes_anatheseis_ioul09.pdf.

tor are women, the measures of "labour reserve" and those introduced by Law 4024/2011 (a new public service statute, a new job classification and a new harmonised wage scale resulting in wage cuts of up to 50 per cent in certain cases) is likely to have an impact on female unemployment. The CoE Commissioner for Human Rights has also emphasised the serious impact of the crisis and austerities measures on women³³.

In the private sector, the rapid growth of **flexible forms of employment** as well as the replacement of contracts of indefinite duration by fixed term contracts lead to a significant reduction in wages. The CEACR stresses, referring to the Greek Ombudsman's findings, that flexible forms of employment, mainly part-time and rotation work, are more often offered to women, especially during pregnancy and upon return from maternity leave, reducing their levels of pay, while layoffs due to pregnancy, maternity and sexual harassment increase. "Flexibility had been introduced without sufficient safeguards for the most vulnerable, or safeguards which had been introduced by law were not effectively enforced"³⁴.

In fact, unemployment, especially among women and young people, is especially high and as the CEACR notes, "a large number of women have joined the ranks of the 'discouraged' workers who are not accounted for in the statistics", while "small and medium-sized enterprises, which are an important source of employment for women and young people, close down massively"³⁵.

Moreover, fiscal consolidation decisions and austerity measures are taken **without any ex ante or even ex post impact assessment**, as the ECSR and other treaty-bodies are deploring³⁶.

Also, "recalling that CAs have been a principal source of determination of pay rates, the Committee refers to its comments on Convention No. 98 and calls upon the Government to bear in mind that **collective bargaining** is an important means of addressing equal pay issues in a proactive manner, including unequal pay that arises from indirect discrimination on the ground of sex"³⁷.

To the abovementioned observations the GNCHR adds the need to strengthen the Labour Inspectorate (SEPE) and the Ombudsman, something crucial at a time when both bodies are suffering major budget cuts. This is all the more so as the number of workers who cannot afford recourse to the courts for financial reasons is in constant increase, as stressed hereabove.

More generally, the GNCHR shares the Ombudsman's fear that **any progress** achieved so far in employment and gender equality **may be reversed**, something which would result in failure to draw on valuable human resources, as well as in violation of the rule of law and democratic principles³⁸. The insufficiency of pol-

cupation) Convention, 1958 (No. 111) – Greece, available from: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3084473.

36. See GNCHR, "Recommendation and decisions of international bodies on the conformity of austerity measures to international human rights standards (2013)", GNCHR, GNCHR Recommendation: On the imperative need to reverse the sharp decline in civil liberties and social rights (2011) and GNCHR, The need for constant respect of human rights during the implementation of the fiscal and social exit strategy from the debt crisis (2010), op.cit.

37. Observation (CEACR) - adopted 2011, published 101st ILC session (2012), Equal Remuneration Convention, 1951 (No. 100), Greece (Ratification: 1975), available from: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2699054. See also Observation (CEACR) - adopted 2012, published 102nd ILC session (2013) Discrimination (Employment and Occupation) Convention, 1958 (No. 111) – Greece, available from: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3084473.

38. Ombudsman, Special Report 2012, «Gender and labour relations», available from: <http://www.synigoros.gr/resources/docs/11eidikes-fylo--2.pdf>.

33. Council of Europe, Commissioner for Human Rights, *Safeguarding human rights in times of economic crisis*, November 2013, op.cit., p. 23, and *Protect women's rights during the crisis*, available from: www.commissioner.coe.int.

34. Observation (CEACR) - adopted 2011, published 101st ILC session (2012), Equal Remuneration Convention, 1951 (No. 100), Greece (Ratification: 1975), available from: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2699054.

35. Observation (CEACR) - adopted 2011, published 101st ILC session (2012), Equal Remuneration Convention, 1951 (No. 100), Greece (Ratification: 1975), available from: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2699054. See also Observation (CEACR) - adopted 2012, published 102nd ILC session (2013) Discrimination (Employment and Oc-

icy measures aiming at combating high female unemployment, the failure to encourage men's participation in family care, the gender pay gap to the detriment of women and the so-called «glass ceiling» on women's professional evolution indeed constitute problems of human rights and democracy.

Article 9 and 10

Changes in the Asylum System

In view of the Revised National Action Plan on the reform of the asylum system and migration management, the GNCHR welcomes the recent legislative progress³⁹.

Furthermore, it is important to highlight **that the intense interest shown by the GNCHR**, as an advisory body to the State regarding issues of protection and promotion of human rights, for matters which are relevant to the protection of aliens and, more specifically, of the procedure for the granting of international protection, **has indeed been recognised by the legislator through the institutionalisation of its contribution to the recruitment and function of the Appeals Committees** (both the new Appeals Authority and the Committees which have been enacted pursuant to the PD 114/2010).

The **Appeals Authority** was established by Law 3907/2011, by which was also established the new autonomous **Asylum Service**. Both services are part of the **Revised Action Plan**, which focuses on a new autonomous procedure, having as a sole task the granting of asylum or subsidiary protection in a short period of time. More specifically, the Asylum Service consists in the first autonomous structure in our country which is in charge of the examination of asylum claims, and more broadly of the international protection claims. It reports directly to the Minister of Public Order and Citizen Protection and is

operated by civil (not police) personnel, trained by specialists in the field with the cooperation of the UNHCR and the European Asylum Support Office. The Appeals Authority, on the other hand, consists in the second instance of examination of the asylum claims.

It should also be noted, at this point, that before the establishment of the new autonomous Asylum system, at the end of 2010, **Presidential Decree 114 introduced the so-called transitional system**, which would be valid until the new asylum system was enacted. **These Committees are still functioning, resolving pending asylum cases and expediting the remaining appeals.**

As far as the **composition of these second instance Appeals Committees is concerned**, we note that the Appeals Authority is composed of three-member independent appeals committees. Each committee consists of an esteemed person, specialised and experienced in refugee law or human rights law or international law, acting as Chair, a Greek citizen nominated by the UNHCR and a university graduate with a degree in law, political or social sciences, specialised in international protection and human rights issues, as members, along with their alternates. According to Article 3(3) of Law 3907/2011 on the *Establishment of the Asylum Service and the First Reception Service*, **the chairman and the third member of the Committee** created and functioning within the framework of the new Appeals Authority, as well as their alternates, **are appointed by the Minister of Public Order and Citizen Protection from a list drawn up by the National Commission for Human Rights**, in accordance with its Rules of Procedure. Similar to the abovementioned provision of Article 3(3) of Law 3907/2011 is the provision of Article 26 of the PD 114 on the *Procedure for the recognition to aliens and stateless persons of the status of refugee or beneficiary of subsidiary protection*, by virtue of which **the choice of lawyers, as well as their alternates**, with specialisation in refugee law or human rights law, who participate in the Appeals Committees functioning under the Ministry of Public Order and Citizen Protection, **is performed from a**

39. See *inter alia* PD 141/2013 on the recognition and the status of "international protection" of foreigners or PD 113/2013 On the establishment of a single procedure for granting the status of refugee or of beneficiary of subsidiary protection to aliens or to stateless persons in conformity with Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status (L 326/13.12.2005).

list established under the responsibility of the GNCHR.

Unfortunately, recent acts on the part of the Ministry for Public Order and Citizen Protection have seriously undermined the GNCHR's trust in the new Appeals Committees. This is the reason which led the GNCHR to issue a Public Statement dated 9th October 2014 in order to express its deep concern about the most serious and multiple consequences of the obvious legality issues arising from the recent procedure regarding the establishment of the Appeals Committees under Law 3907/2011, as amended by Law 4249/2014⁴⁰.

More specifically, pursuant to Article 3(3) of Law 4249/2014 on the selection procedure:

*"The Appeals Committees are composed of three members; an esteemed person, specialised and experienced in refugee law or human rights law or international law, acting as Chair and two persons holding a university degree in Law, Political or Social Sciences, specialised in international protection and human rights issues, as members, along with their alternates. **The Committee members shall be of Greek nationality. The chairman and the third Committee member, as well as their alternates, shall be appointed by the Minister of Public Order and Citizen Protection from a list drawn up by the National Commission for Human Rights, according to its Rules of Procedure, and shall be submitted within thirty (30) days from the submission of the relevant demand. The second member and his/her alternate shall be proposed by the UN High Commissioner for Refugees. The National Commission for Human Rights shall ensure that the relevant list includes at least double the number of people than the selection of Committee members required. In case of lapse of the aforementioned deadline or failure to draw up a list with the aforementioned number of proposed members, the relevant list is drawn***

up and submitted to the Minister by the Appeals Authority within ten (10) days from the submission of the relevant demand.

*The Appeals Authority draws up the list on the basis of the same criteria as those applied by the National Commission for Human Rights. **If the Appeals Authority fails to respond, for any reason whatsoever, within the deadline and with double the number of persons required, the third Committee member and his/her alternate shall be appointed by the Minister of Public Order and Citizen Protection on the basis of the same criteria as those applied by the National Commission of Human Rights**".*

Pursuant to this legislation, the GNCHR, in response to an invitation by the competent Ministry for Public Order and Citizen Protection, drew up, by the deadline provided by law, a list of suggested members for 8 Appeals Committees, following a relevant selection procedure conducted by a Selection Committee composed of eminent members of the GNCHR. After several months of undue delay, during which the international protection of second degree was actually non-existent, while the GNCHR had not been officially informed, Ministerial Decision No 9541/25.9.2014 (OJ 583/25.9.2014) was issued, which resulted in:

1. The establishment of the Committees with the participation of persons not included in the list submitted by the GNCHR, by the deadline provided by law.

2. The increase of the number of Appeals Committees by two, without the GNCHR having ever been asked to contribute thereto by proposing additional Chairmen and members, as provided by law in order for these Committees to be legally established. It must be pointed out that the law provides that in only two cases (expiry of the deadline for submitting the list or failure of the GNCHR to draw up the list) the Appeals Authority or the Minister for Public Order and Citizen Protection is competent to conduct the selection procedure, obligatorily applying the same criteria as the GNCHR, so as to ensure the protection of the rights of the applicants for international protection.

40. GNCHR, Public Statement on the procedure regarding the establishment of the Appeals Committees under Law 3907/2011, available from: http://www.nchr.gr/images/English_Site/NEWS/GNCHR_PublicStatement_Appeals-Committees.pdf.

In the above cases, however, the aforementioned exceptional conditions for the continuation of the procedure without the GNCHR contribution were not met. Therefore, it is obvious that the Ministry acted beyond its lawful competence, exercising unlimited discretion and following a procedure that raises serious questions of legality and of operational and substantive independence of the Appeals Committees. It is clear that the participation of the GNCHR (as well as that of the Office of the UN High Commissioner for Refugees) in the establishment of these Committees, as provided by law, is precisely aimed at avoiding such phenomena.

The GNCHR attaches particular importance to the institution of international protection and has issued a series of relevant Decisions and Recommendations. To this effect, it has also demonstrated in practice its active support to the new Asylum Service and has actively participated in the procedures laid down by law, thus expressing its trust, in particular in the work of the Appeals Authority.

The GNCHR, in the context of its institutional role as an independent advisory body to the State on Human Rights issues, will continue to closely monitor the issues of international protection.

Moreover, as far as the shift in the migrant path to the Aegean Sea is concerned, the GNCHR issued on February 2014 a Press Release *On the need to essentially investigate the circumstances of the tragedy at Farmakonisi*.

In particular, the GNCHR felt the need to both express its deepest sympathies and concern for the continued loss of human lives at sea and highlight the need to effectively investigate the circumstances of the recent Farmakonisi tragedy. In fact, it is imperative to ensure the transparency and independence of both the internal investigation in the context of official inquiry and the judicial investigation of complaints regarding any illegal practices of repulsion at sea and refoulement of aliens.

The GNCHR wishes to express its concern about the positions of competent institutional actors which could potentially create the impression that the need to investigate such events is

questioned or that it is attempted to anticipate the outcome of the investigation. Furthermore, the GNCHR, as part of the international institutional framework for human rights protection, wishes to stress that the best defence of our country's image, when criticisms and recommendations by international monitoring bodies are formulated, is to reinforce accountability and to fully comply with the rules of law.

More generally, the GNCHR recognises the strong immigration pressure the country receives due to its geographical position, the difficulty to control sea transport and its proximity to the main countries of origin. However, it repeats the opinion it has already formulated in its Observations⁴¹ of 12.5.2013: It is imperative to essentially and deeply investigate the claims and testimonies included in reports by international and European bodies, according to which operations of repulsion and refoulement of third country nationals constitute standard policy for addressing the immigration problem in our Country. These practices, being contrary to the international, European and national legal framework that governs the international protection of asylum seekers or recognised refugees entitled to protection in our country, constitute a flagrant violation of human rights.

Returning to its oral statement of 27 May 2014 on the UN Special Rapporteur's Report on the human rights of migrants, the GNCHR highlights the need to strengthen solidarity and distribute responsibilities in a fairer way among EU member States regarding the managing of migration flows.⁴² In order to effectively protect human rights, which is one of EU fundamental values, providing Greece with financial support is not enough. It is imperative that the asylum system be redesigned, focusing on the protection of human dignity and human rights and not

41. GNCHR, "GNCHR Observations on the Draft of the Second Periodic Report of the Hellenic Republic for the International Covenant on Civil and Political Rights (ICCPR)", *op.cit.*

42. UN General Assembly, Human Rights Council, 23d session, Submission by the Greek National Commission for Human Rights (NCHR) on the Report of the Special Rapporteur on the human rights of migrants, François Crépeau, Mission to Greece, 27 May 2013.

on practices of “storing” people in certain Member States.

Detention conditions in penitentiary institutions (par. 12 of the HRC Concluding Observations)

On July 4, 2014, the GNCHR issued a Press Release concerning the death of a detainee in the Nigrita prison, in which it recalled the following principles which are fundamental to European culture:

- Everyone has the right to life as well as to physical and mental integrity, which all state authorities have the duty to safeguard.
- Everyone has the right to a fair trial and, in case of criminal conviction, to detention conditions which guarantee his/her physical and mental integrity and protect him/her from any inhuman or degrading treatment.
- The death penalty has been abolished for all crimes and it cannot be replaced by self-redress.

The GNCHR recalls that Greece has been repeatedly condemned by the European Court of Human Rights for inhuman detention conditions.

The State is bound, apart from fully investigating the heinous acts in the Nigrita prison and punishing the perpetrators, as provided by our legislation, to take effective measures for purging our correctional system of state bodies that violate the aforementioned principles.

Finally, it is highlighted that the accumulated and chronic problems of the correctional system have shaped a state of lack of security and violation of fundamental human rights in our country’s prisons.

Article 14

Acceleration of judicial proceedings

The GNCHR participated in the session of the Standing Committee of Public Administration, Public Safety and Justice of the Parliament on the 29th January 2014, where it submitted observations with regard to the draft law “Fair satisfaction due to excess of the reasonable length of proceedings in civil and criminal courts and the Court of Audit”.

The GNCHR avails itself of the opportunity to remind its positions regarding the drastic increase in litigation costs for lodging legal remedies, and to once again emphasise how inappropriate this choice is as a means to resolve the problem of the excessive length of proceedings. The GNCHR, invoking ECtHR case law, has emphasised that such measures severely violate the right to access to Justice and judicial protection of a great number of individuals. This is the more so as a large and dramatically increasing part of the Greek population is exposed to poverty and social exclusion, as several treaty bodies have found.

It is an undeniable fact that the economic crisis in Greece is unprecedented in intensity and duration⁴³. According to Eurostat, in 2013 the Gross Domestic Product (GDP) of Greece had shrunk by 20.6% in comparison to 2009 (or even by 23.2% in comparison to 2007)⁴⁴, while the Group of Analysis of Public Policy of the Athens’ University of Economics notes that the poverty threshold based on a fixed rate has sharply risen, to 39% in 2012 and 44% in 2013⁴⁵. According to the Greek Statistical Authority (hereinafter ELSTAT), in 2012, 34.6% of the population (now obviously more) were at risk of poverty and social exclusion⁴⁶.

Moreover, pursuant to the 2nd MoU, the *minimum* wages under the National General CA of 15.7.2010 were reduced by 22% for all em-

43. See Athens University of Economics, Analysis Group for Public Policy, *Dimension of poverty in Greece of the crisis*, Newsletter 1/2012, M. Matsaganis, Ch. Leventi, E. Kanavitsa (dir.), available from: http://www.paru.gr/files/newsletters/NewsLetter_01.pdf and *The anatomy of poverty in Greece in 2013*, Newsletter 5/2013, M. Matsaganis, Ch. Leventi (dir.), p. 3-4, available from: http://www.paru.gr/files/newsletters/NewsLetter_05.pdf.

44. EUROSTAT, *Real GDP growth rate - volume*, available from: <http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&plugin=1&language=en&pcode=tec00115>.

45. See Athens University of Economics, Analysis Group for Public Policy, *The anatomy of poverty in Greece in 2013*, Newsletter 5/2013, M. Matsaganis, Ch. Leventi (dir.), available from: http://www.paru.gr/files/newsletters/NewsLetter_05.pdf.

46. ELSTAT, *Living conditions in Greece July 2014*, Labour market, Table 8, Poverty-inequality, Table 6, available from: http://www.statistics.gr/portal/page/portal/ESYE/PAGE-themes?p_param=A0101&r_param=SJO01&y_param=TS&mytabs=0.

ployees, except for those under the age of 25, for whom the *minimum* wages were reduced by 32%. Thus, the *minimum* monthly salary has reached 586.08 Euros and for the workers under the age of 25, 510.95 Euros, while the poverty threshold is 580 Euros⁴⁷. The ECSR found that this reduction of the young workers' salary constitutes a violation of the ESC. Indeed, in a period, of turbulence of growing intensity in the labour and social security field and of restrictions and deprivation of fundamental social rights, when a greater number of people than ever need effective judicial protection, the mounting barriers to access to Justice constitute a human rights violation of particular gravity.

For this reason and in order not to restrict access to Justice for individuals only, since it is only they who pay litigation costs, the GNCHR has recommended that, in case a legal remedy lodged by the State or legal entities governed by public law is dismissed, considerably increased litigation costs and pecuniary penalties be imposed, which will have a deterrent effect⁴⁸. As it is mainly the unjustified legal remedies lodged by the State and other public entities which burden the system of Justice, this is a way to reduce the courts' backlog without creating a problem of inequality of the parties.

The GNCHR, in its comments concerning the Draft law which became Law 4055/2012, invoked a specific opinion formulated in Opinion No. 4/2010 of the Administrative Plenary of the Council of State (Supreme Administrative Court), according to which "it is absolutely impossible to achieve an important reduction of the length of proceedings before the Council of State without drastically reducing the number of cases brought before it. This reduction cannot of course be achieved by legislative measures which would annihilate or seriously impede the

right of individuals, as guaranteed by the Constitution and the ECHR, to seek the annulment of illegal acts or omissions of the Administration. Consequently, the only measure available to the legislator for achieving a significant reduction of the cases brought before the Council of State, is the drastic reduction of the legal remedies lodged by the State and legal entities governed by public law, which, as they exercise public power, do not have a right to judicial protection, the latter being only guaranteed to individuals"⁴⁹.

Moreover, the GNCHR has recommended as a measure of support to those heavily afflicted by unemployment, job insecurity and the weakening of CAs, in line with Articles 21, 22(1) and (5), and 25 of the Constitution, that litigation costs be abolished at least for employment and social security cases and be drastically reduced for the other cases. At the same time, the legal aid system, which is inadequate mainly due to the very strict conditions subject to which it is available, must be reorganised and extended⁵⁰. These recommendations are also in line with the recommendations of ILO bodies for the taking of support measures in favour of workers in the framework of the crisis, as these recommendations have been formulated following complaints of the Greek Confederation of Labour (GSEE)⁵¹.

49. *Minutes of the Administrative Plenary of the Council of State No. 4/2010, specific opinion regarding the provision that became Article 12 of the Draft law. This opinion invokes the decisions made by the ECtHR, Radio France v. France 23.9.2003, par. 26 (on the admissibility), Monasteries v. Greece, 9.12.1994, par. 49, and Commercial, Industrial and Rural Chamber of Timisoara v. Romania, 16.7.2009, par. 15. To these decisions we add those of the ECtHR Section de Commune d' Antilly v. France, 23.11.1999 (on the admissibility) and Danderyds Kommun v. Sweden, 7.6.2001 (on the admissibility).*

50. Law 3226/2004.

51. ILO, *Committee on the Application of Standards, 2013 Report (102nd ILC)*, available from: http://www.ilo.org/ilc/ILCSessions/102/reports/committee-reports/WCMS_216456/lang--en/index.htm; *Committee on Freedom of Association, 365th Report of the Committee on Freedom of Association (November 2012), case 2820*, available from: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_193260.pdf; *Committee on the Application of Standards 2011 Report (100th ILC)*, available from: http://www.ilo.org/global/standards/WCMS_165970/lang--en/index.htm. See also ILO, *Committee of Experts on the Application of Conventions and Recommen-*

47. ECSR 23.5.2012, *Complaint No. 66/2011, General Federation of Employees of the Public Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece.*

48. GNCHR, *Comments on the Draft law of the Ministry of Justice titled "Acceleration of proceedings in administrative courts and other provisions"*, Report 2010, p. 123, available from: http://www.nchr.gr/images/English_Site/DI-KAIHDIKH/2010_Dioiktikh_Dikh.pdf.

Article 19

Racist Violence and hate speech - Antiracist Legal framework

On December 17, 2013 the GNCHR issued a Press Release concerning the *Memorandum of the Greek National Commission for Human Rights (GNCHR) on the Draft law on Combating Racism and Xenophobia*, by which the GNCHR, closely monitoring the initiatives towards changing or reinforcing the current antiracist legislation, restated its positions on the issue.

More particularly, regarding the Draft law of the Ministry of Justice, Transparency and Human Rights "Amendment of Law 927 /1979 (A 139) and adaptation to the Framework Decision 2008/913 /JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law", which was brought before the Greek Parliament, the GNCHR highlighted the impact of its positions on the drafting of a new statute.

Despite the constant disruptions in the legislative procedure, the GNCHR has been consistently stressing the need to combat racist violence and has adopted the following texts:

- [Press release](#) - "GNCHR [Memorandum](#) on antiracist legislation" (16.9.2013)
- [Observations](#) on the Draft law of the Ministry of Justice, Transparency and Human Rights on combating certain forms and expressions of racism and xenophobia by means of criminal law (17.3.2011) and
- [Two special reports](#) entitled "Police and Justice: combating racist violence" and "Extremist groups, public discourse and racism in sports", which were published in the 2011 GNCHR annual report under a special heading on racist violence.

dations, 2013 Report, available from: http://www.ilo.org/ilc/ILCSessions/102/reports/reports-submitted/WCMS_205472/lang--en/index.htm; 2012 Report, available from: http://www.ilo.org/ilc/ILCSessions/101stSession/reports/reports-submitted/WCMS_174843/lang--en/index.htm; 2011 Report, available from: http://www.ilo.org/ilc/ILCSessions/%20100thSession/reports/reports-submitted/WCMS_151556/lang--en/index.htm and ILO's High Level Mission to Greece, Report (November 2011), available from: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/missionreport/wcms_170433.pdf.

Given the crucial current social conjuncture during which the present draft law is about to be examined, the GNCHR seizes the opportunity to formulate the strong belief that the message of the clear, explicit and without differentiation or reserve condemnation of racially motivated crimes, with determination and sincerity, both in theory and in practice, must be sent both inside and outside the country. Effectively combating expressions of racism and xenophobia and punishing bigotry and racist rhetoric is of primary importance to the Greek State, in particular as regards the preservation of democracy and the Rule of Law.

In view of the serious challenges our country is nowadays facing, it is imperative to align the current legislative framework for combating racial discrimination, the ineffective application of which has repeatedly been of concern to international bodies, with the provisions of the Council Framework Decision 2008/913 /JHA (28 November 2008). Therefore, the amendment of Law 927/1979 appears to *a priori* aim at "creating a modern and effective institutional framework for combating demonstrations of racism and xenophobia as well as crimes committed with such motives, while covering particular aspects of the issue by introducing legal means of protection and providing proportionate and effective sanctions."

It is of primary importance, however, to highlight the danger of focusing public attention on the criminalisation of racist speech as a counterweight to the absence of any sanctions for acts of violence whatsoever. Combating racist speech is an important step which can prevent acts of racist violence. Nevertheless, under no circumstances does it fulfill the obligation to investigate and punish - and in essence actually disdain - acts of racist violence. For this reason, it is important to strongly emphasise the need to take parallel and effective educational initiatives at schools and bring into effect measures for sensitizing general population in order to avoid strengthening the impression that violence and racism are acceptable by the State and therefore by society as a whole.

Racist Violence Recording Network⁵²

Year 2013 has been of key importance for the developments of racist phenomena in Greece. The last quarter of the year is demarcated by the murder of Pavlos Fyssas, the criminal investigations and the arrest and detention before trial of persons allegedly involved in the murder, as well as of leading members of Golden Dawn with many offences, the most important being the formation of a criminal organisation⁵³. During this quarter a significant decrease of incidents of racist violence is noted, reinforcing the belief that it took a long time for the Greek authorities to acknowledge the existence, the volume, the characteristics and the need to deal with the phenomenon of racist violence.

The investigation of past cases of racist violence and prosecution of criminal acts in which members of Golden Dawn are allegedly involved have been very positive steps. In no case, however, should we ignore the long-term institutional tolerance towards crimes with bias motivation. Moreover, it should be emphasised that anti-racist rhetoric must be constantly reflected in concrete and coherent measures. At this level, the institutional deficiencies remain. The failure to provide any guarantees for the filing of complaints by persons who have been victims of racist violence but do not possess legal document is considered one of the most important deficiencies. Effective prevention and combat of hate crime presupposes the effective ability of the victim to report such a crime under safe conditions, without fear of being penalised or found in such a position that would deter the victim from reporting the crime. The setting up of the De-

partments and Offices combatting racist violence within the Hellenic Police, an initiative welcomed by the Network, is a necessary but insufficient condition for the effective combat against this phenomenon. Other prerequisites are necessary, which have not yet been addressed. These include transparent and objective selection and recruitment procedures of the personnel of these units; specialised training; the ability of victims of racist violence without legal documents to lodge a complaint; and effective investigation and conviction of racially motivated unlawful acts by police officers.

Moreover, the monitoring of specific cases which have been recorded by the Racist Violence Recording Network demonstrates that the racist motivation is not thoroughly and carefully investigated by law enforcement authorities from the stage of preliminary investigation. Finally, particular concern is caused due to the significant increase of incidents where police violence is connected to racist violence, namely when the perpetrators are members of the law enforcement bodies. The culture of impunity for such acts is reinforced by the lack of an effective independent mechanism to investigate complaints of police brutality and arbitrariness, in accordance with the recommendations of international bodies.

After two and a half years of operation and after having published four reports and a number of written interventions to the State authorities, the Network notes that most of its observations are now considered as common ground. Data published by the Network constitutes a reference point for national and international human rights institutions. However, the responsibility to systematically record hate crimes is primarily a state one. A well-governed state should be seeking acknowledgment, recording and prosecution of hate crimes. On the contrary, any negligence in recognizing and dealing with the phenomenon by the competent state authorities maintains and aggravates the belief that such criminal acts are tolerated, thus fueling tensions which disrupt social cohesion and undermine the basic principles of the rule of law.

52. Pursuant to an initiative of the GNCHR and the Office of the UNHCR in Greece and the participation of NGOs and other actors, the Racist Violence Recording Network was established. The Network, which is composed of actors who offer medical, social and legal services to victims of racist violence, aims at combating racist violence. Among these actors are, inter alia, Medecins du Monde, Amnesty International, Hellenic League for Human Rights, Greek Helsinki Monitor, Greek Council for the Refugees, whilst the Greek Ombudsman participates with an observant status.

53. Racist Violence Recording Network, Annual Report 2013, available from: http://rvrn.org/wp-content/uploads/2014/04/Report2013_EN.pdf.

For the above reasons, under no circumstances should one get the impression that Greece has adequately dealt with the problem of racist violence. The risk of resurgence is present –many recent data indicate that– while even the temporary decrease of serious racist crimes should not allow us to overlook everyday incidents of lower intensity which reveal the constant presence of widespread racist attitudes within the society and its endemic presence in public administration and the security bodies. We must also point out emphatically that in the future, when the trials of the members of Golden Dawn shall be on-going, special care must be taken for the protection of the human rights’ defenders and the witnesses of racist attacks, who may be targeted because of their role.

Findings

During the period January – December 2013, the Racist Violence Recording Network documented, through interviews with victims, 166 incidents of racist violence with at least 320 victims: 143 incidents were committed against immigrants or refugees, while the other 22 were committed against LGBT persons and 1 against a human rights defender (legal counselor of victims). The number of victims is significantly higher because of the recording of the incident of labour exploitation linked with racist motive in Nea Manolada, where 155 victims were shot and 35 of them hit by the supervisors of their employers.

Geographical and temporal dispersion: 103 incidents occurred in Athens, and particularly in areas of the city centre, such as Aghios Panteleimonas, Attica Square, America Square and other areas around Omonia, while 8 incidents were recorded in the broader area of the region of Attica. Moreover, 15 incidents were recorded in Thessaloniki, 15 in Patras, 1 incident with 155 victims in Nea Manolada, Iliia, 5 in Piraeus, 5 in the Prefecture of Heraklion, Crete, 4 in Chania, 2 in Mytilene, while incidents were also recorded in Rhodes, Lamia, Kos, Corfu, Kavala, Giannitsa and on a ship sailing in Greek territorial waters.

The majority of incidents occurred in public places, whereas the incidents which occurred in

areas of detention were increased (23 incidents within police stations or immigrants’ detention centres). This finding, together with the increase in racist incidents of police violence in general, raises particular concern (see a specific reference in the unit “Involvement of police personnel and public servants in racist attacks”).

It is worth noting that during the critical period after the murder of Pavlos Fyssas and the arrest of leading members of Golden Dawn with offences of establishing a criminal organisation (October-December 2013), the Racist Violence Recording Network recorded 18 incidents of racist violence. The significant decrease in the incidences of racist attacks compared to the previous months of 2013, apart from the positive dimension it bears, supports the relevant data and position of the Network regarding the existence of hit squads, against which the Greek State was unfortunately too slow to take action.

Characteristics of the attacks: The majority of incidents concern physical attacks against migrants and refugees, while the types of crimes are mainly severe personal injuries (in 75 cases) and personal injuries (in 58 cases), mostly combined with threats, verbal abuse, property damage and theft. Most incidents occurred at night or in the early morning hours.

There were also 27 incidents of verbal violence (verbal abuse, threats), 1 of which was combined with insults to the victim’s religion, 1 was combined with indecent exposure/insult to sexual dignity and 12 with arbitrary detention after the victim was arbitrarily brought before the authorities. Furthermore, there were 2 incidents of arson and 3 incidents of disturbance of the domestic peace, accompanied by threats and verbal abuse.

It must also be noted that the Racist Violence Recording Network recorded, after contact with the victim’s family and representatives of the Pakistani community, the fatal attack against the 26-year old Sachzat Loukman by two persons on a motorcycle in Petralona in early 2013.

In at least 20 recorded incidents, the victims were targeted due to discriminatory motives in conjunction with other motives. These are the so-called “mixed motive” hate crimes, a

phenomenon which has been identified and analysed in detail in the relevant international literature⁵⁴. The "mixed motive" incidents which were recorded by the Network concern either racist attacks emanating from and in conjunction with labour exploitation (the most emblematic case is in Nea Manolada) or racist attacks followed by removal of assets (mobile phones, money and/or legal documents of residence). These incidents are typical racist crimes, since the victim is targeted and the criminal act takes place because of the victim's perceived "diversity". The victim's "diversity" in these incidents is the determining element⁵⁵.

Victims: The victims who approached the members of the Network and reported the incidents, consisted of 296 men, 11 women, 1 trans man and 12 trans women.

The average age of victims is 29 years.

Within the group of **immigrants and refugees**, the victims originated from Afghanistan (51), Pakistan (11), Algeria (4), Bangladesh (164), Egypt (4), Morocco (8), Somalia (3) Sudan (6), Guinea (6), Tunisia (1), Iran (6), Syria, (3), Eritrea (1), Congo (4), Nigeria (6), Senegal (1), Palestine (1), Ivory Coast (3), Albania (1), Burkina Faso (3), Ghana (1), Libya (1), Mali (2), Mauritania (1), New Guinea (1) and Cameroon (1). Furthermore, 2 victims were citizens of Bulgaria, while in one incident the origin was not declared.

As regards the legal status of the above victims (at the time they were recorded by the Network): 66 were asylum seekers, 4 were recognised refugees, 14 were holders of legal residence permits, while 213 held no legal documents or were under deportation orders.

In the vast majority of cases, the victims consider that their characteristics as foreigners is the reason for the attack; they believe that they were targeted because of their skin color,

ethnic origin or religion and/or any other relevant characteristic revealing the fact they were not natives (the majority of foreign victims were Muslims).

Within the **group of LGBT persons**, the Racist Violence Recording Network documented in 2013 six (6) victims of attacks based on sexual orientation. These incidents involve threats, verbal abuse and, in one case, physical injuries.

There were also 16 recorded victims of racist violence due to gender identity. Most of them concern cases of arbitrary detention of trans women in Thessaloniki, where many persons were multiply victimised, since they were taken in police stations in degrading conditions and detained for two or three days (see a specific reference in the section "Involvement of police personnel and public servants in racist attacks"). There were also 4 recorded incidents involving verbal abuse, threats and personal injuries.

Finally, the Racist Violence Recording Network recorded an incident of arbitrary detention of the lawyer of the victims during the above-mentioned incident when the victims were arbitrarily brought before the authorities.

Perpetrators: The perpetrators of the attacks recorded were almost always men, except for 14 cases of attacks by mixed groups where participation of women is also recorded. In two incidents women were recorded as perpetrators: one incident of verbal abuse and denial of medical treatment in a hospital pharmacy because of national origin, and one incident of verbal abuse and personal injury due to sexual orientation.

The average age of the perpetrators in the incidents where the victims were able to assess it, was approximately 27 years. The overwhelming majority of the perpetrators are of Greek nationality. There were also 3 recorded assaults by mixed ethnic groups, e.g. an assault by a group involving Albanian perpetrators in the centre of Athens. In only 6 among 166 reported assaults there was one single perpetrator. Most assaults were committed by groups of 2-10 persons.

Verbal assault is recorded in 2 incidents (verbal abuse, threats, degrading behavior), while in 2 incidents the perpetrators were the employers of the victims. Finally there were 44

54. Although one definition of the "typical" hate crime is widespread, when the perpetrator's motive is purely racist, many times the motivation behind a hate crime is quite complex. Research has shown that hate crimes often have multiple motives. ODIHR-Hate crime laws, pp. 53-54.

55. See also the Special Report of the Greek Ombudsman, "The phenomenon of racist violence in Greece and how it is combated", p. 14.

recorded incidents of violence by uniformed officers (see next chapter).

In 75 cases, the victims of the attacks believe that the perpetrators are linked to extremist groups. This also emerges from the qualitative data collected regarding the attacks, as well as the *modus operandi* recorded in the 2012 annual report and continues to be recorded in 2013: in these cases, the perpetrators are believed to act in organised groups, moving either by motorcycle or on foot, often being accompanied by large dogs. They are dressed in black and at times with military trousers, wearing helmets or having their faces covered. Most assaults occur after sunset or in the early morning hours. Motorcycle or foot "patrols" by persons dressed in black are the most common practice; they act as self-proclaimed vigilante groups who attack refugees and migrants in the streets, squares or public transportation stops.

It must be noted that, in 15 cases, the victims or witnesses to the attacks reported that they recognised persons associated to Golden Dawn among the perpetrators, because either they wore the insignia of the organisation, or they were seen participating in public events of the organisation in the area, or they were known as members of the local branches of the party.

Intensity of attacks and weapons: Qualitative data on the nature of the attacks resulting from the recording of the incidents demonstrate the continuation of the *modus operandi* of racist violence organised groups in 2013: the victims report the use of weapons during the attacks, such as clubs, crowbars, folding batons, spray, chains, brass knuckles, knives and broken bottles, use of large dogs. The victims often suffer multiple injuries such as fractures, sprains, lacerations, abrasions, eyesight and hearing damages, symptoms of post-traumatic stress, etc.

Involvement of police personnel and public servants in racist attacks: Apart from the aforementioned incidents, the following picture prevails in the incidents involving police officers: **third country nationals, regardless of their residency status, are exposed to violent behavior on the part of some police of-**

ficers and other law enforcement officials.

It appears that they are targeted because of stereotypes, shortcomings, and distortions within the migration policy and because of their particular vulnerability, as the incidents often take place without the presence of witnesses or in detention facilities. The Racist Violence Recording Network observes with great concern the increase in incidents where police violence is linked to racist violence.

Among 44 incidents of violence by uniformed officers recorded in 2013, 23 took place in detention facilities. In 31 incidents, the victims reported that they were targeted because of the fact they were not natives and/or their skin color, religion and ethnic origin. 10 of them took place in detention areas (police stations, detention centres). In these incidents the uniformed officers, during the exercise of their duties and in routine operations, resort to unlawful acts and violent practices.

In 12 incidents recorded during June-July 2013, the victims were targeted due to their gender identity: the incidents involve repetitive arbitrary detention of trans women in Thessaloniki. These incidents were reported extensively in the press during that period and they were accompanied by threats, verbal abuse, derogatory characterisations regarding gender identity, denial of access to a legal counsel, and in one case even denial to provide medication.

Finally, the Network expresses great concern over the incident regarding the arbitrary detention of the victims' legal counselor.

Furthermore there were 2 recorded incidents where the perpetrators were public officials, namely:

- 1 incident during which a student, according to her testimony, fled to the teachers' room to be protected from being attacked by her classmates because of gender identity. The school guard locked her in the classroom, showing indifference for her security, and when the Director of the school arrived, he allegedly told her, "I will call Golden Dawn just for you".

- 1 incident during which a hospital pharmacy supervisor verbally allegedly abused a foreign woman and refused to give her medi-

cal treatment, although she showed her asylum seeker's documentation.

The Racist Violence Recording Network expresses particular concern regarding recorded racist incidents by uniformed officers and civil servants, noting that they should be addressed with particular attention as they bear a particular moral condemnation since they are being committed by representatives of the state.

Complaints and the authorities' response: At the time of the recording, only 33 among 166 incidents were reported to the police, thus initiating criminal proceedings. The vast majority of victims did not wish to take any further action, mainly because of fear associated with the lack of legal documents (see below, "Access of the victims to the justice system").

There were also reports concerning unwillingness or discouragement and, in some cases, refusal on behalf of the police authorities to collaborate in practice and encourage the lodging of a complaint. Furthermore, some victims did not wish to lodge a complaint because they had previously been victims of police violence or because they knew that the perpetrators had relationships with the police and/or Golden Dawn and they feared that they would be targeted. There were also reports on the lack of confidence of the victims in the justice system and consequently many of them feel that it would be hopeless to initiate criminal proceedings.

These indicative reports demonstrate that, in general, an important part of the prosecuting authorities consider racist attacks as an everyday phenomenon integrated into a "normality" and, therefore, do not feel there is any special need to address it. The victims' testimonies frequently show that, when present, authorities avoid intervening during the incidents and, when they do so, they often treat the victims with depreciation and/or they are discouraging them from initiating any process.

The Racist Violence Recording Network once again assesses that the recorded findings are exceptionally alarming, while increasing concern rises from the fact that the incidents recorded by the Network's members are only the tip of the iceberg. The geographically limited range of the

participating organisations, the spreading fear amongst the victims which often prevents them from approaching even the organisations which support them in order to report the incidents, even anonymously, as well as the limited capacity of organisations to provide effective protection to the victims, are strong indications that the number of racist violence attacks recorded by the Network is much lower than the actual one. This conclusion is reinforced from the frequent media reports of incidents in areas different from the ones where the participating organisations are active, while it is validated by the report of the Greek Ombudsman: "It is interesting but not inexplicable that the incidents which were initially collected from the press are usually not found in the list of the Network and vice versa. There are essentially two ways of recording which **complement one another** since most victims of attacks who have chosen to address the Network do not wish, mainly because of fear, frustration or lack of confidence in the state institutions, to take further actions in respect to their case"⁵⁶.

Important developments against racist violence by the competent police and judicial authorities

Departments and Offices combating racist violence within the Greek Police:

In its 2012 Annual Report, the Network welcomed the legislative initiative of the Ministry of Public Order and Citizen Protection to establish Departments and Offices combating racist violence within the Greek Police (Presidential Decree 132/2012). At the same time the necessary conditions for the effective operation of these units were highlighted, including transparent and objective selection and recruitment processes of the officers, specialised training, as well as the urgent need to investigate and convict unlawful actions by racially motivated police officers.

According to data shared with the Network by the Greek Police, in 2013, the competent authorities of the Greek Police (Departments and

⁵⁶. See also the *Special Report of the Greek Ombudsman, "The phenomenon of racist violence in Greece and how it is combated"*, p. 15.

Offices combating racist violence) recorded nationwide one hundred and nine (109) cases with suspected racist motive. All of them were investigated further and were submitted to the local competent Prosecuting Authorities. In forty-three (43) of them charges were pressed under Law 927/1979.

However, these figures relate only to a small sample of racist violence assaults which took place in Greece in 2013, since as explained below, they are reports by holders of legal residence documents and therefore had the possibility to lodge a complaint before the police authorities (apart from the telephone complaints). It is indicative that, from the 166 incidents recorded by the Network, only 33 were actually reported to the police.

Moreover, the Racist Violence Recording Network notes that the two-day training for persons serving in these Departments at the beginning of their operations is considered insufficient for the increased training needs on such sensitive and complex issue. The Network therefore suggests a mandatory process of continuous training, for the police officers appointed in these Departments, as well as for the entire personnel of the Hellenic Police who come into contact with vulnerable social groups. To that end, the Network has repeatedly proposed to the Greek authorities to formally request assistance from international and European organisations with expertise and experience in training security bodies and judicial authorities. It is also proposed to draft Guidelines containing basic information and guidelines related to hate crime. The Racist Violence Recording Network could be actively involved.

Access of victims to the justice system:

There is, currently, no guarantee as regards the possibility to lodge a complaint by persons who do not hold legal documents. Persons without legal residence documents, who constitute the majority of victims of racist attacks according to the recordings of the Network, even in case they wish to denounce the incidents, are automatically detained upon their arrival at the police station, and issued with detention and deportation orders. As a result they are deterred

from reporting racist violence incidents against them. If legal proceedings are initiated, persons without legal residence documents are again discouraged to participate in the process, as they are threatened with arrest and detention for the purpose of deportation. It must be stated that the majority of victims who were recorded by the Network in 2013 did not wish to lodge a complaint due to fear mainly related to the lack of legal documents.

However, effective prevention and combat of hate crime presupposes the effective ability of the victim to report such a crime under safe conditions, without fear of being penalised or found in such a position that would deter the victim from reporting the crime. Competent authorities should encourage and facilitate the victims – regardless of their residence status in the country – to report threats or assaults against them. The Racist Violence Recording Network, in order to effectively address the above issue and reduce subsequent impunity, had proposed in its first recommendations towards the authorities in 2012 to explicitly provide for the suspension of arrest and deportation decisions against victims who file a complaint, complemented by the granting of a residence permit on humanitarian grounds, similar to the protection framework for victims of trafficking. More specifically, it is suggested, in cases where victims and/or witnesses without legal residence documents report incidents of racist violence, to suspend arrest and deportation decisions under a special prosecutor act which shall at first verify the grounds of the complaint and shall recognise a victim or witness of a racist crime as such, in order to grant a special protection status (residence permit on humanitarian grounds) for the time deemed necessary for the prosecution and conviction of the perpetrators and pending final judgment in the criminal proceedings against the offender.

The above proposal by the Network was reflected in the draft for the Ratification of the Code of Immigration and Social Integration, as was initially submitted in the Greek Parliament, in the provisions on humanitarian status (Article 19) where in case (b) it was added that it would be possible to grant a residence permit for hu-

manitarian or other reasons to “victims and essential witnesses of crimes which are provided for in Articles 187, 309 and 310 of the Criminal Code or which are punished as a felony and committed against their life, health, physical integrity, assets, property and personal and sexual freedom, provided that the prosecution procedure has been initiated or that preliminary examination was ordered pending a final court decision or until the procedure is closed. The fulfillment of these requirements shall be established by an act of the competent Public Prosecutor, both before and after the prosecution. The act of the Public Prosecutor shall be notified to the Directorate of Migration Policy of the Ministry of Interior”.

The above provision, which provided for a residence permit on humanitarian grounds for all victims of felonies, came to fill the legal vacuum which existed on the residence permits of racist crimes victims, by expanding it to all victims of felonies irrespective of the racial motive in the criminal acts. The Racist Violence Recording Network welcomed this initiative insofar as it would contribute to the effective access of victims and witnesses to the Greek justice system. The Network expresses its great concern for the non adoption of this specific provision, as the Code of Immigration and Social Integration was ratified without the provisions for humanitarian status (Article 19). In any case, the Network expresses its intense opposition to the recently promoted amendment which essentially exempts public officials from any accountability and leads to the further intimidation of the victims. This unacceptable amendment reverses the burden of proof in the expense of the victims, threatening them with deportation and immediate court under the flagrant crime procedure and essentially criminalizing the recourse to legal protection⁵⁷.

The message of the State must be the absolute respect of the physical integrity and safety

of any person living in the Greek territory. Lack of a protection mechanism for victims of racist violence sends a message of impunity to organized groups of racist violence and exacerbates the lack of confidence in the rule of law.

Adequate investigation of racial motive:

The Racist Violence Recording Network recognises the Greek authorities have made positive steps towards effective recording and prosecuting hate crimes. The recognition of the racial motive as an aggravating circumstance in November 2013 for the first time, in a trial regarding arson in a store in Kypseli belonging to a national of Cameroon is an important step towards this direction. Another positive step is the significant increase in racially motivated cases which have found their way to the courts, the most significant being the ongoing trial for the murder of Sachzat Loukman in January 2013 in Petralona.

However, based on the monitoring of specific cases which have been recorded by the Racist Violence Recording Network, it appears that the racial motive is not thoroughly and carefully investigated by the law enforcement authorities at the stage of preliminary investigation. The Police Circular dated 24/5/2006, which states that, in the framework of their enforcement action and particularly during preliminary investigation, the Police Authorities should investigate the possibility of a racial motive in the crimes committed, should collect information and record/report incidents through a specific form for all crimes with racist or multiple (mixed) motive, seems to remain inactive.

In terms of court proceedings, the impunity of the perpetrators is a result of the fact that the relevant provision of Article 79(3) of the Criminal Code which was added through a legislative amendment in 2008 and stipulates that the perpetration of an act of hatred on national, racial, or religious grounds or hatred due to differentiated sexual orientation or gender identity constitutes an aggravating circumstance, is not applied by neither the police nor the Prosecutor at the stage of the criminal prosecution; it is applied only at the stage of the decision on the

57. See relevant press release by the Racial Violence Reporting Network: <http://rvrn.org/2014/03/%CE%BD%CE%B1-%CE%B1%CF%80%CE%BF%CF%83%CF%85%CF%81%CE%B8%CE%B5%CE%AF-CE%B1%CE%BC%CE%AD%CF%83%CF%89%CF%82-%CE%B7-%CE%B1%CF%80%CE%B1%CF%81%CE%AC%CE%B4%CE%B5%CE%BA%CF%84%CE%B7-%CF%84%CF%81%CE%BF%CF%80/>.

sentence, thus, after the guilt or innocence of the offender has been established.

It is therefore necessary to take an immediate legislative initiative in order to ensure the investigation of racial motive at the stage of preliminary investigation, regardless of the aggravating circumstance at the stage of the decision on the sentence.

Along with the explicit commitment of the prosecuting authorities to record, from the moment a complaint has been filed, any events or suspicions of the victim that relate to racist motives, it is required to establish provisions which: a. provide that the crime committed with racist motive is a distinct offence; or b. provide, in relation to some specific types of crimes (including, indicatively, those against life, physical integrity, personal freedom and property), for a sentence increase in case the crime is committed due to racist motive; or c. provide for the racist motive to constitute a general aggravating circumstance, but within a specific framework regarding the sentencing of the crime. In that manner, the exercise and initiation of the prosecution will be facilitated on the basis of a specific type of crime that will allow the investigation of the racist motive already from the beginning of the criminal proceedings, including the stages of interrogation and judicial process.

Nevertheless, it should be reiterated that, notwithstanding any legislative amendment, the State should provide adequate training and guidance to the prosecuting and judicial authorities involved so that the racist motive is investigated at all stages of the criminal proceedings.

Adequate investigation and combat against racist violence by police officers:

The Racist Violence Recording Network notes with concern the increase in incidents where police violence is linked to racist violence. It is imperative to deal effectively with the reports/testimonies/complaints about any kind of police arbitrariness, whether it is an offense by the police officers during the performance of their duties or perpetuation of stereotypical reactions against the victims, which are stemming from personal opinions, or the absence of specific training so that racist behaviors which

constitute violations of human rights may directly or indirectly evolve. Therefore, the practical and unconditional condemnation on behalf of the State of any act of police brutality and arbitrariness is imperative.

To this end, it is proposed to amend the current legislative framework with a view to establishing an effective mechanism for complaints regarding police violence and arbitrary incidents, for the independent investigation and monitoring in accordance with the recommendations of international organisations. The Network emphatically reiterates the recommendations of the Greek Ombudsman and the National Commission for Human Rights⁵⁸ in order to resolve the issue of the effective functioning as well as of the independence of the Offices against Incidents of Arbitrariness, which are provided for by Law 3938/2011, but are not operating. The same applies for the Commission which is foreseen in the same Law for the assessment of the complaints, the function of which is critical in order to review cases after the issuance of relevant decisions by the European Court of Human Rights.

Adequate investigation of attacks on grounds of sexual orientation and gender identity:

The Racist Violence Recording Network has expressed its satisfaction for the explicit inclusion of gender identity in the last subparagraph of Article 79(3), namely in cases of crime victims where the motive of hatred constitutes an aggravating circumstance under Law 4139/2013. This is a positive step that brings our country closer to European laws and practices.

However, P.D. No. 132/2012 by the Ministry of Public Order and Citizen Protection on the establishment of specific Departments and Offices combating racist violence includes persons or groups of persons victimised solely because of "their racial or ethnic origin or their religion". Therefore, both this P.D. and any legislative initiative aiming to tackle hate crime should include the cases of persons being targeted because of a different sexual orientation and gender identity.

58. http://www.nchr.gr/images/pdf/apofaseis/astunomia/Grafeio_Kataggelion_2010.pdf.

2. Oral Statements

2.1 Oral statement by the GNCHR during the presentation of the Report on Greece of the Working Group on Arbitrary Detention, at the Human Rights Council of the UN 27th Session. The statement was read by the representative of the International Coordinating Committee of National Human Rights Institutions in Geneva (ICC), Katharina Rose (1.9.2014)

The Greek National Commission for Human Rights warmly thanks the Working Group for visiting Greece and meeting its representatives. We fully agree that progress has been made, but much remains to be done, mainly in practice.

We share the Working Group's concern for the length of detention of migrants, the failure to apply alternatives and the detention of minors, bad detention conditions and the heavy backlog of asylum cases – problems to which we have repeatedly drawn the authorities' attention. We agree with the positive evaluation of several legislative measures, including those regarding asylum procedures. However, there are currently problems with the staffing of the appeals committees, which hamper their operation and independence and which the Government should be asked to remedy.

We are very glad that the Working Group recalls that 90% of undocumented migrants enter the EU via Greece, which for most of them is not their final destination, while the Dublin system criteria that overburden the Greek asylum system, in particular in times of financial crisis, are maintained by Regulation (EU) 604/2013.

Besides, we note that budget cuts have dangerously affected the de-institutionalisation of the mentally ill.

We agree with the Conclusions and Recommendations. We particularly thank the Working Group for recommending the reinforcement of our Commission through the provision of competent staff and resources.

However, support for the de-institutionalisation of the mentally ill should also be recommended, while, regarding migrants, recom-

mendations should also be addressed to the EU. The Special Rapporteur on human rights of migrants stressed the need for more solidarity and responsibility-sharing among EU Member States and for the revision of the Dublin system. Indeed, in view of the growing migration flow, it is not merely by providing financial assistance to Greece that the EU will fulfil its primary duty to protect human rights. The EU asylum system must be re-designed and focus on human dignity and rights – not merely on ways to stockpile human beings in some Member States.

2.2 Participation of the GNCHR in a teleconference meeting of the UN Committee on the Rights of Persons with Disabilities with the National Human Rights Institutions (NHRIs) and national monitoring mechanisms of the International Convention on the Rights of Persons with Disabilities. The GNCHR was represented by GNCHR Legal Officer, Ms Aik. Tsampi, who read the relevant statement (23.9.2014)

ICC: First Meeting between the CRPD Committee and NHRIs

Greek National Commission's for Human Rights Oral statement

The Greek National Commission for Human Rights warmly thanks the Committee on the Rights of Persons with Disabilities (Committee) and the ICC for inviting it to participate, as a NHRI, in this important forum.

However, we deplore the fact that no independent monitoring mechanism has been set up in Greece in compliance with Article 33(2) of the Convention on the Rights of Persons with Disabilities (the Convention). This is an infringement of the Convention and of EU law of which the Convention has become an integral part.

The violations of the rights of persons with disabilities are not scarce in Greece. For example, many public buildings are not accessible to persons with mobility problems. The right of access to education is often violated.

More generally, we strongly support the strengthening of the interaction between the Committee, NHRIs and other NMMs.

The Committee should require that a channel of information exchange and cooperation between NHRIs and NMMs be established in each country, which will be continuously open and will yield material for the Committee. It should be also ensured that sufficient time is given to consideration by the Committee of the cooperation between NHRIs/NMMs and with the Committee and due account should be taken of the costs involved in securing the effectiveness of this cooperation.

Apart from simplifying the reporting procedure itself, it is important for the NHRIs to be able to present a report/communication at any moment at which they deem this necessary. In this way the *décalage* between the report cycles can be avoided. The designation of focal points within both the Committee and NHRIs/NMMs should be encouraged so that the interaction among them can be fostered.

The Draft Programme of work suggests that the Committee Concluding Observations should support the establishment and development of NHRIs/NMMs. It should be added, that these Observations should also invite the States to support, strengthen and ensure the effective and independent operation of the already existing NHRIs/NMMs. Finally, a practical data-base providing all kinds of information and material necessary for the effective cooperation of NHRIs/NMMs with the Committee should be created.

3. Presentations-Papers

3.1 Presentation of the Ms S. Koukoulis-Spiliotopoulou, chair of the Fifth Sub-Commission, in a roundtable on the general subject "Experiences from the implementation of austerity measures and violations of human rights at a time of limited financial resources," the meeting of the International Coordinating Committee of National Human Rights Institutions (ICC), in Geneva (13.3.2014)

Experiences with austerity measures and violations of human rights in times of limited economic resources*

by Sophia Koukoulis-Spiliotopoulos
Preliminary observations

1. In January 2014, the European Network of National Human Rights Institutions (ENNHRI) addressed open letters to Mr J.-M. Barroso, President of the European Commission, and Mr M. Draghi, President of the European Central Bank, "On the upcoming Troika visit to Greece". In these letters ENNHRI expressed its concern for the austerity measures imposed on Greece by "Memoranda of Understanding" (MoUs) signed by the European Commission, acting on behalf of the Euro-area Member States, and the Hellenic Republic, as conditions for the disbursement of loan installments. The implementation of the MoUs is monitored by the "Troika" (International Monetary Fund (IMF), European Commission and European Central Bank (ECB)).

* This paper draws on a paper entitled "Austerity measures v. Human Rights and EU foundational values", which was attached to the open letters of the European Network of National Human Rights Institutions (ENNHRI), dated 10 January 2014, to Mr J.-M. Barroso, President of the European Commission, and Mr M. Draghi, President of the European Central Bank, "On the upcoming Troika visit to Greece": <http://nhri.ohchr.org/EN/Regional/Europe/Pages/Regional-Documents.aspx>; and <http://www.nchr.gr/index.php/en/2013-04-03-10-23-48/2013-04-03-10-41-02>. See also our contribution to the Turin Conference on the European Social Charter, 2014: <http://racseanesc.org/2014/10/11/contributions-individuelles-des-membres-du-racse-a-la-conference-de-turin-2014-individual-contributions-of-members-of-the-anesc-to-the-conference-of-turin-2014>. The statistics are updated. The views herein expressed do not necessarily reflect those of the GNCHR.

2. As ENNHRI underlined in its open letters, “several [MoU] requirements have been and are being fulfilled at the expense of the full enjoyment of human rights by the people of Greece, including civil and political rights and economic, social and cultural rights”. However, ENNHRI’s concerns are wider. Its observations and recommendations were aimed at safeguarding universal values and principles, which also constitute foundations of the European Union (EU).

3. In support of its observations and recommendations ENNHRI invoked findings of treaty bodies, in particular the European Committee of Social Rights (ECSR), the quasi-judicial body which is competent to interpret and monitor the application of the European Social Charter (ESC), according to which several austerity measures taken in Greece violated the ESC. ENNHRI also invoked reports of international independent experts, in particular the “UN independent expert on the effects of foreign debt and other related international obligations of States on the full enjoyment of all Human Rights, particularly economic, social and cultural rights”, Dr. Cephias Lumina, who also harshly criticised the adverse effects of austerity measures on human rights in Greece and other countries.

4. ENNHRI called for “new methods and measures for the EU and the Troika to ensure that their proposed policy changes in a given country do not arbitrarily affect certain segments of the society – especially vulnerable groups – disproportionately or lead to effective infringements of the enjoyment of essential human rights”. “Only by connecting macro-economic decision-making processes and human rights can we decelerate, perhaps even invert, the transformation of the financial crisis into a humanitarian crisis”.

5. ENNHRI recalled that the EU Member States are bound by human rights obligations and that the EU has oriented all its policies on human rights in the EU Treaty and the EU Charter of Fundamental Rights (the EU Charter) which is binding on Member States and all EU bodies. It consequently called on the European Commission and the ECB to carry out a systematic *ex ante* human rights impact assessment of all austerity measures; to make sure they do not

lead to human rights violations; and to integrate human rights institutions and experts in the process of macro-economic decision-making.

6. Indeed, as the ECSR is constantly stressing, “the economic crisis should not have as a consequence the reduction of the protection of the rights recognised by the [European Social] Charter. Hence, governments are bound to take all necessary steps to ensure that [they] are effectively guaranteed at a period of time when beneficiaries need the protection most [...]. Doing away with such guarantees would not only force employees to shoulder an excessively large share of the consequences of the crisis, but also accept pro-cyclical effects liable to make the crisis worse and to increase the burden on welfare systems”.

7. The above core principles, which underlie the work of the ECSR, were recalled in seven decisions by which the ECSR found that several austerity measures taken in Greece violated the ESC 1961¹. The dramatically deteriorating socio-economic situation in Greece provides a typical example of how austerity measures may seriously undermine human rights, in particular social rights. Other quasi-judicial treaty bodies, such as the ILO Committee on the Application of Conventions and Recommendations (CEACR), the ILO Committee on Freedom of Association (CFA) and the Council of Europe (CoE) Committee of Ministers in its capacity as a treaty body for the European Code of Social Security, have also found that austerity measures taken in Greece are violating the treaties the application of which they are monitoring.

1. ECSR decisions on the merits of 23.5.2012, Complaints No. 65/2011, *General Federation of Employees of the Public Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece*; No. 66/2011, *General Federation of Employees of the Public Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece*; ECSR decisions on the merits of 07.12.2012, Complaints No. 76/2012, *Federation of employed pensioners of Greece (IKA-ETAM) v. Greece*; No. 77/2012, *Panhellenic Federation of Public Service Pensioners (POPS) v. Greece*; No. 78/2012, *Pensioners' Union of the Athens-Piraeus Electric Railways (I.S.A.P.) v. Greece* No. 79/2012, *Panhellenic Federation of pensioners of the Public Power Corporation (POS-DEI) v. Greece*; No. 80/2012, *Pensioners' Union of the Agricultural Bank of Greece (ATE) v. Greece*.

8. In the issue paper "*Safeguarding Human Rights in times of economic crisis*"², the CoE Human Rights Commissioner underlined that, since 2010, many governments have focused on emergency austerity policies, often side-stepping regular channels of participation and democratic checks and balances. Public budget cuts, regressive tax hikes, reduced labour protection and pension reforms have exacerbated the severe human consequences of the economic crisis, affecting the whole spectrum of human rights. However, "*economic, social and cultural rights are not expendable in times of economic hardship, but essential to sustained and inclusive recovery*". He draws attention to the accountability of European and international institutions of economic governance, "*which have assumed a central role in enforcing austerity*".

9. The findings of international treaty bodies, officials and experts are mostly converging. They are all stressing that the socio-economic and financial crisis does not exempt States from their duty to respect and effectively safeguard, in law and in practice, human rights, which set limits to state financial and social policies. At the same time, they are seriously questioning the overall effectiveness of austerity measures. Moreover, they often draw attention to the accountability of all the parties to the "*mechanism of support*" to the Greek and other economies for the observance of these limits. Indeed, all EU institutions are accountable for this situation along with Member States, under the EU Charter (see No. 21 below).

10. The ECSR, the ILO bodies, the CoE Committee of Ministers and Dr. Cephas Lumina quote a Recommendation by the Greek National Commission for Human Rights (GNCHR) "*On the imperative need to reverse the sharp decline in civil liberties and social rights*"³. In this Recommendation, the GNCHR summarised striking features of the situation in Greece. It expressed its "deep concern" at "*the dramatic deterioration of living standards*", "*coupled with the disman-*

ting of the Welfare State and the adoption of measures incompatible with social justice" which breach European and international human rights norms. Warning that there is "*[no] future for the Union, if fundamental civil liberties and social rights are not guaranteed*", the GNCHR called for "*a joint mobilisation of all European forces, if it is to save the values on which the European civilisation is founded*". In a recent follow-up Resolution, the GNCHR presented the decisions and reports of treaty bodies and it reiterated and updated its recommendations⁴. As EU "*economic governance*" measures of purely monetarist character, with spillover effects across Greater Europe, are multiplying, the call of the GNCHR is more urgent than ever.

11. The European Commission shares the above concerns. In particular, deploring that "*social issues have so far not appeared explicitly in the implementation of the MIP [macroeconomic imbalances procedure]*", it underlines that "*making such a link more explicit [...] would ultimately help to identify policy measures to correct imbalances while minimizing their social consequences*" and proposes a social dimension for the EMU⁵.

A. Features of the real situation in Greece

12. An ILO High Level Mission that visited Greece in September 2011 estimated that "*should unemployment increase to 1 million from the [then] 800.000, social security funds would lose €5 billion annually and the sustainability of the benefits provided by them would be called into question*"⁶. The ECSR also recalled in all Greek cases that "*the increasing level of unemployment is presenting a challenge to social security and social assistance systems, as the number of beneficiaries increases, while tax and social contribution revenues decline*".

2. See www.commissioner.coe.int.

3. Recommendation adopted unanimously by the GNCHR Plenary on 8 December 2011: <http://www.nchr.gr/index.php/en/2013-04-03-10-23-48/2013-04-03-10-41-02>.

4. "The GNCHR Recommendation and decisions of international bodies on the conformity of austerity measures to international human rights standards", see website in previous note.

5. Communication from the Commission to the European Parliament and the Council, "Strengthening the social dimension of the EMU", COM(2013) 690 final.

6. ILO, Report on the High Level Mission to Greece (Athens, 19-23 September 2011): <http://www.ilo.org>.

13. Meanwhile, unemployment in Greece is soaring. According to the latest data of the Hellenic Statistical Authority (ELSTAT), in June 2014 (a period of seasonal employment), the unemployed were 1.303.884 and the unemployment rate was 27% (men: 23.8%, women 31.1%, 15-24 age group: 51.5%)⁷. Long-term unemployment (over 12 months) was 71.4% of total unemployment in the first quarter of 2014⁸. The unemployment allowance, which a mere 9% of the registered unemployed receive for a maximum of twelve months in principle, is EUR 360 per month, plus EUR 36 for each dependent family member⁹.

14. This allowance is well below the poverty threshold, which, as the ECSR indicated, is about EUR 580 for Greece; at the same time, the ECSR deplored that there is no concept of a “*subsistence wage*” in Greece and warned of “*a large scale pauperisation of a significant segment of the population*” – problems also underlined by the ILO CEACR.

15. Recent research revealed that, in 2013, 44,3% of the population were below the poverty threshold; 1 in 7 persons were below the ‘extreme’ poverty threshold (compared to 1 in 9 in 2012 and 1 in 45 in 2009), mainly due to “*the steep rise in joblessness, combined with the dramatic gaps in coverage left by a patchy and inadequate social safety net. This is Greece’s New Social Question*”, a dramatic feature of which is “*the massive phenomenon of jobless couples with children, lacking unemployment benefits or other income support*”. “*A sharp shift in policy is called for: a comprehensive upgrading of income support and social services to prevent the economic crisis from mutating into a social catastrophe*”¹⁰.

16. The ILO Mission deplored the lack of any *social impact assessment* of the austerity meas-

ures. When it met the Mission, the Government admitted that “*it did not have an opportunity, in meetings with the Troika, to discuss the impact of social security reforms on the spread of poverty, particularly for persons of small means, and the social security benefits to withstand any such trend [nor] the impact that policies in the area of taxation, wages and employment would have on the sustainability of the social security system*”. Also, the Mission “*was struck by reports that in discussions with the Troika employment objectives rarely figure*”.

17. When they met the Mission, the European Commission’s representatives expressed “*serious doubts about the sustainability of the situation*”, while the IMF representatives “*were very concerned about high and rising unemployment, not least as Greek social safety nets were weak [...] only a few of the unemployed received adequate unemployment benefits*” (see Nos. 13-14 above). No meeting of the Mission with the ECB is reported.

18. By not responding to questions asked by the ECSR (see No. 30 below), the Government reaffirmed the lack of any social impact assessment of the austerity measures.

19. This omission has not been subsequently remedied, as the ILO CEACR and the CoE Committee of Ministers deplored. Both bodies stressed the urgent necessity for such an assessment, to be made in cooperation with the social partners, and to be “*put on the agenda of future meetings with the parties to the international support mechanism*”, with the aim of “*determining the most rapid scenarios for undoing certain austerity measures and returning disproportionately cut benefits to the socially acceptable level which at least prevents the ‘programmed’ impoverishment of the beneficiaries*”¹¹.

20. UN Independent Expert Dr. Cephias Lumina¹² is stressing that rights guaranteed by

7. ELSTAT Press release September 11 for June 2015: <http://www.statistics.gr>.

8. <http://www.statistics.gr>.

9. According to the Manpower Employment Organisation (OAED) which pays it: <http://www.oaed.gr>.

10. Athens University of Economics and Business, Policy Analysis Research Unit (PARU), Newsletter 5/2013, “Poverty in Greece: trends in 2013”: <http://www.paru.gr>.

11. CEACR Report ILC 102nd Session (2013); ILC 103rd Session: C. 102, Greece; Committee of Ministers Resolution CM/ResCSS(2013)21 (period from 1 July 2011 to 30 June 2013).

12. 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, End of Mission State-

international law, “particularly socio-economic rights, are under threat of being undermined by the harsh procyclical policies the Government has been constrained [by the Troika] to implement”; “the successively rigid measures have resulted in the contraction of the economy and significant social costs for the population (including high unemployment, homelessness, poverty and inequality)”. He is also deploring drastic health budget cuts and rising barriers to access to health and medical care. The growing deterioration of physical and mental health care is also of concern to the CoE Parliamentary Assembly, which is warning that “Greece is now faced with a health and even humanitarian crisis”¹³.

B. Are the measures condemned by treaty bodies compatible with EU law?¹⁴

I. Measures condemned by the European Committee of Social Rights in light of EU law

21. The social rights enshrined in the ESC and the ILO Conventions, which, as the ECSR and ILO bodies found, were violated by Greece, are also guaranteed by EU law, in particular primary law (the Treaties, the EU Charter and the general principles of EU law), as also expressed in EU Directives. Several general principles were formulated by the CJEU, before the EU Charter came in force, as primary EU law norms. Most of them were incorporated into the EU Charter, while the CJEU will continue under the new TEU (Arts. 6(3), 19(1)) to formulate new ones.

ment, 26.4.2013: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID>.

13. PACE, Doc. 13225/7.6.2013, Committee on Social Affairs, Health and Sustainable Development, “Equal access to health care”. Rapporteur Mr J-L. Lorrain, after a fact-finding visit to Athens of Ms L. Pasquier, Chair of the Committee: <http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID>; PACE Resolution 1946 (2013) adopted on 26 June 2013 (24th Sitting), referring to the above Committee report: <http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=19776&Language=en>. See also Kentikelenis, M. et al ‘Greece’s health crisis: from austerity to denialism’, *The Lancet*, Vol. 383 - February 22, 2014.

14. On the matters dealt with in this chapter see more in particular our paper attached to the ENNHRI open letters, *op.cit.*, where relevant CJEU case law is also referred to.

The EU Charter and the general principles are binding on all EU institution, bodies, offices and agencies, and on Member States when they act within the scope of EU law, according to Art. 51(1) of the EU Charter, as interpreted by well established CJEU case law¹⁵. It is thus obvious that the Greek cases raise issues of compatibility of austerity measures with EU law, along with issues of accountability of all parties involved in the “mechanism of support” to the Greek economy.

a) *Discrimination on grounds of age in employment and social security: EU law*

22. Most measures condemned by the ECSR fall within the scope of the EU general principle of non-discrimination on grounds of age, which has vertical and horizontal effect. This principle is enshrined in Art. 21 of the EU Charter, which prohibits all discrimination on grounds *inter alia* of age, and is expressed in Directive 2000/78/EC¹⁶, which sets out minimum standards for the public and private sectors regarding employment and occupation (Arts. 3, 8 of the Directive). Directive 2000/78 – to be also read in light of the right to work enshrined in Art. 15(1) of the EU Charter) – must be given a broad, teleological interpretation which ensures effective protection against discrimination on any of the grounds that it covers.

23. This Directive prohibits (direct and indirect) discrimination in “employment and working conditions, including dismissals and pay” (Arts. 2(2), 3 (1)(c)). ‘Pay’ includes severance allowances and occupational social security benefits (e.g. pensions, sickness benefits), according to Art. 157 TFEU, which also applies to the grounds covered by this Directive. Differential treatment based on the sole criterion of age constitutes direct discrimination, which is, according to well established CJEU case law, unjustifiable.

24. In light of well established CJEU case law, we can consider that the violations of the

15. CJEU C-617/10 Åkerberg Fransson, EU:C:2013:105 C-92-93/09 Schecke [2010] ECR I-11063; C-236/09 Test-Achats [2011] ECR I-773; C-402/05P, 415/05P Kadi [2008] ECR I- 6351.

16. Directive 2000/78/EC (Equal Treatment in Employment and Occupation), OJ L 303/16, 2.12.2000.

ESC found by the ECSR are very likely to constitute violations of the EU Charter and Directive 2000/78 as well.

b) The ECSR decisions

i) Termination of the employment contract without notice and severance allowance

25. The ECSR found that a provision making the first year of employment on a contract of indefinite duration a probationary period, during which termination without notice and severance allowance is allowed, violates Art. 4(4) of ESC 1961 ("*right to a reasonable period of notice*")¹⁷.

26. This measure affects the conditions of dismissal of a category of workers most of whom are very likely to be young. It thus establishes a difference in treatment indirectly linked to age, which constitutes indirect discrimination on grounds of age, unless it is "*objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary*" (Directive 2000/78 Art. 2(b)(i)).

27. In the ECSR case, the Government invoked "the trial nature" of the working period concerned and "*the unstable nature of Greek enterprises' activities due to the economic crisis*". The ECSR replied: "*the only acceptable justification for immediate dismissal is serious misconduct*". The Government's arguments seem also inadequate under EU law; this is the more so as they constitute "*mere generalisations*", which are insufficient according to CJEU case law.

28. According to the ECSR and the CJEU, the notice and the allowance are aimed at assisting workers in finding new employment. The workers concerned are hard hit by the measure, as it totally deprives them of their income. Moreover, the measure affects their right to work; this is the more so as their employment prospects are increasingly gloomy. The inadequacy of the justification is corroborated by the admitted lack of impact assessment and the ineffectiveness of austerity measures deplored by treaty bodies. This measure is thus likely to conflict with Directive 2000/78 and Arts. 21 and 30 EU Charter ("*protection in the event of unjustified dismissal*").

17. ECSR Complaint No. 65/2011, *op.cit.*

ii) "Sub-minima" for young workers – limitation of their social security coverage

29. Another ECSR decision regarding Greece¹⁸ concerned a provision reducing the minimum wage for workers below 25 years old to 68 % of the national minimum wage ("*sub-minima*"). The Government justified it as an incentive to employ young workers, aimed at combating their acute unemployment while ensuring a decent living. The ECSR found that this wage is below the poverty level (€ 580 for Greece), in breach of ESC 1961 Art. 4(1) ("*right to a fair remuneration sufficient for a decent standard of living*"), while there is no concept of a "*subsistence wage*" in Greece. It considered that the extent of the reduction and the way in which it applies to all workers below 25 are disproportionate, even in the particular economic circumstances, and concluded that this provision also violates ESC 1961 Art. 4(1), in light of the non-discrimination clause of the Preamble to ESC 1961 (*discrimination on grounds of age*).

30. The same ECSR decision also concerned a provision restricting the social security coverage of workers aged 15 to 18, employed on "*special apprenticeship contracts*" of up to one year. Noting that this provision established a distinct category of workers within the social security system, the ECSR requested information on: i) the reasons for these restrictions, their necessity and their results, and ii) the existence of social assistance measures for those who find themselves in need due to these restrictions. The Government gave no reply. Consequently, the ECSR found a violation of Art. 12(3) of ESC 1961 ("*right to social security*").

31. The above measures fall within the scope of the EU principle of non-discrimination on grounds of age, which precludes the determination of the level of pay (including occupational social security benefits) by reference to the worker's age. They are thus likely to constitute direct discrimination on grounds of age under EU law as well, since age is the *sole criterion* of pay differentiation (see Nos. 22-23 above). Furthermore, a decent standard of living is also

18. ECSR Complaint No. 66/2011, *op.cit.*

an EU norm – an expression of human dignity, which is a fundamental principle and right and an EU foundational value: Arts. 2, 3(1) and (3) TEU, Arts. 1 (“*human dignity*”); 31(1) EU Charter (“*right of every worker to working conditions which respect his or her health, safety and dignity*”). Moreover, Art. 151 TFEU refers to ESC 1961.

iii) Reduction or suppression of retirement benefits on grounds of age

32. By five further decisions¹⁹ the ECSR found that reductions or suppression of retirement benefits, “*due to their cumulative effect*” and “*the procedures adopted to put them into place*” violate ESC 1961 Art. 12(3). Some of these measures are related to age (they disadvantage beneficiaries below 55 or 60 years of age). The Government argued that they aim to enhance economy competitiveness and labour market operation, and are required by the MoU, while exceptions are provided for vulnerable groups.

33. The ECSR deplored that “*even taking into account the particular context in Greece created by the economic crisis and the fact that the Government was required to take urgent decisions [...], [it] has not conducted the minimum level of research and analysis into the effects of so far-reaching measures that is necessary to assess in a meaningful manner their full impact on vulnerable groups*”. Thus, “*it has not been discovered whether other measures could have been put in place, which may have limited the cumulative effects of the contested restrictions upon pensioners*”, while “*the adopted measures risk bringing about a large scale pauperisation of a significant segment of the population*”.

34. These measures fall within the scope of the EU non-discrimination principle and are likely to constitute direct discrimination on grounds of age, regarding occupational social security benefits, since the *sole criterion* of differentiation is age (see No. 22-23 above). In any event, a decent standard of living is also a fundamental right under EU law (see No. 31 above), while,

as the CJEU acknowledged, persons below 55 years of age are likely to have more financial needs than older persons, due to heavier family burdens. Indirect gender discrimination prohibited by Art. 23 of the EU Charter and Directive 2006/54/EC (equal opportunities and treatment of men and women in employment and occupation (recast))²⁰ is also likely, as most pensioners below 55 years old are mothers of minor children who were entitled in the past to an earlier pension, after a shorter period of service, as the ILO Mission noted²¹. Further, the fundamental “*right of the elderly to lead a life of dignity and independence and to participate in social and cultural life*” (Art. 25 EU Charter), an expression of the fundamental right and EU foundational value of “*human dignity*” (Art. 1 of the EU Charter, Art. 2 TEU) is an ultimate barrier to austerity.

b) No paid annual leave for young workers

35. By its second decision on austerity measures²², the ECSR also dealt with “*special apprenticeship contracts*” for young persons aged 15-18, who were not entitled to paid annual leave, and found a breach of ESC 1961 Art. 7(7), which requires at least three weeks paid leave. This issue falls within the scope of a fundamental principle of EU social law that allows no derogations and has vertical and horizontal effect. This principle, which is enshrined in Art. 31(2) EU Charter (“*fair and just working conditions*”) and referred to in Directive 2003/88/EC²³, grants all workers a right to at least four weeks paid annual leave (one week more than the ESC 1961 minimum). The provisions condemned by the ECSR thus violate that (broader) principle, which prevails.

II. Measures condemned by the ILO bodies in the light of EU law

a) Trade union and collective bargaining rights (Conventions 87 and 98)

36. All ILO bodies are stressing that trade union and collective bargaining rights, being

20. OJ L 204/23, 23.7.2006.

21. ILO, Report on the High Level Mission to Greece, *op.cit.*

22. ECSR Complaint No. 66/2011, *op.cit.*

23. Directive 2003/88/EC (working time) OJ L 299/9, 4.11.2003.

19. Decisions on Complaints Nos. 76/2012, 77/2012, 78/2012, 79/2012 and 80/2012, *op.cit.*

fundamental international labour law principles, are of wider importance for labour relations and social cohesion and peace. The CFA, the CEACR and the Committee on the Application of Standards found numerous violations of Conventions 87 and 98 in the public and private sectors, due to statutory measures imposed in the context of the international mechanism of support to the Greek economy. These measures introduced repeated and extensive interference, seriously weakening collective bargaining and collective agreements (CAs) and violating the autonomy of social partners²⁴.

37. These measures restricted or abolished the binding nature of CAs; moreover, they reversed CA hierarchy, with the result that the fundamental principle of favourability to workers was abolished; they imposed or allowed derogations from CAs, to the detriment of workers; they modified or replaced CA clauses by unfavourable statutory provisions; they restricted the subjects of CAs. Finally, following substantial statutory reductions of the general minimum wages, their determination was removed from the scope of national general CAs and assigned to the legislature. Essential safety nets were thus abolished.

38. The ILO bodies acknowledged that, in very exceptional circumstances, certain state interferences may be allowed, provided they are limited in time (not exceeding anyway three years) and degree, they are subject to full and in-depth prior and subsequent consultations and assessment with the social partners and they are accompanied by adequate safeguards to protect workers' living standards. As none of these requirements was met, they requested that the Government urgently review the measures with the social partners and the Troika, so as to make them compatible with the Conventions.

39. However, the statutory interferences, which started in 2010, are being constantly extended and intensified, and so are the Troika re-

quirements. Each austerity measure is thus of limited duration, in the sense that, after a while, it is totally or partially replaced by a stricter measure, as the previous one has proven ineffective. The Government, admitting the lack of *ex ante* and *ex post* consultations and impact assessment and the inexistence of the concept of "*subsistence wage*", invoked the urgent character of the austerity measures, as conditions for the disbursement of loan instalments, and the need to improve Greece's competitiveness by reducing labour costs, as required by the Troika. Yet, the CFA recalled that, in discussions with the ILO Mission (No. 17 above), employers' organisations stated that labour costs "*are not what is hindering Greek business*"²⁵.

i) Characteristic cases of violation of the rights to collective bargaining and equal treatment in light of EU law

40. Among the measures violating the rights to collective bargaining and equal treatment, according to ILO bodies, are increasing and massive staff reductions in the public sector, imposed by the MoU, which are made through either *ipso jure* dismissals or other retrenchment measures, such as pre-retirement suspension or "*labour reserve*", that conceal collective dismissals. The CFA considered that such measures should be the subject of extensive *ex ante* and *ex post* consultation with the social partners. It urged the Government to engage immediately in constructive social dialogue aimed at taking steps to mitigate their massive consequences, something that may relieve the downward economic spiral that they caused²⁶. The CEACR formulated similar observations and considered such measures contrary to Conventions 151 (labour administration in the civil service), 154 (promotion of collective bargaining), 100 and 111 (see No. 40 below)²⁷.

41. Under EU law, the above measure is likely to constitute direct discrimination in pay, i.e. wages and social security benefits (cf. Nos.

24. CFA 365th Report (November 2012), Case 2820, Conclusions; CEACR, Report to 101st ILC session (2012) and Report to 102nd ILC Session (2013) on Conventions 87 and 98, Greece; Committee on the Application of Standards, Report to ILC 102nd Session, Part II/76-8, Greece, Conclusions, *op.cit.*

25. CFA, Case 2820, *op.cit.*, par. 960.

26. CFA, Case 2820, *op. cit.*, par. 991.

27. CEACR, 102nd ILC (2013), C. 151 and 154; 101st ILC (2012); 102nd ILC (2013), C. 100, 111.

22-23 above) on grounds of age. The CJEU considers the Greek social security scheme for civil servants occupational.²⁸

ii) The right of collective bargaining and action or freedom of association under EU law

42. The right of collective bargaining and action or freedom of association, including the right to engage in trade union activities and to negotiate and conclude CAs, is a fundamental right recognised by the CJEU long ago as a general principle of EU law it is enshrined in Arts. 12 (1) (*“freedom of assembly and association”*) and 28 (*“right of collective bargaining and action”*) of the EU Charter (Art. 28 explicitly guarantees the right of employers’ and workers’ organisations to negotiate and conclude CAs). It is thus binding on both EU and Member States. It is also guaranteed by international treaties that have inspired the EU general principle and the EU Charter, including, besides ILO Conventions 87 and 98, the ECHR (Art. 11: *“freedom of assembly and association”*). According to Art. 52(3) EU Charter, the meaning and scope of Charter rights which correspond to ECHR rights *“shall be the same as those laid down by [the ECHR]”*.

43. The ECtHR, interpreting Art. 11 ECHR in a dynamic and evolutionary way, is extending the scope of the rights and limiting the possibilities of their restriction. It holds that this Article imposes on the States a negative obligation (to refrain from arbitrary interferences) and a positive obligation (to ensure the effective enjoyment) regarding the rights, including the right of trade unions to negotiate and conclude CAs and *“to be heard” “for the protection of their interests”*. These obligations apply to the private and public sectors and are binding on all state authorities, including the courts.

44. Art. 11 (2) ECHR allows restrictions to the exercise of these rights subject to very strict conditions: that they are *“prescribed by law”*, *“clearly and strictly defined”* and *“necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder and crime, the protection of health and morals or the protection of rights and freedoms*

of others”. These exceptions *“must be interpreted strictly, in a way which ensures concrete and effective protection of the rights”*. They may only be justified by *“convincing and imperative reasons”*. The States have *“a restricted margin of appreciation”*, subject to *“strict European control”* of the law and its implementation.

45. The ECtHR has referred to Arts. 28 and 12(1) EU Charter, both before the EU Charter acquired binding force and thereafter, considering that they correspond to Art. 11 ECHR. It noted that *“the [EU Charter] adopts a wide approach of trade union rights”* and acknowledged it as one of the important European developments from which it should draw inspiration in order to extend the interpretation of Art. 11.²⁹ We may thus consider that the numerous violations of trade union rights found by the ILO bodies also constitute violations of Arts. 12(1) and 28 EU Charter, in the light of ECtHR case law.

b) Right to social security (Convention 102), wage protection (Convention 95)

46. The CEACR is deploring the consecutive drastic pension cuts, as a condition for bailout funds, with retroactive effect, some of them harsher for pensioners below 55 years old, while retirement age was further raised (from 65 in 2010, to 67 in 2012). It underlines that *“pension cuts across the board have put a large percentage of the population into instant poverty, with no indication as to when and how [it] would recover”*. The Government *“did not respond to [its] previous demand to assess the spread of poverty in the country and to consider social security policies in coordination with its tax, wage and employment policies under the [MoU]”*. *“In view of the serious deterioration of the situation in Greece, [it is] an urgent duty of the Government to assess past and future austerity measures in relation to one of the main objectives of the Convention, the prevention of poverty [...] and to put this question on the agenda of its future meetings with the parties to the international support mechanism for Greece”*.

28. Case C-559/07, *Commission v. Greece*, *op.cit.*

29. See in particular *Demir and Baykara v. Turkey*, 12.11.2008 and *Enerji Yapi-Yol Sen v. Turkey*, 21.4.2009.

47. The CEACR is also deploring that *“there is no concept of a subsistence wage in Greece”, while “the minimum pension is set well below the poverty threshold”. “In a country where large segments of the population live below the poverty threshold, wages and benefits should be linked to indicators of physical subsistence [...] determined in terms of the basic needs and the minimum consumer basket”. It asked the Government “whether any subsistence level is established for different age groups [...], if so, how it is determined and how it is related to the minimum wage and minimum amounts of social security benefits”.*

48. The above *“raise concerns about the impact of austerity policies on the viability of the social security system, its observance of the minimum standards prescribed by the Convention, and its capacity to reduce poverty and ensure subsistence” as well as compliance with “the principles of social solidarity, justice and equity in handling the crisis”. “Applying exclusively financial solutions to the economic and social crisis could lead to the collapse of the internal demand and the social functioning of the State, condemning the country to years of economic recession and social unrest”.*

49. The CEACR is calling for *“the reverse engineering of austerity”* through *“the most rapid scenarios of undoing certain austerity measures and returning disproportionately cut benefits to the socially acceptable level, which at least prevents the ‘programmed’ impoverishment of the beneficiaries”*³⁰. It is also deploring wage cuts and delays in wage payment due to financial problems of many enterprises, which also affect pensions. It is *“seriously concerned about the cumulative effect these measures have on workers’ income level and living standards and compliance with labour standards on wage protection”*³¹.

50. In its observations on Conventions 102 and 95, the CEACR is quoting the GNCHR (Recommendation, Nos. 3-6 above) regarding *“the ongoing drastic reductions in even the lower salaries and pensions”* and *“the drastic reductions*

or withdrawal of vital social benefits”. The CEACR is noting that *“as this Recommendation has not been followed by the Government, the Court of Auditors, which vets Greek laws before they are submitted to parliament, one year later, ruled that recurrent cuts in pensions were contrary to the Constitution as they conflict with the constitutional obligation to respect and protect human dignity, the principles of equality, proportionality and the protection of labour”*.

51. As these measures were judged by the ECSR, we refer to No. 39 above regarding EU law and we recall that in EU law *“human dignity”* is the ultimate barrier to austerity.

c) Conventions 100 (equal pay), 111 (discrimination) and 156 (family responsibilities)

52. The CEACR is deploring the *“disproportionate impact”* of the crisis and austerity on women: *“the combined effect of the financial crisis, the growing informal economy and the implementation of structural reform measures adversely affect the negotiating power of women, and lead to their over-representation in precarious low-paid jobs”*. It is indicating several factors that are favouring direct and indirect gender discrimination, the widening of the gender pay gap and the exponential rise of female unemployment (No. 20 above). It is recalling that *“collective bargaining is an important means of addressing equal pay issues in a proactive manner, including unequal pay that arises from indirect discrimination on the ground of sex”*. The reversal of CA hierarchy (No. 43 above) and the facilitation of part-time and rotation work and subcontracting by temporary employment agencies are affecting more women; due to their weak negotiating power, such forms of work are more often imposed on them, while their pay is reduced. This is often happening to mothers returning from maternity leave, in spite of their statutory protection³². The above may also involve breaches of Directives 2006/54/EC (No. 39 above), 92/85/EEC (maternity protection) and 2010/18/EU (parental leave)³³.

30. CEACR Report 102nd ILC (2013), C. 102, Greece, op.cit.

31. CEACR Report 102nd ILC (2013), C. 95, Greece, op.cit.

32. CEACR Reports 101st and 102nd ILC (2012 and 2013), C. 100, 111, 156, Greece: website in note 4.

33. OJ L 348/1, 28.11.1992; OJ L 68/13, 18.3.2010.

Concluding remarks

53. Austerity measures have contributed in Greece to a massive loss of employment in the private and public sectors and unprecedented labour law deregulation leading to increase in atypical, insecure, low-paid and non-insured employment. This situation, coupled with drastic social budget, wage and pension cuts and rising direct and indirect taxes and other charges, has led to a *"large scale pauperisation of significant segments of the population"*, as the ECSR and other treaty bodies deplore. Women and the young are greatly and increasingly affected. Furthermore, the treaty bodies have found that no social impact assessment of the austerity measures has been made.

54. We have examined the measures condemned by treaty bodies in light of EU law and we have expressed the opinion that most of these measures are very likely to also constitute violations of EU law.

55. Indeed, it is the future of the EU and Greater Europe that is at stake. As the GNCHR recalled in its 2011 Recommendation, the CJEU has held that the EU *"is not merely an economic union, but is at the same time intended, by common action, to ensure social progress and seek constant improvement of the living and working conditions of the peoples of Europe, as is emphasised in the Preamble to the Treaty"*³⁴. Moreover, the EU Charter, which is binding on both the EU and its Member States, guarantees indivisible civil liberties and social rights and proclaims that the EU *"places the individual at the heart of its activities"*³⁵. We expect that the EU Charter will be interpreted and applied in that vein, as a *"living instrument"*, in light of the fundamental EU values and objectives. As the EU values are pan-European, indeed universal, the ECSR and the ILO bodies have opened the way.

34. CJEU Cases C-50/96 Schröder [2000] ECR I-774; C-270/97 Sievers [2000] ECR I-933. The passage quoted in these judgments remains in the EU and TFEU Preambles.

35. Regarding the GNCHR Recommendation, see No. 7 above.

4. Cooperation with National Authorities

4.1 The GNCHR contribution to the drafting of the 2014 Report of the Hellenic Center for Disease Control and Prevention (HCDCP) on HIV/AIDS to UN-AIDS, ECDC and WHO (25.2.2014)

I. Introductory Observations

The Hellenic Center for Disease Control and Prevention (HCDCP), which operates, since 2008, as the national focal point for the drafting of the national report regarding the implementation of international commitments on HIV/AIDS, addressed to the Greek National Commission for Human Rights (GNCHR) a letter signed by the President of the HCDCP's Board (ref. no: 1676 11.2.2014) requesting the collection of data/indicators for the drafting of its 2014 national report.

The GNCHR, in its capacity as the independent advisory body to the State on matters pertaining to human rights protection, is willing to meet the HCDCP's request with responsibility, by providing assistance in its efforts to collect and record both data and indicators for the drafting of the 2014 national report on HIV/AIDS. Besides, the GNCHR has expressed its concerns in the past regarding the lack of effective protection of the human rights of HIV-positive people.

Given that the GNCHR has expressed its opinion in the past and that the particular issues of human rights protection of HIV-positive or AIDS patients concern, on the one hand, the stigma and discrimination due to HIV/AIDS and, on the other hand, the right of undocumented migrants to have access to health care, the GNCHR will confine itself to highlighting in English, as requested, the following issues:

II. Specific Observations

Political Leadership

1. Do national policies and/or laws exist in the areas of HIV/AIDS prevention, treatment and care?

Greece does not have specific legislation on the availability of and access to free and anonymous

HIV testing for people who inject drugs, nor for undocumented migrants or prisoners. Furthermore, there are no policies or laws concerning HIV prevention, treatment or care.

We note, however, that patients with HIV fall under the general provisions of:

a. Article 47 of Law No. 2071/1992 on the *Modernisation and Organisation of the Health System* (OGG A 123), entitled "Rights of Hospitalised Patient". In fact, Greece was among the first countries in Europe to enact statutory provisions relating to hospitalised patients' rights.

b. Article 1 of Law 2519/1997 on the *Development and Modernisation of the National Health System* (OGG A 165), which established bodies for the protection of the Rights of Patients. These are:

- The Independent Service for the Protection of the Rights of Patients and
- The Control Committee for the Protection of the Rights of Patients.

c. Law 3418/05 on the *Code of Medical Ethics* (OGG A 287).

d. Ministry's of Health Circular No. Y1/3239 of July 4th, 2000, which sets out the guiding principles for the protection of the rights of HIV/AIDS patients and

e. Article 18 of Law 3293/2004 on *Health and Social Welfare* (OGG A 231), which has introduced a significant addition to the Ombudsman's competences. The Greek Ombudsman (Department of Social Protection, Health and Welfare) examines and mediates over complaints related to the protection of citizens' social rights and more specifically cases concerning the areas of social policy, health, social security and welfare. The Department focuses its mediatory efforts on the protection of the rights of vulnerable groups such as the elderly, people with disabilities, the physically and mentally ill, Roma, refugees or third country nationals.

As far as policies regarding **AIDS research protocols involving human subjects** are concerned, Article 6 of Ministerial Act No. 89292/03 on *Compliance of the Greek Legislation with Directive 2001/20/EC on the approximation of the laws, regulations and administrative provisions of the Member States relating to the implemen-*

tation of Good Clinical Practice in the conduct of clinical trials on medicinal products for human use (OGG B 1973) provides for the establishment of the National Commission of Ethics on Clinical Trials.

2. Are there any policies and/or laws that present barriers to HIV prevention, treatment and care (e.g. access to treatment, criminalisation of homosexuality, HIV transmission, sex work and/or drug use)?

According to **Article 84 (1) of Law 3386/2005** on *Entrance, residence and social integration of third country nationals in Greece* (OGG A 212), hospitals and clinics are allowed to provide their services to adult undocumented migrants only in cases of emergency. Furthermore, according to paragraph 4 of the same article, the employees of the aforementioned services who violate the above provision are disciplinarily and criminally liable to disciplinary and penal sanctions for breach of their duties.

Such a provision, which prohibits and criminally punishes assistance to undocumented migrants, in cases other than emergency hospitalisation, leads to their inhuman and degrading treatment and violates their right to social assistance and healthcare, whilst endangering public health. This is why the Greek National Commission for Human Rights (hereinafter GNCHR) has repeatedly requested the repeal of this provision.

Instead, the Ministry of Health has issued, in **May 2012, a Circular**¹ which recalled that access to the healthcare and hospital system is not available to undocumented third country nationals, save for specific categories of patients, such as children, recognised refugees, asylum seekers, third country nationals under protection for humanitarian reasons and beneficiaries of subsidiary protection, and for emergency cases. Therefore, due to the obligation to apply this provision, doctors are forced to violate the

duties imposed by the Constitution and the Hippocratic Oath.

Furthermore, in **April 2012, an Act of the Minister of Health** provided for the control of undocumented migrants and asylum seekers with infectious diseases which are characterised as medical urgency according to the criteria of the WHO, ECDC and CDC². Doctors or other health care professionals, who become aware of any breach of the provisions concerning the control process defined by the aforementioned Ministerial Act, have the obligation to immediately inform the competent police or judicial authorities. Therefore, undocumented migrants shall be reported in accordance with this Act.

In addition to undocumented migrants, all non-permanent foreign residents, both from the EU and third countries, are also affected by another measure introduced by the Greek Government. Through a **Common Ministerial Act** in force since November 23, 2012³, **all legally residing foreigners must pay admission fees to Greek public hospitals which are 2.09 times higher than those paid by Greek patients.**

It should also be noted that the GNCHR has not dealt with any cases specifically related to HIV/AIDS. This does not imply the non-existence of HIV/AIDS related violations in Greece; it is merely due to the fact that the GNCHR has not come across such issues. Besides, according to its founding law, the GNCHR is not empowered to receive individual complaints; these belong to the competence of the Ombudsman.

3. Are there any HIV-related policy and/or legal issues that need to be addressed (e.g. revision of existing policies/laws or development of new policies/laws)?

On the basis of the aforementioned, the GNCHR recommends the following:

- The organisation of information and sensitisation campaigns for the general public on HIV/AIDS issues aiming at HIV/AIDS prevention.

1. Ministry of Health, Circular No. Y4a/oik. 45610/2.5.2012 on Clarifications regarding the approval process for free hospitalisation and health care of the financially weaker and uninsured third country nationals residing on Greek territory.

2. Ministry of Health, Act No. G.Y. 39a/1.4.2012 on the Regulations for containing the spread of infectious diseases.

3. Common Ministerial Act No. Y4a/oik.105494/2012 (OGG B 3096/23.11.2012).

- The introduction of sex education in schools.
- The incorporation of the provisions of ILO Recommendation 200 (2010) on HIV/AIDS into Greek legislation.
- The repeal of Article 84(1) of Law 3386/2005, which prohibits and criminally punishes assistance to undocumented migrants.
- The repeal of Ministry of Health Circular (May 2012), which recalls that access to the healthcare system is forbidden to undocumented third country nationals.
- The repeal of the Ministry of Health Act No. Y4α/οικ. (April 2012), which orders doctors and other health care professionals to report undocumented third country nationals.
- The repeal of any disciplinary or criminal sanctions imposed on medical staff for providing medical care exceeding the limits prescribed by law.
- The participation of NGOs, in particular those representing people living with HIV/AIDS, in the social dialogue on HIV/AIDS.
- The specialised periodic training of medical and administrative hospital personnel concerning HIV/AIDS and their obligations while performing their duties.
- The organisation of a system of co-operation between the patients' physicians and the hospital of admission.
- The generalised implementation of precautionary measures for contagious diseases in all hospitals.
- The imposition of disciplinary and criminal sanctions provided for the breach of medical confidentiality by competent authorities.

Migrants

1. Do migrants face barriers in accessing HIV prevention, treatment and care services?

In addition to undocumented migrants who are the ones mostly facing barriers in accessing health care services, **all non-permanent foreign residents, both from the EU and third countries**, are also affected by the imposition

of "double charges" for access to Greek public hospitals⁴.

2. Does your country have laws and/or policies that affect access by migrants to HIV prevention, treatment and care services?

According to Article **84(1) of Law 3386/2005** on *Entrance, residence and social integration of third countries' nationals in Greece* (OGG A 212), hospitals and clinics are allowed to provide their services to adult undocumented migrants only in cases of emergency. Furthermore, according to paragraph 4 of the same article, the employees of the aforementioned services who violate the above provision are liable to disciplinary and criminal sanctions for breach of their duties.

Instead of abolishing the aforementioned provision, which prohibits and criminally punishes the assistance to undocumented migrants, the Ministry of Health has issued, in **May 2012**, **a Circular**⁵ which recalled that access to health-care by undocumented third country nationals except for specific categories of patients, such as minors, recognised refugees, asylum seekers, third country nationals under protection for humanitarian reasons and beneficiaries of subsidiary protection. Doctors are therefore forced to violate their duty imposed by the Constitution and the Hippocratic Oath.

In **April 2012**, an **Act of the Minister of Health**, required the control of undocumented migrants and asylum seekers with infectious diseases that are characterised as medical urgency according to the criteria of the WHO, ECDC and CDC⁶. According to Article 2(4) of the aforementioned Act, doctors or other health care professionals, who become aware of any breach of the provisions concerning the control process, have the obligation to inform the competent police or

4. *Common Ministerial Act No. Y4α/οικ.105494/2012 (OGG B 3096/23.11.2012).*

5. *Ministry of Health, Circular No. Y4α/οικ. 45610/2.5.2012 on the Clarifications regarding the approval process for the free and health care of the financially weaker and uninsured third country nationals residing on Greek territory.*

6. *Ministry of Health, Act No. ΓΥ 39α/1.4.2012 on the Regulations for containing the spread of infectious diseases.*

judicial authorities immediately. Undocumented migrants shall therefore be reported.

Limiting the access of undocumented migrants to medical care makes the timely diagnosis of transmitted diseases impossible. When undocumented migrants are apprehended while trying to enter Greece, they are submitted to a medical check. However, a great number manages to enter unnoticed. These individuals are not medically checked. In case they are already sick they must wait until their health deteriorates in order to qualify for emergency care while possibly endangering public health. The **protection of public health** constitutes, therefore, another reason for ensuring access to medical care to undocumented migrants.

Law 4070/2012 (OGG A 82) included amendments to **Article 13(2) (b) of Presidential Decree 114/2010** and **Article 76(1) (d), of Law 3386/2005**, which provide for the detention of asylum seekers and other undocumented third country nationals who are in need of emergency health care and pose, therefore, a risk to public health, as well as for the deportation of third country nationals whose presence constitutes a danger for public health, because of their belonging to vulnerable groups suffering from infectious diseases.

Measures concerning healthcare and hospitalisation of undocumented third country nationals, as well as sanctions against employers of undocumented third country nationals, were also adopted through Ministerial Acts and Law 4052/2012 transposing Directive 2009/52/EC, respectively.

Regarding migrants' deportation, according to **Article 44 (1) (e), of Law 3386/2005**, residence permit can be provided for humanitarian reasons to third countries nationals having serious health problems. However, precondition of the said issuance is the previous possession of residence permit. That means that an individual who suffers from serious health problems may be deported. The GNCHR notes that this possibility, apart from potentially amounting to degrading treatment, in accordance with ECHR's jurisprudence, certainly does not comply with the obligation of human being's value protection.

Attached to the present written contribution, the GNCHR submits its **Decision regarding the Right to Health of Undocumented Migrants** (8 November 2007).

Stigma and Discrimination

Does your country have policies or laws prohibiting HIV screening for general employment purposes?

Greece does not have a specific legal framework addressing issues of stigma and discrimination related to HIV/AIDS.

Nonetheless, a law *on the Implementation of the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin, Religious or Other Convictions, Disability, Age or Sexual Orientation* has been adopted (Law 3304/2005, OGG A 16).

Article 19 of Law 3304/2005 empowers:

a) the **Greek Ombudsman** to monitor the implementation of the principle of equal treatment in the public sector;

b) the newly established **Commission of Equal Treatment** (in accordance with Article 21 of the said Law) the monitoring of the principle of equal treatment in cases of violation by natural or legal entities not falling under the public sector;

c) to the **Labour Inspectorate (SEPE)** the monitoring of the principle of equal treatment in cases of violation by natural or legal entities in the area of occupation and labour.

With regard to the Labour Inspectorate, **Law 3996/2011**⁷ on the *Reform of the Labour Inspectorate* in its **Article 2(1) (h)**, states clearly that it supervises the implementation of the principle of equal treatment irrespective of racial or ethnic origin, religion or other beliefs, disability, age or sexual orientation, taking into consideration instances of multiple discrimination in accordance with Article 19 of Law 3304/2005. Moreover, on the basis of **Article 10 of Law 3304/2005**, it supervises the compliance with the principle of equal treatment with regard to persons with disabilities, including people living with HIV/AIDS.

7. Law 3396/2011 on the Reform of the Labour Inspection Body (OGG A 170/5.8.2011).

Furthermore, **Article 23 of Law A 3304/2005** provides for the establishment of the Equal Treatment Service of the Ministry of Justice to examine complaints in relation to violation of the equal treatment principle.

In relation to the aforementioned, **Article 13 of Law 3488/2006** empowers the Greek Ombudsman to monitor the implementation of the principle of equal treatment for men and women in both the private and the public sector. In cases of violation, the Greek Ombudsman mediates so that the violation be remedied. If the mediation does not produce satisfying results, the Greek Ombudsman communicates its final conclusions to the appropriate authorities in order for the latter to exercise their disciplinary or penal jurisdiction.

The GNCHR is attaching hereto its Decision concerning ***Human Rights Protection of People living with HIV/AIDS*** (27.1.2011) and its Press Release entitled ***Cruel and Degrading Treatment of our fellow people: Responsibility of the State*** (25.5.2012), both translated into English.

5. Collaborations

5.1 Contribution of ENNHRI to the Consultation regarding the long term future of the ECHR where the GNCHR participated (27.1.2014)

European Network of National Human Rights Institutions (ENNHRI)

Summary of the main points

This submission on behalf of ENNHRI focuses on some key themes in the context of reform of the Convention system. ENNHRI recalls that the Brighton Declaration affirmed the importance of the establishment of national human rights institutions (NHRIs) in each Member State to ensure effective implementation of the Convention at a national level, and therefore NHRIs are clearly core stakeholders in the Convention system. The Brighton Declaration also placed considerable emphasis on effective implementation of the Convention and proper execution of judgments, another theme addressed in this submission.

ENNHRI identifies the main challenge to the Convention system into the future as the ability of the Council of Europe to ensure compliance with the Convention by its Member States. In this light a number of practical recommendations are made which focus on facilitating national implementation first, emphasising that this is the primary responsibility of each Member State under the Convention, and then moves to address problems regarding execution of judgments thereafter. In relation to execution of judgments the most important recommendation is that a more concrete response from the Council of Ministers to non-execution of judgments, including the possibility of imposing sanctions on recalcitrant states. Throughout this Submission ENNHRI illustrates how NHRIs play a critical role in the Convention system, and makes a series of recommendation aimed at encouraging states to have more structured engagements with NHRIs, at both national and European level as one measure in meeting the challenges facing the Convention system at the present time.

Submission to Council of Europe's Committee of experts on the reform of the European Court of Human Rights (DH-GDR) on the longer term future of the system of the European Convention on Human Rights, and the European Court of Human Rights

European Network of National Human Rights Institutions

Introduction

The European Network of National Human Rights Institutions ("ENNHRI") comprises 41 National Human Rights Institutions ("NHRIs") from across wider Europe. NHRIs are state funded institutions, independent of government, with a broad legislative or constitutional mandate to promote and protect human rights. NHRIs are accredited by reference to the UN Paris Principles to ensure their independence, plurality, impartiality and effectiveness. ENNHRI recently established a Permanent Secretariat in Brussels.

NHRIs are critical actors for the implementation of judgments of the European Court of Human Rights ("the Court"). They are legally mandated to advise the executive and legislative branches of state on the application of international human rights standards, and may exercise litigation functions in this regard. Through their promotion mandates, they often perform educational and awareness-raising functions, which can also encourage implementation. In addition, NHRIs must cooperate with civil society, other national bodies and the international human rights system, which they also use in their efforts to ensure implementation of the Court's judgments.

The recent High Level Conferences have recognised NHRIs' critical role in effective working of the Convention system. For example, the Brighton Declaration 'expresses the determination of the States Parties to ensure effective implementation of the Convention at national level by taking the following specific measures, so far as relevant: Considering the establishment, if they have not already done so, of an independent National Human Rights Institution...' (at Article 9(a)(i)). The Brighton Declaration also placed

due emphasis on effective implementation of the Convention and proper execution of judgments.

ENNHRI has been an active stakeholder in discussions and proposals regarding reform of the Court for a number of years and has observer status at CDDH and its subordinate bodies. We also participated actively at the High Level Conferences on the Future of the Court in Interlaken, Izmir and Brighton. We have also engaged at Wilton Park and other Court reform conferences and seminars through our Legal Working Group.

ENNHRI welcomes the present process to scrutinise the whole European Convention of Human Rights ("the Convention") system. ENNHRI is concerned, however, that the rationale for this ongoing process, beyond the Brighton Declaration, may not be sufficiently clear¹. ENNHRI considers that the essential objective of this process should be to ensure the efficient working of the Convention system for the vindication of rights for all persons within the Council of Europe Member States's jurisdiction.

There is naturally a risk that the ongoing reform process may undermine the system, if the Court's ability to consider applications is negatively affected. It could be argued that it is in the interest of certain states, including those with a large volume of individual complaints to the Court and those who regard the judgments of the Court as an encroachment on national sovereignty, to seek to limit the Court's ability to adjudicate. ENNHRI therefore considers that it is important that this ongoing process is grounded in a clear rationale, which upholds the fundamental purpose of the Convention in the first place to "secure to everyone... the rights and freedoms defined in...this Convention"².

Future Challenges to the Convention System

The Convention system is made up of a number of interdependent elements. First, is the Convention itself, which laid down a number of

human rights and fundamental freedoms guaranteed to all those within the jurisdiction of the States of the Council of Europe. Thus, there are 47 States within which the human rights in the Convention are accepted, and therefore, must be adhered to. Accordingly, the primary duty lies with Member States to comply with their obligations under the Convention and to ensure that each individual within the Council of Europe area enjoys the rights defined therein in whatever way such rights are secured and upheld within the domestic system.

Furthermore, as with any international treaty to which states commit themselves, there is also need for supervision to ensure that compliance is achieved within each national system. While states have a degree of discretion as to how the rights under the Convention are secured within their national system, the Convention itself, at the next level, dictates a system of accountability through the right of individual application to the European Court of Human Rights, and in turn execution of judgments under the supervision of the Committee of Ministers.

ENNHRI considers that the main challenge to the Convention system into the future is the ability of the Council of Europe to operate as an international organisation to ensure compliance with the Convention by its individual Member States.

This has been the experience particularly over the last fifteen years, when the backlog of cases became of central concern and where there has been a failure by a minority of individual States to address systemic issues regarding compliance with the Convention. This failure in turn has generated a large volume of repetitive applications, while also generating an unsustainable number of routine cases that require ongoing supervision at Committee of Ministers level. This limits capacity for supervision system to deal with significant, complex or novel cases that require particular scrutiny to ensure compliance. While much focus has been placed on the backlog of cases coming before the Court, ENNHRI considers that the Court itself, in implementing Protocol 14, has shown an ability to deal with the problem of delays that was inherent in the Court

1. It is noted that this consultation process is predicated on certain elements of the Brighton Declaration, but the overall rationale for the process is not clear from the open call for submissions.

2. Article 1, the Convention. European Network of National Human Rights Institutions (ENNHRI).

system itself, and that the measures taken are yielding positive results³.

In this context, ENNHRI makes the following specific observations and recommendations regarding a number of non-exhaustive discrete issues that it considers are relevant to the future effectiveness of the Convention system:

Reform of the Court

Noting the efforts made by the Court in reducing its backlog, ENNHRI considers that, from the perspective of access to justice as an inherent component of all human rights, further admissibility criteria do not appear to be merited or desirable. There are further measures that might be taken to further reduce the backlog, and ENNHRI recommends that consideration be given to the following proposals:

- That national judges (the judiciary being a key organ of the state) be proactively encouraged to read, understand and implement the judgments of the Court – and not leave it to the executive and state agents alone;
- That states send additional *ad litem* judges to the Court;
- That there be deeper engagement between the Court and national judiciaries so both better understand the other; and
- That the Court be in a position to be able to consider applications relating to all Convention provisions, and not prioritise claims under certain Articles over others.

Execution of Court Judgments

In order to enhance compliance with the Convention, ENNHRI recommends the following measures regarding the execution of judgments:

- Execution of judgments should be seen as a twin-track process: primarily on the national implementation level (see further below) but

also at the Department of Execution of Judgments and Action Plan level.

- Court judgments should be understandable and clear on a general measures issue, in order that a link between general measures and Article 46 will assist the Department of Execution of Judgments in overseeing execution and the national authorities in effecting execution.

- There should be increased synergy between the Court and the Department of Execution of Judgments on how pilot judgments are identified and executed.

- There should be increased synergy between the Department of Execution of Judgments and NHRIs to ensure that the Department of Execution of Judgments receives comprehensive information on the execution of judgments in the state concerned.

- The Committee of Ministers should offer experts (similar to UN missions) to engage directly with a state's national authorities on law reform measures required in cases of concern.

- The delegates on such missions could include state agents from Member States.

- The NHRI of the state concerned and other relevant organisations or civil society should be consulted on what is required nationally to execute the relevant judgment(s) of the Court.

- Such missions should link in with cooperation and assistance programmes run by other organs of the Council of Europe.

- The Parliamentary Assembly (PACE) should use additional measures for holding accountable the state concerned (e.g. such as a state report to PACE on implementation), as well as the Council of Ministers.

ENNHRI suggests that, following a Court judgment, an effective and efficient manner of execution should include the following:

- The state should designate a coordinating official empowered to ensure that execution occurs.

- The executive, the legislature and the judiciary should be seized of the matter as appropriate to their roles as organs of the state.

- The draft Action Plan should be furnished to the NHRI (where one exists) and civil society, where relevant, for consultation.

3. In 2010 the total number of pending cases increased by 10% over 2009, in 2011 the total number of pending cases increased by 8% over 2010, and in 2012 the total number of pending cases increased by 4% over 2011. While the total number of cases pending continues to increase, it is clear that the Court has managed to diminish the incremental increase in its back log year by year, and if these trends continue, would hopefully stem the year by year increase that has been a feature of its operation for so long.

- The relevant parliamentary committee should be advised of the judgment and the proposed Action Plan to ensure its execution.
- The legislation or amending practice should be implemented in a timely manner to clearly address the lacunae in the law or practice, as identified by the Court.

Supervision of the execution of Court judgment: Role of CoM

The role of the Committee of Ministers is crucial to the effective working of the Convention system, as it oversees the measures taken by Member States to comply with Court judgments. However, the Committee of Ministers is by its nature highly politicised, and this is reflected in the unwillingness of the Committee to place political pressure on recalcitrant States⁴. In this regard ENNHRI **recommends:**

- The Committee of Ministers should consider concrete measures in relation to states with repetitive applications, to which the states concerned should respond urgently. Such measures should commence with support for the state concerned, but also have the ability to move from incentives to graded sanctions where the state proves intransigent in relation to execution.
- The Department of Execution of Judgments should be better resourced for its role in supporting the Committee of Ministers.
- Better information on Article 41 compensation and costs should be disseminated to states and to applicants.
- The Committee of Ministers should also find means to highlight important cases which require implementation by states generally, beyond the individual state directly concerned.
- The Committee of Ministers should invoke Article 46 and engage with the Court more effectively regarding the execution of judgments,

4. See for instance, CDDH report on whether more effective measures are needed in respect of States that fail to implement Court judgments in a timely manner, CDDH (2013) R79, Addendum 1, 29 November 2013, wherein a large range of options are examined for more effective measures to ensure states comply with Court judgments, but where no recommendation is made to the Committee of Ministers in relation to any specific measure it might adopt or whether to make any change at all.

which may in turn bring greater pressure to bear on the individual state concerned.

- The Committee of Ministers should actively request information from civil society organisations or NHRIs under Rule 9 of its procedures, in those cases where such information would enhance the supervision process.

Subsidiarity

ENNHRI recognises the importance of the principle of subsidiarity but continues to caution against any interpretation of the term which may undermine the right to individual petition. In particular, proposals to further restrict meritorious applications (such as new admissibility criteria) should not be developed in light of Protocol 15. Subsidiarity should be understood in the way in which the concept has been developed in the Court's case law. The Court must retain the ability to manage its own affairs, and no proposals should be considered that may impinge on its independence.

ENNHRI would not support any suggestion to interpret "subsidiarity" narrowly to restrict the Court's oversight of domestic judicial decision-making. The Convention system is based on the fact that all applications must have exhausted domestic judicial remedies to be admissible. Moreover in some cases an overall review of the domestic decision in the light of the Convention without a more thorough examination would not assure the effective protection of the rights and freedoms enshrined therein. To restrict the Court's oversight of how Convention law is interpreted and applied domestically would dramatically reduce the right to individual petition and the scope of the protection afforded by the Convention. This issue goes to the heart of the concept of the rule of law.

ENNHRI opposes the argument, as has been advanced by some states in recent years, that "subsidiarity" means permitting national courts to deal with Convention issues alone without Court oversight. This would amount to the abolition of the core rationale of the European system of human rights protection.

Regarding the role of the jurisprudence of the Court, the rule of law⁵ requires that the provisions of the Convention be applied fully and consistently across the Convention system. In addition, the principle of legal certainty would be undermined if the Court does not apply the same standards in the same situations, irrespective of the State concerned. To do otherwise would increase the complexity of the case law and reduce the foreseeability of national measures being in harmony with the Convention system.

In this regard ENNHRI recommends that:

- No new admissibility criteria, or other restriction on the right of individual application, be introduced under the rationale of “subsidiarity”;
- Any discussion of subsidiarity must focus on national implementation of the Convention under Article 1, and provision of effective remedies under Article 13.

Implementation at national level

As noted above, and as was recognised in the Brighton Declaration, the primary reason for the large number of applications to the Court is the failure by States to implement the Convention effectively, and thereby ensure the protection of individual rights. This means that state officials and parliamentarians do not have Convention obligations sufficiently in mind when devising policies or procedures, when creating new national legislation, or when implementing national laws and policies. Violations that could have been avoided occur, and national courts do not have the powers or the ability to provide an effective remedy to the victims, even where it is clear from existing Court case law that a violation has occurred.

Improvements therefore need to be made at each stage of the process so as to implement the Convention effectively at national level, including national authorities having proper regard to developing Court jurisprudence. This would then lead to fewer cases being brought overall and in particular fewer repetitive cases, leaving capacity at Court level for those cases which raise issues that are genuinely new or difficult.

⁵ Regularly cited in the Court’s jurisprudence.

ENNHRI considers that existing mechanisms for national implementation should be strengthened, and in particular the work of the Committee of Ministers in ensuring effective implementation of the court’s judgments.

Further specific work on implementation at national level that could be taken forward includes:

- Publication and wide dissemination on the Toolkit to inform public officials about states’ obligations under the Convention, adopted at the 78th meeting of CDDH in June 2013, and any other measures aimed at increasing awareness of the Convention system;
- Greater assistance to Member States in developing effective domestic remedies, including those states with a federal system, where specific attention should be paid to ensuring the implementation of judgments at all competent levels of government;
- Consideration of the role that NHRIs, and other relevant bodies including civil society, could play nationally to improve implementation of the Convention, and in particular whether further encouragement or assistance in setting up an NHRI could be given to Member States who do not currently have an NHRI;
- Consideration of sanctions against states who fail to implement the court’s judgments and thereby create repetitive applications;
- Elaboration of guidelines on drawing conclusions from precedential court judgments against another state (where the same problem of principles exists in a different legal jurisdiction);
- Enhancing the role of the State agent vis à vis other state officials, as the primary national focal point to ensure national implementation of Convention provisions; and
- Encourage Member States to translate the judgments of the Convention into their official languages, or at a minimum disseminate a summary of the judgment in their official languages.

Conclusion

ENNHRI will continue its active participation in the ongoing debate on the longer term reform of the Convention system. We remain available to participate in future dialogue on this important subject for the safeguarding of human rights in Europe.

PART IV.
INTERNATIONAL AND NATIONAL COLLABORATIONS
AND ACTIVITIES

A. Activities at an International and European Level

- Participation of the GNCHR in a working meeting with an aim to develop and implement national action plans concerning human rights. The meeting was organised by the office of the Commissioner for Human Rights of the Council of Europe. The GNCHR was represented by Ms Aik. Tsampi, GNCHR Legal Officer (27-28.3.2014).

- Participation of the GNCHR in a meeting organised by the Fundamental Rights Agency (FRA) in Vienna where a new “web tool” (on-line tool), called Clarity was presented. The GNCHR was represented by Ms R. Fragkou, GNCHR Legal Officer (13.5.2014).

- Participation of the GNCHR in the meeting organised by FRA in cooperation with Equinet (the European Network of Equality Bodies) and ENNHRI (European Network of National Institutions for Human Rights) in Vienna, discussing ways of strengthening existing channels of communication between the institutions involved and their members, and finding new channels of cooperation and mutual support regarding the communication of fundamental rights at both national and European level. The GNCHR was represented by Ms R. Fragkou, GNCHR Legal Officer (14.5.2014).

- Participation of the GNCHR in a meeting co-organised by FRA, the Council of Europe, ENNHRI and Equinet in Vienna under the topic “Asylum and Immigration”. The GNCHR was represented by the GNCHR First Vice-President, Ms A. Argyropoulou-Chrysochoidou (17-18.9.2014).

- Participation of the GNCHR in a teleconference meeting of the UN Commission for Human Rights with the National Human Rights Institutions and national monitoring mechanisms of the International Convention on the Rights of Persons with Disabilities. The GNCHR was represented by Ms Aik. Tsampi, GNCHR Legal Officer, who read the relevant statement of the GNCHR (25.9.2014).

B. Cooperation with Counterpart Committees

- Participation of the GNCHR in the annual meeting of the National Committees on Human

Rights at the United Nations in Geneva. The GNCHR was represented by Ms S. Koukouli-Spiliotopoulou, Chair of the Fifth Sub-Commission of the GNCHR for the international communication and cooperation (12.3.2014-14.3.2014).

- Participation of the GNCHR in the meeting of ENNHRI in Brussels on the implementation of the Network’s program on the Rights of Older Persons/International Network for the Prevention of Elder Abuse on Care issues. The GNCHR was represented by Ms Aik. Tsampi, GNCHR Legal Officer. Before the meeting, the GNCHR had sent a report with positions it had already adopted on this issue. The GNCHR also proposed the expansion of the topic in order to include home care services for the elderly and to investigate the consequences of the economic crisis and austerity measures (5.6.2014).

- Participation of the GNCHR in the first Human Rights Academy for National Human Rights Institutions held in Budapest by ENNHRI, the OSCE-ODHIR (OSCE-ODIHR) and the School of Public Policy, Central European University. The GNCHR was represented by Ms Aik. Tsampi, GNCHR Legal Officer (23.6.2014-27.6.2014).

- Participation of the GNCHR in the meeting of ENNHRI in Brussels on the implementation of the biennial program of the Network for the Rights of Older Persons in Care issues. The GNCHR participated in the Advisory Group of the program. The GNCHR was represented by Ms R. Fragkou, GNCHR Legal Officer (8.10.2014-9.10.2014).

- Participation of the GNCHR in the annual meeting of the Legal Working Group of ENNHRI in Berlin. The GNCHR was represented by Ms S. Koukouli-Spiliotopoulou, Chair of the Fifth Sub-Commission of the GNCHR for international communication and cooperation (21.11.2014).

C. Meetings with State Representatives, Organisations and International Organisations

1. International Meetings

- Meeting with representatives of the International Federation for Human Rights (FIDH) on issues related to the right to education (20.1.2014).

- Meeting with representatives of the European Commission against Racism and Intolerance of the Council of Europe (ECRI). The GNCHR was represented by its President, Mr K. Papaioannou as well as two Legal Officers Ms Aik. Tsampi and Ms R. Fragkou (13.3.2014).

- Meeting of the GNCHR with the Dutch NGOCMO and the Greek Forum of Migrants on issues relating to racism and xenophobia. The GNCHR was represented by its two Legal Officers, Ms Aik. Tsampi and Ms R. Fragkou (15.4.2014).

- Meeting of the President of GNCHR with the General Secretary of the humanitarian organisation UHRRA in Athens. The UHRRA is a newly established non-governmental organisation based in Oslo whose purpose is the protection of human rights, democracy and freedom of speech worldwide (20.6.2014).

- Meeting of the GNCHR with Danish MP Mr Villumsen, member of the Parliamentary Assembly of the Council of Europe and rapporteur in the PA of the subject "equality and crisis". The purpose of his visit to Greece was the preparation of an explanatory report on the impact of austerity measures and the economic crisis on equality issues. The GNCHR was represented by its First Vice-President, A. Argyropoulou-Chrysohoidou, the Chair of the Fifth Sub-Commission, Ms S. Koukouli-Spiliotopoulou, as well as its Legal Officers, Ms Aik. Tsampi and Ms R. Fragkou (15.9.2014).

2. National Meetings

- Participation of the GNCHR in an information and consultation meeting with NGOs and other bodies of the civil society organised by the UN High Commissioner for Refugees. The GNCHR was represented by its Legal Officers, Ms Aik. Tsampi and Ms R. Fragkou (17.10.2014).

D. Participation in Parliament Meetings

- Participation of the GNCHR in the meeting of the Standing Parliamentary Committee on Public Administration, Public Order and Justice concerning the draft law of the Ministry of Justice, Transparency and Human Rights "Just satisfaction due to the excessive length of the proceedings in civil and criminal courts as well

as the Court of Auditors." The GNCHR was represented by Ms S. Koukouli-Spiliotopoulou, Chair of the Fifth Sub-Commission of the GNCHR for the international communication and cooperation and Ms Aik. Tsampi, Legal Officer at the GNCHR (29.1.2014).

- Participation of the GNCHR in the meeting of the Standing Parliamentary Committee on Public Administration, Public Order and Justice concerning the draft law of the Ministry of Public Order and Citizen Protection "Reorganisation/ Restructuring of the Hellenic Police, the Hellenic Fire Service/Brigade and the General Secretariat for Civil Protection, upgrade of the Services of the Ministry of Public order and Citizen Protection and regulation of other matters concerning the Ministry of Public Order and Citizen Protection". The GNCHR was represented by the First Vice-President Ms A. Argyropoulou-Chrysohoidou and its Legal Officer Ms R. Fragkou (13.2.2014).

- Participation of the GNCHR in the meeting of the Special Permanent Committee on Equality, Youth and Human Rights, covering the following agenda topics: a) Excluding maternity from unpaid leave/layoff and b) Poverty as a threat to human rights. The GNCHR was represented by Ms S. Koukouli-Spiliotopoulou, Chair of the Fifth Sub-Commission of the GNCHR for international communication and cooperation (28.3.2014).

- Participation of the GNCHR in the meeting of the Special Permanent Committee on Equality, Youth and Human Rights, covering the following agenda topics: Poverty as a threat to human rights. The GNCHR was represented by Ms S. Koukouli-Spiliotopoulou, Chair of the Fifth Sub-Commission of the GNCHR for international communication and cooperation and its Legal Officer, Ms R. Fragkou (11.4.2014).

- Participation of the GNCHR in the meeting of the Standing Committee on Cultural and Educational Affairs (within the parliamentary hearings of different bodies) on the draft law concerning the organisation of the legal status of religious communities and their associations in Greece. The GNCHR was represented by its Legal Officer, Ms R. Fragkou (24.9.2014).

E. Participation in Working Groups

- Participation of the GNCHR as an observer in the meetings of the Working Group of the Ministry of Justice for the drafting of the National Action Plan for Human Rights. The GNCHR was represented by its Legal Officers, Ms Aik. Tsampi and Ms R. Fragkou (2.5.2014).

- Participation of the GNCHR as an observer in meetings of the Working Group of the Ministry of Justice for the drafting of the National Action Plan for the Rights of the Child. The GNCHR was represented by its Legal Officers, Ms Aik. Tsampi and Ms R. Fragkou (5.7.2014, 9.11.2014 and 6.11.2014).

F. Participation in Conferences and Seminars

- Participation in the seminar "Training workshop on hate crimes for members of the Greek Racist Violence Recording Network" organised by ODHIR at the GNCHR premises. The GNCHR was represented by its Legal Officers, Ms Aik. Tsampi and Ms R. Fragkou, as well as by its Secretary, Mr N. Kyriazopoulos (18.2.2014 - 19.2.2014).

- Participation of the Chair of the Fifth Sub-Commission of the GNCHR for international communication and cooperation, Ms S. Koukoulispiiotopoulou, in the seminar on "*How can EU Member States combat hate crime effectively. Encouraging reporting and improving recording*", organised by the Greek Presidency of the EU and the EU Agency for Fundamental Rights (FRA), in collaboration with the Centre of International and European Economic Law (CIEEL) (Thessaloniki, 28 - 29.4.2014).

- Participation of the GNCHR President, Mr K. Papaioannou, in the Consultation Meeting on the subject of "Investing in Children: A challenge for 21st century Europe". The event was organised by the Greek Ombudsman in cooperation with and having the support of the European Commission and the European network Eurochild. The event was held under the auspices of the Greek Presidency of the Council of the EU having as a primary concern the implementation of the EU Recommendation "Investing in children:

Breaking the cycle of inferiority" (C (2013) 778, 20.2.2013) (9.5.2014).

- Participation of the GNCHR Legal Officer, Ms Aik. Tsampi, in the conference of the Hellenic League for Human Rights on the subject "The right to water. Proposals for its effective protection" (13.6.2014 - 14.6.2014).

- Participation of the GNCHR as an observer in the discussion meeting of the General Secretariat of Commerce for the National Strategy Plan on Corporate Social Responsibility. The GNCHR was represented by its Legal Officers, Ms Aik. Tsampi and Ms R. Fragkou (16.9.2014).

- Participation of GNCHR in the workshop of the Central Structure for Equality - GSEE Women's Secretariat, on "Strengthening and Enhancing Women's Participation in Trade Unions". The GNCHR was represented by its Legal Officers, Ms Aik. Tsampi and Ms R. Fragkou (17.10.2014)

- Participation of the GNCHR in the Transnational Congress of the Central Structure for Equality - GSEE Women's Secretariat, on "Promoting the Participation of Women in Trade Unions: Right and Duty". The GNCHR was represented by its Legal Officers, Ms Aik. Tsampi and Ms R. Fragkou (17.10.2014)

- Participation of the GNCHR President, Mr K. Papaioannou and the GNCHR Second Vice-President, Ms E. Varchalama, at the 1st International Congress on Research and Group Psychotherapy and Processes on Chronic Stress. The congress was organised by the International Association for Group Psychotherapy and Group Processes, under the auspices of the Ministry of Culture (20.11.2014).

- Participation of the GNCHR, represented by its First Vice-President A. Argyropoulou-Chrysohoidou, in the presentation held by the Greek Ombudsman on its new mandate as the National Preventive Mechanism (NPM) for torture (8.12.2014).

Z. Questionnaire Responses

- Response to the Questionnaire of the UN Special Rapporteur on the Right to Water concerning violations of the right to water.

- Response to the Working Group Questionnaire on discrimination against women in law

and practice, Office of the UN High Commissioner for Human Rights.

- Response to the Questionnaire of the Ministry of Foreign Affairs - A4 Division concerning the implementation of the right to water and sanitation at a national level.

- Response to UPR Info Questionnaire.

- Response to the ENNHRI Questionnaire on the rights of the elderly.

- Response to the Questionnaire of the EU Council addressed to all Member States of the EU on the functioning of the National Human Rights Institutions. The questionnaire sent to the GNCHR by the Ministry of Foreign Affairs concerned the accreditation procedure and the accreditation status of the GNCHR.

- Response to Questionnaire of the Commission on Equality and Non-discrimination of the Parliamentary Assembly of the Council of Europe: Relations between the National Commissions and the Parliament.

- Response to the ENNHRI questionnaire on the financial resources of National Human Rights Institutions. The survey aims to highlight the issue of the limited resources of the national institutions due to constant cuts in funding.

- Response to surveys for the evaluation of the 2014 NHRI Academy.

- Response to the Questionnaire of the Danish Institute for Human Rights on national practices regarding the right to participate in the conduct of public affairs.

- Response to the Questionnaire of the German Institute for Human Rights on issues pertaining to domestic violence and the gender registration of intersex persons.

- Response to online questionnaire regarding education issues and the rights of the LGBT-GALE-Global Alliance for LGBT education.

- Response to the Questionnaire of the Dutch Commission for Human Rights regarding the Oviedo Convention on Human Rights and Biomedicine.

PART V.
GNCHR EVENTS/PRESS CONFERENCES

GNCHR Press Conference for the “Right to Water”

The GNCHR organised on June 24, 2014 a Press Conference on the “Right to Water”, which took place in the auditorium of GSEE (69 Patision Street and 2-4 Enianos Street, Athens).

The event was held in response to the GNCHR recommendations on the effective protection of the right to water.

The GNCHR decided to deal with this fundamental right after weighing, on the one hand, the progress made towards the guaranteeing of this right at the European and international level, and on the other hand, the dangers posed to its enjoyment by growing pressure for the privatisation of its providers. Taking the above into consideration, the GNCHR submitted to the State *recommendations regarding the effective protection of the right to water*.

The urgency of such a project stems from the need to consolidate the status of water as a “public good” and not as a “commercial commodity”, as well as to treat water as a natural commodity in shortage.

Beyond its timeless importance, the right to water becomes especially crucial in times of crisis. The recognition of the right to water in Greece is rendered still more crucial, given that there is a heightened possibility that water supply companies will be privatised despite the social and economic consequences of the financial crisis. On this note, and as an overall recommendation, *the GNCHR recommends that water’s status both as a public good and a universal right be enshrined in the constitution*.

Furthermore, based on the normative content of the right to water, the GNCHR issued a series of recommendations both general and specific.

With regard to the general framework of protection of the right to water, the GNCHR recommended:

- Legally recognizing the right to water as a public good. Recognition of the link between the right to water on the one hand and sewerage and irrigation on the other.

- Preserving the public character and oversight of the bodies responsible for water and sewerage; precluding the possibility of their being conceded to private actors.

- Ensuring the right of access to safe drinking water for every inhabitant of the country.

- Ensuring universal access to administrative and judicial procedures whereby members of the public can express their complaints relating to acts or omissions on the part of actors public or private, natural or legal that violate the right to water.

- Monitoring compliance with obligations relating to the right to water, mainly via independent authorities, on the basis of the specified GNCHR recommendations.

- Adopting, implementing and evaluating a National Plan of Action for the full implementation of the right to water. It would be very useful to include a specific chapter on water in the National Plan of Action for Human Rights.

Finally, the GNCHR issued specific recommendations, around four main pillars concerning a) the adequacy, b) availability, c) quality, d) accessibility of water (physical accessibility-affordability as well as equal and non-discriminatory access), and e) the participation of the public in matters concerning water.

Invitation/Programme of the Press Conference

Invitation to

EVENT - PRESS CONFERENCE

The National Commission for Human Rights invites you to an Event - Press Conference on

THE RIGHT TO WATER

which will take place on Tuesday, 24th of June, at 12:00, at the auditorium of GSEE (69 Patision Str. and 2-4 Enianos Str., Athens)

Invited speakers:

- **Kostis Papaioannou**, *President of the GNCHR*

- **Giannis Panagopoulos**, *President of GSEE, Member of the GNCHR*

- **Georgios Stavropoulos**, *former Minister, Honorary Vice-President of the Council of State, Member of the GNCHR*

- **Petros Stagkos**, *Professor of European Law at the Faculty of Law of the Aristotle University of Thessaloniki, Vice-President of the European Committee of Social Rights of the Council of Europe, former Member of the GNCHR*

- **Agis Terzidis**, *Pediatrician, Research Associate at the Postgraduate Programme "International Medicine - Health Crisis Management" of the University of Athens Medical School*

The GNCHR report on "*The Right to water-Recommendations for its efficient protection*" will be presented during the Event-Press Conference.

Live broadcast of the event will be available (live-streaming) on the GNCHR's site: www.nchr.gr
More info: 210 7233221-1, info@nchr.gr

Presentations in Brief

- The President of the Greek National Commission for Human Rights (GNCHR), **Mr Kostis Papaioannou**, presented the recent GNCHR on the "Right to Water-Recommendations for effective its protection". In particular, he stated, among others, that:

"The enjoyment of the right to water constitutes a fundamental precondition for the enjoyment of every right. Since, at a time of financial and social crisis, the fact that water is a public commodity is questioned and its insufficiency as a natural resource is underestimated, the protection of the right to water cannot be ensured in practice.

For all the above reasons, the GNCHR does not consider the recommendations to the State for the effective protection of the right to water as a mere fulfillment of its advisory role. In light of the aforementioned circumstances, it is deemed an its institutional obligation".

- The President of the Greek General Confederation of Labour (GSEE), **Mr Giannis Panagopoulos**, mentioned, among others, that:

"European and international experience has clearly shown that wherever there has been a

privatisation of water, the consequences for society were devastating. Its cost increased so dramatically, that it led to a proliferation of people without access to water, which is indispensable to survival. At the same time, the quality of water and infrastructures has deteriorated, thus putting public health in imminent danger. Furthermore, the cases of water privatisation prove the great losses of water and water contamination, while it is well-known that water is a scarce natural resource which requires rational use.

The widespread reaction of civil society to the privatisation of water supplies has blocked or reversed this process in towns or cities all over Europe. At a time when the government's decisions to bargain away the country to the international lenders, ignoring the repercussions to the community, the trade union movement plays a leading role in the process of ensuring and protecting the public nature and the universal access to natural resources and social services.

We will defend the fundamental human right to water. Our right is non-negotiable".

- The former Minister, Honorary Vice-President of the Council of State, President of the Legal Commission of the Marangopoulos Foundation for Human Rights (MFHR) and representative of MFHR at the GNCHR, **Mr Georgios Stavropoulos**, referred to the recent decision delivered by the plenary of the Council of State (1906/2014) and noted that:

"This decision annuls the decision n° 206/25.4.2012 (B 1363/26.4.2012) of the Interministerial Commission for Restructuring and Denationalisation regarding the part that the Greek State transfers 36.245.240 stocks of EYDAP AE (34,033% of the share capital) to TAIPED AE. The Council of State found that the transfer in question alienates the Greek State from the majority of the share capital of EYDAP AE, resulting in the actual transformation of the enterprise into a private one, operating as a "for profit" organisation, violating the Articles 5(5) and 21(3) of the Constitution. Considering the monopolistic nature of the services provided by EYDAP and their significance for safeguarding the fundamental right to health, this innovative decision of the Council of State considers that

the privatisations of the corporation renders the continuation of providing affordable services of general interest to everyone extremely uncertain. These services involve, mainly, the supply of drinking water, which is the most necessary natural resource for the human survival”.

- The Professor of European Law, Vice-President of the European Committee of Social Rights of the Council of Europe and former Member of the GNCHR, **Mr Petros Stagkos**, stated:

“It is a tradition in Greece to poorly implement the European law rules explicitly safeguarding the most crucial aspects of what the civil society has managed to be considered by the international community, as the human right to water. In the past 5 years, our country has been repeatedly convicted by the EU and the Council of Europe for its detrimental decisions and policies, due to their contradiction to the rules of European law, which provide for this human right. The GNCHR has the know-how and the experience to recommend a consistent action plan to the State, regarding the implementation, in practice and in citizens’ everyday life, of the right to water. Under the extremely adverse circumstances of the financial and social crisis of Greece, some new public decisions, which might weaken even more the enjoyment of a natural public good; water, may be once again deterred, thanks to the means of protection of the citizen’s interests, which are still being guaranteed by European Law”.

- Pediatrician, Research Associate at the Postgraduate Programme “International Medicine - Health Crisis Management” of the University of Athens Medical School, **Mr Agis Terzidis**, pointed out that:

“Access to drinking water has been acknowledged by the United Nations as an inalienable universal right. Reality, though, is extremely complicated, involving political, economical and diplomatic issues. It is roughly estimated that about 2 billion people worldwide do not have access to drinking water as a result of climate and environmental factors, as well as of the uncontrollable human intervention and exploitation of natural resources; the environmental and epidemic repercussions of this phenomenon appear

after years. In Africa, only 60% of the population has access to water, which is of uncertain quality. The waterborne diseases in the sub-Saharan Africa (salmonellosis, cholera, typhoid fever, diarrhea etc.) are responsible for the death of more than 4.000 children on a daily basis. As far as the Western world is concerned, this is not mainly a problem of hygiene, but an issue of managing drinkable water resources. The cases of water privatisation led to a sharp increase in the prices and to the violation of safety rules on behalf of the entrepreneurs. Returning gradually to the management of water by the State or other public bodies (Great Britain, France, Germany, Argentina, Bolivia) prevented any hygienic dangers from emerging. After all, the inalienable universal right to water, even though legally established, is still a goal for millions of people worldwide, on a hygienic as well as on a financial level”.

PART VI.
IMPACT AND EFFICIENCY OF THE WORK AND PROPOSALS
OF THE GNCHR

A. At a National Level

1. Law 4239/2014 "Just satisfaction for exceeding the reasonable duration of proceedings in civil and criminal courts as well as the Court of Audit and other provisions" (Government Gazette A 43/20.2.2014)

Within its institutional role as an independent advisory body to the State for the protection of human rights, the GNCHR was invited to present its views on the draft law of the Ministry of Justice, Transparency and Human Rights "Just satisfaction for exceeding the reasonable duration of proceedings in civil and criminal courts as well as the Court of Audit" (Law 4239/2014), before the Standing Committee on Public Administration, Public Order and Justice, during its meeting on 01.29.2014. Its positions, which were adopted unanimously at its plenary session/sitting on 01.30.2014, were lodged in writing, with a memorandum submitted to the above Committee and the House of Parliament and sent as usual to all relevant bodies.

Given both the importance of the right, and that the good and within a reasonable time administration of justice is a condition of enjoyment of other rights, the GNCHR even from the very beginning of its operation expresses a firm opinion, on the rationalisation and improvement of the administration of justice - civil, criminal and administrative -, the compliance of the Administration to the national judicial decisions and the right to legal assistance¹. In particular, re-

garding Law 4239/2014, the GNCHR welcomes the introduction of a legal remedy for the just satisfaction concerning the unjustified delay of proceedings in the civil and criminal courts as a positive step towards addressing the systemic and chronic problem of long duration of trials, which has drawn a lot of convictions by the European Court of Human Rights (ECtHR). Thus, it deems necessary to make a specific reference, in particular, to two key provisions of the new legislation, in the general spirit of the repeated proposals of the GNCHR:

Firstly, the GNCHR welcomes the reduction in the amount of the court fee regarding the request for just satisfaction due to the unjustifiable delays of the trials in relation to what was proposed in the original draft law and the corresponding fee referred to in Article 55(4) of Law 4055/2012 regarding the just satisfaction for exceeding the reasonable durations of proceedings in administrative courts. More specifically, Article 3(6) of Law 4239/2014 provides for the payment of the court fee, increased in value/ provides for an increase in the court fees depending on the degree of jurisdiction, starting from fifty (50) euros for applications in the District Civil Court to one hundred fifty (150) euros for applications before the Supreme Court and the Court of Audit. The original wording of the aforementioned provision was different, as the fee was set to two hundred (200) euros indiscriminately without taking into consideration the degree of jurisdiction (Article 3(6) of the original draft law). After the criticism exercised by the GNCHR, noting that the introduction of a fee of two hundred (200) euros for each stage of the trial, under penalty of inadmissibility, undetermined, to a great extent, the right to judicial protection of a large number of persons, given that the fee is not returned to the applicant, who may have been required to pay, depending on the case, the already high fees of the main pro-

1. GNCHR, *Recommendations on the draft law titled "Just satisfaction for exceeding the reasonable durations of proceedings in civil and criminal courts as well as the Court of Audit."* 30.1.2014, *Comments and recommendations on the draft law of the Ministry of Justice "for the fair trial and its reasonable duration"*, 26.1.2012, *Comments on the draft law of the Ministry of Justice titled "Rationalisation and improvement in the administration of criminal justice" (2010)*, *Comments and recommendations on the draft law of the Ministry of Justice entitled "Rationalisation of procedures and acceleration of proceedings in administrative courts and other provisions"*, 21.10.2010, *The compliance of the Public Administration with domestic judicial decisions*, 24.9.2009, *Comments on the the draft law of the Ministry of Justice titled "Providing Legal Aid to Persons with Low Income"*, 30.10.2003, *Judgements on the draft law ti-*

tled "Compliance of the Public Administration with judicial decisions and promotion of judges of the regular administrative courts to the rank of Hellenic Supreme Administrative Court/councillor of the state", 4.7.2002, *The right to a legal aid system - relevant European authorities and major issues of the Greek legislation/law and practice*, 25.6.2001.

ceedings, and in addition, since the hearing of a case is delayed by more than one degrees, the number of applications should be increased and, respectively, fees should be paid anew².

Furthermore, the GNCHR welcomes the reinstatement of the nine-month period of parental leave for judicial officers, which was limited to five months under the provisions of Article 89 of Law 4055/2012. The ECtHR pointed out that it was unacceptable that the length of parental leave granted to judicial officers be limited as it conflicts with both the Constitution (Article 21(1) and (5), for the protection of family and childhood) and the law of the EU (Directive 96/34/EEC)³. Therefore, the GNCHR welcomes the relevant provisions of Law 4239/2014, which in Article 8(1)(A) and (1)(B), state that *«it is granted to the parent-judicial officer by the Minister of Justice, Transparency and Human Rights and at her request, a nine-month paid leave for child-raising »* and stated that *«the judicial officers who were granted a child raising leave of five (5) months, pursuant to the provisions of Article 89 of Law 4055/2012 (A 51), are granted additionally by the Minister of Justice, Transparency and Human Rights, a leave of four (4) months, at their request, until their child completes three (3) years of age»*.

However, the GNCHR deems necessary to point out that ensuring the right to a fair trial in the Greek legal system is still incomplete and that in particular Law 4239/2014 is not completely exempt from the shortcomings of Law 4055/2012. It should be emphasised, however, that the observations made by the GNCHR were not taken into account. These observations relate to the need, on the one hand, the overall delay of the proceedings to be calculated in order to determine their reasonable or excessive length, in all degrees, and on the other hand, the need to integrate the arrangements for the new

remedy to the relevant Codes, to ensure legal certainty.

With regard to the first issue, the GNCHR has repeatedly proposed the possibility of lodging an application for just satisfaction concerning the delay not only for each degree of jurisdiction, but also the delay of proceedings in all degrees of jurisdiction, even stating that if compensation has already been adjudicated for a delay in a particular degree of jurisdiction, it should be taken into account by the Court which will be called upon to adjudicate compensation for the overall delay of the trial.

Article 3(1) of Law 4239/2014 still states that *«the application shall be lodged at each degree of jurisdiction»* and the applicant *«when lodging an application for delay in proceedings before a higher court, cannot request just satisfaction for excessive length of proceedings that took place at a previous degree of jurisdiction.»*

Finally, with regard to the second issue, the GNCHR has stressed the importance of incorporating the provisions of this particular Law to the Civil Procedure Code, the Code of Criminal Procedure and the Code of Laws regarding the Court of Audits (as ratified by Law 4129/2013 - Gazette 52 A/ 28.2.2013), as it had recommended before as well as the incorporation of the relevant provisions of Articles 53-58 of Law 4055/2012 on administrative justice in the Administrative Procedure Code and Presidential Decree 18/1989, which governs the procedure to the Council of State.

2. Right to Water: Recommendations for its effective protection – Hellenic Supreme Administrative Court - Council of State (Plenum), No 1906/2014

The GNCHR, in its session of 20.3.2014, unanimously adopted a report on the *«Right to Water-GNCHR recommendations for its effective protection»*.

In the aforementioned report, the GNCHR, expressed *inter alia* its concern over the planned privatisation of water supply services, stressing that any privatisation of water supply services impacts negatively *in totum* on every aspect of the right to water. Consequently, the GNCHR

2. GNCHR, *Recommendations on the draft law titled "Just satisfaction for exceeding the reasonable durations of proceedings in civil and criminal courts as well as the Court of Audit"*, (2014).

3. ΕΕΔΑ, *Comments and recommendations on the draft law of the Ministry of Justice "for the fair trial and its reasonable duration"*, (2012).

recommended maintaining the public character and control of water supply services.

On May 23, 2014 the Council of State's (CoS⁴), the Hellenic Supreme Administrative Court, cancelled by virtue of its plenum judgment No. 1906/2014 the decision adopted by the Interministerial Committee on the Restructuration and Denationalisation (DEAA) to transfer the 34.033% of the share capital of "EYDAP SA", from the Greek State to the Hellenic Republic Asset Development Fund (HRADF).

According to the Hellenic Council of State, the aforementioned decision implies the actual privatisation of a public enterprise, which provides services of general interest, such as water and sanitation. Such an alteration to a private profit-oriented enterprise jeopardises the continuous supply of affordable and of high quality services of general interest, which cannot be guaranteed by the State's supervision. EYDAP's services are provided monopolistically to a large population, living under adverse residential conditions within the region of Attiki, through networks which are unique to the region and belong to the fixed assets of EYDAP. The aforementioned services regard water and sanitation supply which is necessary for healthy living conditions, and notably the provision of drinking water, a natural commodity necessary for the survival of the population which becomes scarcer over time. The uncertainty as to the continuity of affordable utilities of public interest, indispensable to the people, infringes Article 5 of the Constitution, in particular the provision of paragraph 5 which enshrines the right to protection of health, and Article 21(3) which provides that the State shall ensure the health of citizens.

It is worth mentioning that the general term "services" includes both water supply and sanitation services. In addition, the term "water supply" is used here *lato sensu*, as it refers to the provision of water for any use, not just the sup-

ply of drinking water, which the CoS indicatively mentions. Finally, the issue of water adequacy is highlighted, as the CoS notes that drinking water becomes scarcer over time.

3. Joint Ministerial Decision No. 30651, G.G. B' 1453/5.6.2014 "Determination of residence permit on humanitarian grounds, as well as of the type, procedure and specific conditions for its granting"

Article 1 of Joint Ministerial Decision 30651/2014 (FEK B 1453 / 05.06.2014) "Determining residence permit on humanitarian grounds, as well as of the type, procedure and the specific conditions for its granting" regulates the granting and renewal of residence permit on humanitarian grounds.

This provision was originally included in Article 19 of the draft law "Immigration and Social Integration Code" (which became Law 4251/2014) and concerned the "granting and renewal of residence permits on humanitarian grounds", in compliance with the 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 plaintiff shall be judged for the offences set out in the eleventh chapter of the Criminal 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*".

The GNCHR, in its 24.3.2014 Press release, expressed its deep concern about this amendment, pointing out that it violates fundamental

4. The UN Special Rapporteur Ms Catarina de Albuquerque refers to the Hellenic CoS judgment. See Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, *Common violations of the human rights to water and sanitation, A / HRC / 27/55, 30.6.2014*.

human rights, especially, the benefit of presumption of innocence and the rights of access to justice and to equal criminal treatment⁵. Deep concern was also expressed by the Commissioner for Human Rights of the Council of Europe⁶.

Finally, Article 19 of the draft law "Immigration and Social Inclusion Code" was withdrawn, as a whole, together with the above amendment, during the discussions in the Parliament. The issues concerning the protection of victims as well as essential witnesses of racist crimes were regulated at a later time by means of the J.M.D. No. 30651/2014.

In this way, the proposals of the GNCHR⁷ and the Racist Violence Recording Network are approved. These proposals concern the regulation on the protection of foreign victims, providing the suspension of the detention order and deportation of victims and essential witnesses, as well as the granting of a residence permit on specific cases for the time period required for the prosecution and conviction of perpetrators. However, the necessity to incorporate this provision to the Immigration and Social Integration Code remains, in order for the necessary legal certainty to be established.

The GNCHR also highlights the need to strengthen the above legislative framework so as to a) refrain from prosecuting persons entering illegally and b) prohibit the arrest and administrative detention of the reporting witness for the period between pressing the charges and the issuance of the special prosecutor's act. Thus, victims

will not experience both the consequences of such criminal proceedings and those of a possible secondary victimisation when they turn to the competent authorities in order to press charges, while they will also be encouraged to lodge the relevant complaints.

4. Ministerial Decision No 128005/Δ2/13.8.2014 (OGGB 2217/13.8.2014) on «Regulating issues concerning the employment of substitute and hourly-paid teachers in Special Education»

The GNCHR, in its plenary session which took place on 26.1.2012, unanimously adopted its *Recommendations in response to the draft law on Special Education*, which was put into public consultation process from April 17 2014 until May 9, 2014. At a joint meeting of its Subcommission for Social, Economic and Cultural Rights and its Subcommission for the Promotion of Human Rights, which took place on June 30, 2014, the provisions of the aforementioned draft law were discussed and the GNCHR decided to further examine the issue, in accordance with the provisions of Article 1(6) (b) and (j) of Law 2667/1998. The aforementioned draft law was eventually withdrawn, and a few months later, the Ministry of Education issued the decision No 128005/Δ2/13.8.2014 (OGG B 2217/13.8.2014) on «Regulating issues concerning the employment of substitute and hourly-paid teachers in Special Education». In light of the aforementioned Ministerial Decision and with regard to the GNCHR Recommendations, the following are noted:

With the above remarks, the GNCHR deemed necessary to return to the issue of special education without attempting an exhaustive and thorough approach to the organisation and management of Special Education, but with an aim to substantially contribute to the development of a wider integration philosophy not only for students with special educational needs, but also for teachers of Special Education. To this end, concrete proposals have been put forward regarding both **the legislative procedure which had been followed** and **the content of this specific draft law**.

5. GNCHR, "Press Release - 24 March 2014", available from: http://www.nchr.gr/images/pdf/nea_epikairothta/deltia_tupou/DT.Arthro19.pdf.

6. Commissioner for Human Rights of the Council of Europe, Public Statement, available from: <http://on.fb.me/1gphOxQ>.

7. See in the GNCHR present report, "Observations on the draft law by the Ministry of Internal Affairs entitled "Incorporation in the Greek legal order of Directives 2011/98/EC on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State and 2014/36/EC on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers, regulations regarding citizenship issues and other provisions."

As far as the first part of the GNCHR Report is concerned, it has been stressed that the need for **a new legislation with regard to the education of children with disabilities is not so urgent, as is the need for the definition of measurable objectives, the proportional increase and rational absorption of the required resources for the effective implementation of special education and the equitable distribution of resources in the field of education.** The GNCHR also highlighted that **separate legislation** on the issue constitutes *per se* a form of discrimination against people with disabilities and that the **plethora of provisions** arising from such practices affects not only legal certainty but also the rights of children with disabilities. The GNCHR had particularly insisted on the need for quality education for persons with disabilities to determine and improve the quality of the entire education in Greece.

Therefore, in the light of the abovementioned comments and given that before the introduction of this specific draft law in Parliament, neither the evaluation of the previous legislation was carried out, nor the need for a new legislation was justified, along with the fact that the proposed provisions **were not the fruit of a continuous and meaningful consultation** between the Ministry of Education and the involved stakeholders, in breach of Article 4(3) of CRPD, **the withdrawal of the aforementioned draft law is considered as a positive first step.**

Regarding the second part of its Recommendations and in particular **the contents of the draft law**, the GNCHR insisted on issues concerning teachers with disabilities and their right to be employed (Article 24(4) CRPD) in order to provide appropriate education and special educational support to students with disabilities, provided that they are qualified and that their placement aims at ensuring the realisation of the right to education of children with disabilities. For this purpose, the GNCHR had drawn attention to Article 21(7) of the proposed draft law, according to which teachers with a sixty-seven percent (67%) disability or more with sight or hearing loss as well as quadriplegic-paraplegic persons could teach **"only"** in schools with stu-

dents with the same disability. The exclusion of the aforementioned categories of teachers of Special Education from access to other special education institutions in which undoubtedly they might be efficient violated the principle of equal treatment⁸ and "reasonable accommodation", as enshrined in EU law (Directive 2000/78), the CRPD and the Constitution (Article 21(6) in conjunction with Article 4(1)).

Therefore, in light of the above, the withdrawal of the draft law and the issue No 128005/Δ2/13.8.2014 Decision of the Minister of Education is indeed a positive development, according to which teachers with a sixty-seven percent (67%) disability or more with sight or hearing loss as well as quadriplegic-paraplegic persons may teach in all special education schools and integration classes, irrespective of the disability of their students.

In particular, Article 3(2) of the aforementioned Decision states that «teachers with sight or hearing loss or quadriplegics - paraplegics with a 67% disability or more, who are capable of teaching, in accordance with the current applicable Civil Service Code, are hired as full or part-time substitutes under fixed-term private law contract only in Special Education School Units (SMEAE) and integration classes».

5. Law 4285/2014 "Amendment of Law 927/1979 (A 139) and its adaptation with the framework decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law (L 328) and other provisions" (OGG A 191/10.9.2014)

The GNCHR, having adopted among others the two following documents: Press Release: Memorandum of the Greek National Commission for Human Rights (GNCHR) on the Antiracist Legislation (16.9.2013) and "Comments on the draft law Ministry of Justice, transparency and

8. Law 3304/2005 on the "Implementation of the principle of equal treatment regardless of racial or ethnic origin, religious or other beliefs, disability, age or sexual orientation" (OGG A 16/27.1.2005), transposing Directives 2000/78/EC and 2000/43/EC in Greek law.

Human Rights on combating certain forms and expressions of racism and xenophobia by means of criminal law" (17.3.2011), as well as two special reports ("Dealing with racist violence", "Extremist groups, public discourse and racism in sports"), has constantly expressed its concern over the need to combat racist violence.

The GNCHR, through the Racist Violence Recording Network, has expressed its satisfaction for the voting of Law 4285/2014 "Amendment of Law 927/1979 (A 139) and its adaptation with the framework decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law (L 328) and other provisions".

With its Press Release dated 6 October 2014, the Racist Violence Recording Network, submitted specific supplementary recommendations. Among other things, the Network, taking into consideration the introduction of the general aggravating circumstance for crimes with racist motive (Article 81A of the Criminal Code), reminded of the need to safeguard the implementation of the Hellenic Police Circular No 7100/4/3 dated 24.5.2006 on the obligation to explore racist motive, collect relative evidence, record and/or report every incident against a person due to racial or ethnic origin, colour, religion, disability, sexual orientation and gender identity by police officers through a special form irrespective of the filing of a complaint and recommended the updating of the above mentioned circular⁹.

It should finally be noted that Law 4285/2014 does not provide for the *ex officio* prosecution of all racist motivated punishable acts or the relevant waiver of the court fee for the victims. Additionally, the existing legislation partially adopts the GNCHR recommendation, in compliance with the international obligations of the country (see Article 4(g) of the International Convention on the Elimination of All Forms of Racial Discrimination), according to which the commission of an act by a public officer or employee can be an aggravating circumstance. Moreover, the Law does

not recognise the right of legal entities or associations to file a civil suit, which in the GNCHR's opinion is extremely important for the effective implementation of the law.

6. National Action Plan for the Rights of Children

In its Plenary Session dated 8 May 2014, the GNCHR unanimously adopted its "Recommendations for the protection of childhood: Health and Welfare".

In its Recommendations, the GNCHR emphasised, among others, the need to develop a National Action Plan for Children's Rights (hereinafter NAPCR). In this context, it further recommended the creation of an interministerial body with a coordinating role as well as the legislative vesting of this interministerial collaboration. Such a body, which will have the form of an interministerial Committee for Children and will consist of General Secretaries of Ministries with relevant responsibilities, will have the final responsibility to develop and implement the NAPCR and will be held accountable thereof. The GNCHR also recommended the participation of the Children's Ombudsman in the interministerial Committee with an advisory-consultative role, as well as the possibility to invite to hearings representatives from other public organisations or independent Authorities, depending on the issues of every meeting.

The GNCHR Recommendations were accepted on principle. With the initiative of the General Secretariat of Transparency and Human Rights of the Ministry of Justice, a Draft "National Action Plan for Children's Rights, 2015-2020" was prepared, which was released to the public in November 2014. It was, then, put to public consultation from 24 November 2014 until 9 January 2015.

Given that it is a Draft NAP, whose completion is imminent, the issue of the incorporation of the rest of the GNCHR's recommendations is still pending the completion of the NAPCR.

9. Racist Violence Recording Network, Press release concerning recent legislative regulations for the combating of racist crimes, 6.10.2014, available at <http://rvrn.org/2014/10/447/>.

B. At an International and European Level

References of the European Court of Human Rights (ECtHR), Treaty Bodies and Officials and Experts of International organisations to reports of the Greek National Commission for Human Rights (GNCHR)

1. The GNCHR in the caselaw of the ECtHR

1. KAVOURIS AND OTHERS V. GREECE, 17.4.2014 (appl. No. 73237/12)

Violation of Article 3 ECHR

Violation of Article 13 ECHR

§ 16

«Le tribunal administratif conclut à une violation de l'article 5 de la Constitution et de l'article 5 de la Convention, mais non de l'article 3 de cette dernière: il considéra que le requérant ne prouvait pas la véracité de ses allégations, et il releva que le commissariat de police de Paleo Faliro n'était mentionné ni dans la déclaration publique du Comité européen pour la prévention de la torture et des peines ou traitement inhumains ou dégradants du 15 mars 2011, ni dans le rapport du 5 juillet 2011 établi par la **Commission nationale des droit de l'homme** et relatif aux conditions de détention en Grèce».

GNCHR, "Findings of the in situ visit undertaken by the National Commission of Human Rights and the Greek Ombudsman in detention centres for migrants in the Evros Region", 2011, available from: http://www.nchr.gr/images/English_Site/ASTYNO-MIA/Evros_2011.pdf

2. F.H. V. GREECE, 31.7.2014 (appl. No. 78456/11)

Violation of Article 3 ECHR

Violation of Articles 13 and 3 ECHR

§§ 73-85

«Les constats de la **Commission nationale pour les droits de l'homme** et du médiateur de la République

73. Du 18 au 20 mars 2011, la **Commission nationale pour les droits de l'homme** et le médiateur de la République ont visité les centres de rétention des départements d'Evros et de Rodopi afin d'examiner les conditions de détention des étrangers et l'application de la législation relative à l'asile.

1. Le centre de rétention de Soufli

74. Selon le directeur du centre, la capacité maximale du centre est de 36 personnes, à condition que les détentions ne durent que quelques jours. En effet, le centre ne se prête pas à des détentions de longue durée. À la date de la visite de la **Commission**, le centre accueillait 56 personnes, dont la plupart étaient détenues depuis trois ou quatre mois. Peu avant la visite, le nombre de détenus avoisinait les 150 personnes. Les conditions de détention étaient « inadmissibles ». La plupart des détenus dormaient par terre dans les dortoirs, mais aussi dans le hall qui servait pour la promenade.

75. L'une des deux installations sanitaires (comprenant des toilettes et douches) était en panne. Ainsi, l'ensemble des détenus utilisait l'autre installation, avec toutes les conséquences que cela pouvait entraîner d'un point de vue hygiénique.

76. La promenade dans la cour extérieure du centre dépendait du nombre des détenus, car celui des gardiens ne suffisait pas pour assurer la sécurité et empêcher les évasions.

77. La **Commission** et le médiateur concluaient que la présence d'un médecin, d'un psychologue et d'une infirmière ne pouvait pas compenser les conditions de détention inhumaines et dégradantes.

2. Le centre de rétention de Fylakio

78. Au premier jour de la visite – le 18 mars 2011 –, le centre, d'une capacité de 300 personnes, en accueillait 412. Les mois précédents, le nombre de détenus atteignait le double. Alors qu'au début de sa mise en service le centre avait été totalement rénové, il présentait déjà des dégradations et des problèmes de fonctionnement, dus à la surpopulation. Les conditions de détention étaient mauvaises à cause de la surpopulation. En raison du grand nombre de détenus et du nombre insuffisant de gardiens, les premiers n'étaient pas autorisés à sortir du bâtiment.

79. La **Commission** et le médiateur ont été informés qu'il y avait un important problème de financement du centre, ce qui avait comme conséquence le manque, entre autres, de produits de première nécessité (tels le papier hygiénique et les produits d'hygiène) et de linge de lit. Il y avait aussi une inquiétude concernant l'approvisionnement du centre en denrées alimentaires car le contrat conclu avec une société privée arrivait à échéance.

80. La **Commission** et le médiateur ont aussi été informés qu'il y avait des problèmes de communication avec les détenus par manque d'interprètes. Les détenus n'étaient pas au courant de la procédure d'asile, ni des motifs ou de la durée de leur détention.

3. Le centre de rétention de Venna

81. Avant d'être transformé en centre de rétention, le bâtiment servait de lieu de stockage de céréales. À la date de la visite de la **Commission**, le centre, d'une capacité de 214 personnes, en accueillait 202.

82. Les détenus étaient répartis dans six grands dortoirs, suffisamment éclairés et ventilés. Ils sortaient dans la cour extérieure du centre de 10 heures à 12 heures, puis de 15 heures à 17 heures.

83. Les détenus se voyaient distribuer des produits d'hygiène corporelle. Toutefois, les dortoirs n'étaient pas nettoyés et les matelas devaient être remplacés en raison de l'usure et du manque de nettoyage.

84. Il y avait deux interprètes dans le centre et un accès libre aux avocats et représentants des organisations non gouvernementales.

4. Le centre de rétention de Feres

85. À la date de la visite de la **Commission** et du médiateur, le centre, d'une capacité de 40 personnes, en accueillait 126. Le problème de la surpopulation était particulièrement intense et les détenus étaient obligés de dormir dans la cour».

§ 93

« Se prévalant des rapports du CPT, des Rapporteurs spéciaux des Nations unies, du médiateur de la République et de la **Commission nationale des droits de l'homme**, le requérant rétorque que ces documents démontrent de manière parfaitement crédible que les conditions de détention dans tous les centres de rétention en cause étaient similaires ».

GNCHR, "Findings of the in situ visit undertaken by the National Commission of Human Rights and the Greek Ombudsman in detention centres for migrants in the Evros Region", 2011, available from: http://www.nchr.gr/images/English_Site/ASTYNO-MIA/Evros_2011.pdf

3. H.H. V. GREECE, 9.10.2014 (appl. No. 63493/11)**Violation of Article 3 ECHR**

§ 55

«La Cour relève en l'espèce que, sur une période totale de six mois, le requérant a été détenu la plus grande partie du temps au poste-frontière de Soufli (à l'exception de deux courtes périodes, à savoir deux jours et cinq jours pendant lesquels il a été détenu respectivement au poste-frontière de Feres et au commissariat de Soufli). La Cour a pris note des constats concernant ce poste-frontière effectués par le CPT (dans son rapport du 10 janvier 2012), le représentant du Haut-Commissariat des Nations unies pour les réfugiés (à la suite de la visite effectuée du 29 septembre au 1er octobre 2010), la **Commission nationale pour les droits de l'homme** et le médiateur de la République (à la suite de leur visite effectuée du 18 au 20 mars 2011) et cités dans l'arrêt B.M. c. Grèce précité. Il en ressort que rien n'avait changé, lors du séjour du requérant à Soufli, par rapport à la situation relevée dans les arrêts précités».

GNCHR, "Findings of the in situ visit undertaken by the National Commission of Human Rights and the Greek Ombudsman in detention centres for migrants in the Evros Region", 2011, available from: http://www.nchr.gr/images/English_Site/ASTY-NOMIA/Evros_2011.pdf

4. AL. K. V. GREECE, 11.12.2014 (appl. No. 63542/11)**Violation of Article 3 ECHR**

§ 53

«La Cour relève en l'espèce que, sur une période totale de six mois environ, le requérant a été détenu en grande partie aux postes-frontières de Ferres et de Soufli. La Cour a par ailleurs pris note des constats concernant ces postes-frontières effectués par diverses organisations et institutions nationales et internationales – à savoir le CPT dans son rapport du 10 janvier 2012, le représentant du Haut Commissariat des Nations unies pour les réfugiés à la suite de sa visite effectuée du 29 septembre au 1er octobre 2010, ainsi que la **Commission nationale pour les droits de l'homme** et le médiateur de la République à la suite de leur visite effectuée du 18 au 20 mars 2011 –, ces constats étant mentionnés dans les arrêts A.F. c. Grèce et B.M. c. Grèce précités (paragraphes 33-37 et 43-55 respectivement). Il ressort du dossier que rien n'avait changé, lors du séjour du requérant dans ces postes-frontières, par rapport à la situation relevée dans les arrêts précités».

§ 70

«A. Article 46 de la Convention

70. En parvenant à la conclusion de violation de l'article 3 relative aux conditions de détention du requérant, la Cour s'est fondée sur les circonstances particulières du grief de celui-ci à cet égard. Toutefois, elle se doit de souligner, de manière générale, que le problème qui sous-tend la violation de l'article 3 en l'espèce va au-delà des intérêts personnels du requérant dont il s'agit (voir, mutatis mutandis, Ananyev et autres c. Russie, nos 42525/07 et 60800/08, §§ 184 etc., 10 janvier 2012). En effet, la Cour a déjà eu à plusieurs reprises l'occasion de se prononcer sur les conditions régnant dans les postes-frontières de Soufli et de Ferres et elle a conclu dans un certain nombre d'arrêts que celles-ci enfreignaient l'interdiction de mauvais traitements posée par l'article 3 de la Convention (voir notamment les arrêts S.D. c. Grèce, précité ; R.U. c. Grèce, précité, Ahmade c. Grèce, no 50520/09, 25 septembre 2012 ; A.F. c. Grèce, précité, B.M. c. Grèce,

*précité; F.H. c. Grèce, no 78456/11, 31 juillet 2014). Les constats de la Cour sur la situation individuelle des requérants dans les affaires précitées ont, de par leur nature, une portée plus large et ont été faits à lumière des préoccupations générales exprimées par le CPT, le Haut-Commissariat des Nations Unies pour les Réfugiés, le médiateur de la République et la **Commission nationale des droits de l'homme en Grèce**. De plus, un grand nombre d'affaires contre la Grèce, qui soulèvent des griefs similaires, est actuellement pendant devant la Cour. Rien ne laisse à penser que le flux continu de ce type d'affaires cesserait dans un avenir immédiat».*

GNCHR, "Findings of the in situ visit undertaken by the National Commission of Human Rights and the Greek Ombudsman in detention centres for migrants in the Evros Region", 2011, available from: http://www.nchr.gr/images/English_Site/ASTYNO-MIA/Evros_2011.pdf

5. MOHAMAD V. GREECE, 11.12.2014 (appl. No. 70586/11)

Violation of Article 3 ECHR

Violation of Articles 13 and 3 ECHR

Violation of Article 5 par. 1 ECHR

§ 38

*«Les constats concernant le poste-frontière de Soufli effectués par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (dans son rapport du 10 janvier 2012 et dans sa déclaration publique du 15 mars 2011), le représentant du Haut-Commissariat des Nations unies pour les réfugiés (à la suite de la visite effectuée du 29 septembre au 1er octobre 2010), la **Commission nationale des droits de l'homme** et le médiateur de la République (à la suite de leur visite effectuée du 18 au 20 mars 2011) sont exposés dans l'arrêt B.M. c. Grèce (no 53608/11, §§ 41-55, 19 décembre 2013)».*

§ 60

*«La Cour relève en l'espèce que le requérant a été détenu pendant plus de cinq mois au poste-frontière de Soufli. La Cour a pris note des constats concernant ce poste-frontière effectués par le CPT (dans son rapport du 10 janvier 2012 et dans sa déclaration publique du 15 mars 2011), le représentant du Haut-Commissariat des Nations unies pour les réfugiés (à la suite de la visite effectuée du 29 septembre au 1er octobre 2010), la **Commission nationale des droits de l'homme** et le médiateur de la République (à la suite de leur visite effectuée du 18 au 20 mars 2011) (paragraphe 38 ci-dessus). Il en ressort que rien n'avait changé, lors du séjour du requérant dans ce poste-frontière, par rapport à la situation relevée dans les arrêts précités».*

GNCHR, "Findings of the in situ visit undertaken by the National Commission of Human Rights and the Greek Ombudsman in detention centres for migrants in the Evros Region", 2011, available from: http://www.nchr.gr/images/English_Site/ASTYNO-MIA/Evros_2011.pdf

2. The GNCHR in the European Committee of Social Rights (ECSR) Conclusions

European Social Charter, European Committee of Social Rights Conclusions XX-3 (2014), Greece, Articles 2 and 4 of the 1961 Charter and Articles 2 and 3 of the 1988 Additional Protocol

Article 2 - Right to just conditions of work

Paragraph 2 - Public holidays with pay

The Committee takes note of the information contained in the report submitted by Greece. It also takes notes of the information contained in the comments by the Greek General Confederation of Labour (GSEE) of 15 January 2014 and in those of **the Greek National Commission for Human Rights (GNHCR)** of 9 October 2014.

Article 2 - Right to just conditions of work

Paragraph 3 - Annual holiday with pay

The Committee takes note of the information contained in the report submitted by Greece. It also takes notes of the information contained in the comments by the Greek General Confederation of Labour (GSEE) of 15 January 2014 and in those of **the Greek National Commission for Human Rights (GNHCR)** of 9 October and 1 December 2014.

Article 2 - Right to just conditions of work

Paragraph 5 - Weekly rest period

The Committee takes note of the information contained in the report submitted by Greece. It also takes notes of the information contained in the comments by the Greek General Confederation of Labour (GSEE) of 15 January 2014 and in those of **the Greek National Commission for Human Rights (GNHCR)** of 9 October and 1 December 2014.

In the light of the comments by **the GNHCR**, the Committee furthermore asks the next report to clarify how Act No. 4093/2012 has affected the right to a weekly rest period.

Article 4 - Right to a fair remuneration

Paragraph 1 - Decent remuneration

The Committee takes note of the information contained in the report submitted by Greece. It also takes notes of the information contained in the comments by the Greek General Confederation of Labour (GSEE) of 15 January 2014 and in those of **the Greek National Commission for Human Rights (GNHCR)** of 9 October and 1 December 2014.

It also notes that, according to **the GNHCR** comments, the abundance of complex, contradicting and ever changing austerity measures exacerbate a general feeling of insecurity, and that 34.60% of the population were at risk of poverty in 2012.

The Committee further refers to the terms of **the GNHCR Recommendation of 8 December 2011** on the imperative need to reverse the sharp decline in civil liberties and social rights, in particular to the call to take the fiscal measures' impact on social protection and security into account and to undertake action so that every measure of economic governance be adopted and implemented with due respect for, and in a manner that safeguards, civil liberties and social rights.

Article 4 - Right to a fair remuneration

Paragraph 4 - Reasonable notice of termination of employment

The Committee takes note of the information contained in the report submitted by Greece. It also takes note of the information contained in the comments by the Greek General Confederation of Labour (GSEE) of 15 January 2014 and in those of **the Greek National Commission for Human Rights (GNHCR)** of 9 October and 1 December 2014.

The Committee notes from the comments of the GSEE that Act No. 4093/2012 considerably reduces notice periods, restricts severance pay to 12 months' salary and imposes a ceiling of €2 000 on supplementary payments. According to the comments of **the GNHCR**, notice period and severance pay reductions jeopardise the notice's purpose, which is to support the worker during search for new employment, and the allowance of supplementary payment to workers with more than 16 years of service creates discrimination in the termination of employment and remuneration on the criterion of hire.

The Committee further refers to **the GNHCR Recommendation of 8 December 2011** on the imperative need to reverse the sharp decline in civil liberties and social rights, in particular to the call to take the fiscal measures' impact on social protection and security into account and to undertake action so that every measure of economic governance be adopted and implemented with due respect for, and in a manner that safeguards, civil liberties and social rights.

Article 4 - Right to a fair remuneration

Paragraph 5 - Limits to wage deductions

The Committee takes note of the information contained in the report submitted by Greece. It also takes note of the information contained in the comments by the Greek General Confederation of Labour (GSEE) of 15 January 2014 and in those of **the Greek National Commission for Human Rights (GNHCR)** of 9 October and 1 December 2014.

Article 3 of the 1988 Additional Protocol - Right of workers to take part in the determination and improvement of working conditions and working environment

The Committee takes note of the information contained in the report submitted by Greece and in the Observations made by **the Greek National Commission for Human Rights**.

GNCHR, "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 (Reference Period 1.1.2009-12.31.2012)", 9.10.2014, available from: http://www.nchr.gr/images/pdf/apofaseis/ellinikes_ektheseis_en_ell_org/CoE/GNCHR_Observations_24thReportf.pdf

GNCHR, "Recommendation on the imperative need to reverse the sharp decline in civil liberties and social rights", 2011, available from: http://www.nchr.gr/images/English_Site/CRISIS/nchr_crisis.pdf

3. The GNCHR in the European Commission against Racism and Intolerance (ECRI) Reports

ECRI REPORT ON GREECE, (fifth monitoring circle), Adopted on 10 December 2010, Published on 24 January 2015

29. The Ombudsman can only refer a case to the competent prosecutor or administrative authority for investigation, without having the right to initiate and participate in court cases. Since 2010, **the National Commission of Human Rights (NCHR)** has been proposing to amend Law 3304/2005 to allow the Ombudsman to intervene in favour of a plaintiff in cases which have been previously investigated by him/her and are subsequently heard by the courts. However, no such amendments have been made or are planned.

68. In May 2011, **the National Commission for Human Rights (NCHR)** adopted a special report on tackling racist violence in Greece by the police and the justice system. It found that racist violence could not be dealt with effectively without a complete change in the way that the police handled such cases. Reform was especially important in cases involving police officers. Such cases generally resulted in an acquittal, if investigated at all. This failure to investigate complaints properly contributed to victim's reluctance to report crime. The police were accused of being a neutral observer of the attacks by right-wing groups at best. At worst, they actually perpetrated racist violence. Furthermore the police often refused to investigate, even when there was ample evidence.

73. While some measures had been taken by the authorities, such as the creation of new anti-racist police units in early 2013, these remained largely insufficient to address the problem of racist violence. It was only after the murder of the Pavlos Fyssas, an ethnic Greek, by a member of Golden Dawn in September 2013 that the authorities acted against the neo-Nazi party, arresting and charging its leadership with having formed a criminal organisation. A Public Prosecutor for the prosecution of acts of racist violence was appointed in October 2013. The arrests also sparked a public debate as to whether the crackdown might have been mainly motivated by party politics.⁵³ On the other hand, the fact that hundreds of attacks against foreigners, including several killings, had not resulted in any steps against this organisation, but that this required the death of a Greek, is in itself worrying. This attitude is also implied by a comment made by the former high-ranking Cabinet Secretary, responding in 2012 to **the annual NHRC report**, which had raised the problem of racist violence, that "We are not interested in the human rights of foreigners". The Ministry of Justice, Transparency and Human Rights has included the fight against racism and racist violence into its Human Rights National Action Plan 2014-2016.

74. ECRI recommends the creation of a Task Force to develop a comprehensive national strategy to combat racism and intolerance. Such a Task Force should be composed of the relevant authorities, the two independent bodies (Ombudsman and National Human Rights Commission) and NGOs, so as to enhance the cooperation between the authorities and civil society on this matter. The national strategy should, inter alia, include a situation analysis, an overview of existing measures, gaps and needs, and strategic recommendations on how to address them, including targets and measurable indicators.

GNCHR, Annual Report 2012-2013, available from: http://www.nchr.gr/images/English_Site/Ektheseis/ENGLISHREPORT12_13.pdf

GNCHR, "Racist Violence", 2011, available from: http://www.nchr.gr/images/English_Site/DIAKRISEIS/racist_violence.pdf

4. The GNCHR in the ILO Reports

Application of International Labour Standards 2015 (I), International Labour Conference, 104th Session, 2015, REPORT III (Part 1A)

Discrimination (Employment and Occupation) Convention, 1958 (No.111) (ratification: 1984)

Articles 2 and 3 of the Convention

*Impact of the structural reform measures on the application of the Convention. The Committee has been examining for a number of years the austerity measures adopted in the framework of the support mechanism. In this context it has requested the Government to monitor the impact of such measures on the employment of men and women, including those from religious and ethnic minorities, in both the public and the private sectors, so as to address any direct or indirect discrimination based on the grounds provided for in the Convention. The Committee notes the information provided by the Government concerning the implementation of Act No.4024/2011 which provides for the automatic termination of different categories of employees and the placing of some employees in some categories in the "labour reserve" (that is employees on open-ended private law contracts) and Act No. 4093/2012 which provides for civil service mobility, as well as the conversion from full time to part time and rotation work contracts in the private sector, which are addressed in detail in the direct request. The Committee further notes that **the Greek National Commission for Human Rights (NCHR)** highlighted the importance of assessing the adverse consequences of the multiple austerity measures on the employment and social security rights of large segments of the population and called on the Government to end the flexibilisation of employment relationships in the private and the public sectors (**NCHR conclusions adopted by the Plenary of 27 June 2013**). Moreover, the independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of human rights recommended the conducting of human rights impact assessments to identify potential negative impacts of the adjustment programme and the necessary policies to address such impacts (A/HRC/25/50/Add.1, 27 March 2014, paragraph 91).*

GNCHR, "The GNCHR Recommendation and decisions of international bodies on the conformity of austerity measures to international human rights standards (2013)", available from: http://www.nchr.gr/images/English_Site/AusterityMeasure-sHR/gnchr.austeritymeasures.2013.pdf