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II.
REPORT ON GNCHR AND ITS WORK

ESTABLISHMENT

The Greek National Commission for Human Rights (GNCHR) was founded by Law 2667/1998 and inaugurated on 10 January 2000, when it was first convened by the Prime Minister, and its President and two Vice-Presidents were elected.

I. Mission and mandate of GNCHR

GNCHR is a statutory National Human Rights Institution having a consultative status with the Greek State on issues pertaining to human rights protection. The creation of GNCHR emanated from the need to monitor developments regarding human rights protection on the domestic and international plane, to inform Greek public opinion about human rights-related issues and, above all, to provide guidelines to the Greek State aimed at the establishment of a modern, principled policy of human rights protection. A source of inspiration for the creation of GNCHR were the *Paris Principles*, adopted by the United Nations and the Council of Europe.

According to Law 2667/1998, by which GNCHR was established, GNCHR has the following substantive competences:

1. The study of human rights issues raised by the government, by the Convention of the Presidents of the Greek Parliament, by GNCHR members or by non-governmental organisations;
2. The submission of recommendations and proposals, elaboration of studies, submission of reports and opinions for legislative, administrative or other measures which may lead to the amelioration of human rights protection in Greece;
3. The development of initiatives for the sensitisation of the public opinion and the mass media on issues related to respect for human rights;
4. The cultivation of respect for human rights in the context of the national educational system;
5. The maintenance of permanent contacts and co-operation with international organizations, similar organs of other States, as well as with national or international non-governmental organisations;
6. The submission of consultative opinions regarding human rights-related reports which Greece is to submit to international organisations;
7. The publicising of GNCHR positions in any appropriate manner;
8. The drawing up of an annual report on human rights protection in Greece;
9. The organisation of a Human Rights Documentation Centre;
10. The examination of the ways in which Greek legislation may be harmonised with the international law standards on human rights

protection, and the subsequent submission of relevant opinions to competent State organs.

II. Membership of GNCHR

In accordance with Article 2 of Law 2667/1998, as amended in 2002 and 2003, the following are members of GNCHR:

1. The President of the Special Parliamentary Commission for Institutions and Transparency;

2. A representative of the General Confederation of Greek Workers, and his/her alternate;

3. A representative of the Supreme Administration of Civil Servants' Unions, and his/her alternate;

4. Six representatives (and their alternates) of Non-Governmental Organisations active in the field of human rights protection, that is, Amnesty International Greek Section, the Hellenic League for Human Rights, the Marangopoulos Foundation for Human Rights, the Greek Council for Refugees, the Greek League for Women's Rights and the Panhellenic Federation of Greek Roma Associations;

5. Representatives of the political parties represented in the Greek Parliament. Each political party designates one representative and his/her alternate;

6. The Greek Ombudsman and his/her alternate;

7. One member of the Authority for the Protection of Personal Data and his/her alternate, proposed by the President of the above Authority;

8. One member of the National Radio and Television Council and his/her alternate, proposed by the President of the Council;

9. One member of the National Commission for Bioethics and his/her alternate, proposed by the President of that Commission;

10. Two personalities widely recognised for their expertise in the field of human rights protection, designated by the Prime Minister;

11. One representative (and one alternate) of the: Ministry of Interior, Public Administration and Decentralisation, Ministry of National Education and Religion, Ministry of Labour and Social Security and Ministry of the Press and Mass Media. Each of these persons (who do not have the right to vote) is designated by the competent Minister;

12. Three Professors or Associate Professors (and their alternates) of Public Law or Public International Law, members of the University of Athens, Faculty of Political Science and Administration, of the University of Thessaloniki, Faculty of Law and of the University of Thrace, Faculty of Law;

13. One member of the Athens Bar Association and his/her alternate.

It is worthy to note the originality of the law provisions concerning GNCHR membership and the election of Members, of the President and the two Vice-Presidents. Each institution

participating in 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 the right to vote- elect the President and the two Vice-Presidents of GNCHR. This particular, liberal system ensures GNCHR's independence and impartiality.

III. The organisational structure of GNCHR

Since 10 January 2000 the President of GNCHR (Commissioner) has been Emer. Professor Alice Yotopoulos-Marangopoulos. First Vice-President is Mr Nikos Frangakis and Second Vice-President is Professor Anna Frangoudaki.

GNCHR has established five Sub-Commissions:

1. The Sub-Commission for Civil and Political Rights;
2. The Sub-Commission for Social, Economic and Cultural Rights;
3. The Sub-Commission for the Application of Human Rights to Aliens;
4. The Sub-Commission for the Promotion of Human Rights;
5. The Sub-Commission for International Communication and Co-operation.

According to the Rules of Procedure of GNCHR the Plenary convenes every two months. In practice this happens every month. According to the above Rules each Sub-Commission holds at least one meeting per month. The Sub-Commissions' work consists of the preparation 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.

Since 15 November 2000 GNCHR has employed two Legal Officers while since 1 April 2002 GNCHR has also employed an Executive Secretary.

In 2003 GNCHR acquired its own premises in Athens and opened its website (www.nchr.gr).

IV. Summary of the work of GNCHR from 2000 to date

In the beginning of the first year of its life, 2000, GNCHR collected and studied all major international and European documentation regarding human rights protection issues in Greece, which have been raised in international and European fora, with a view to examining the actual compliance of Greece with international and European human rights standards and law. Accordingly, the major issues of concern have been the following: issues pertaining to the effectiveness of the Greek justice system; freedom of religion; conscientious objection to military service; conditions of detention; non-discrimination on the grounds of race, ethnic origin or sex; protection of minority populations.

In the course of the meetings of the GNCHR Plenary and the Sub-Commissions since 2000 the following issues have been discussed and relevant action was taken, including notification of the GNCHR

resolutions and recommendations to all competent Greek authorities (also published in GNCHR Annual Reports):

• **GNCHR proposals on the draft Charter of Fundamental Rights of the European Union (11 July 2000):** GNCHR submitted to the EU Convention and competent Greek authorities proposals regarding the inclusion within the body of the Charter of specific substantive provisions regarding:

1. The inclusion in the body of the Charter of a substantive notion of effective equality, especially with regard to women;

2. The abolition and prevention of modern forms of slavery, especially those pertaining to trafficking and sexual exploitation of women and children;

3. The prevention of human rights violations, especially gender-related, by fundamentalists;

4. The express abolition of the death penalty in all circumstances;

5. The strengthening of the legal status and the establishment of implementation measures relating to social and economic rights.

• **The issue of inclusion of religious affiliation in Greek citizens' identity cards (13 July 2000):** GNCHR adopted a resolution according to which the inclusion of religious affiliation in Greek citizens' identity cards is not in accordance with the Greek Constitution (article 5 paras 1 and 2 and article 13), or with current international and European human rights law, as well as European Community law. GNCHR pointed out that the selection of religion as a particular determining identity conflicts with religious freedom and, more specifically, with the right not to declare or to remain silent as to one's religious faith, and gives rise to dangers of possible discrimination by reason of religion, as past experience has proved.

• **Ratification of humanitarian law treaties (28 September 2000):** GNCHR called upon the Greek government to proceed to the ratification of the 1999 Second Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict, as well as of the 2000 Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (Greece had already signed these Protocols).

• **The 2000 Bill on aliens/immigration (9 November and 30 December 2000):** GNCHR expressed its criticism and submitted recommendations regarding certain provisions and omissions of the above Bill (later Law 2910/2001) which were considered to contravene current international standards of immigration and human rights law, such as: the lack of expert research on which the above Bill should have been based; non justification of visa application decisions by Greek consulates; lack of special protection of long-term immigrants; lack of effective protection of immigrant families; need to prevent human, especially women, trafficking through immigration legislation; access of immigrant children to education; access of

detained immigrants to legal counselling. GNCHR stressed that the Greek government should take all appropriate measures for the establishment of specialised research into contemporary conditions of migration and for the establishment of an integrated immigration policy.

- ***Cremation of the deceased (7 December 2000)***: GNCHR proposed to the competent Greek authorities the modification of the current legislative framework for the protection by Greek law of every person's right, without any distinction whatsoever, to choose between cremation and burial when deceased. Current Greek law exclusively provides for the latter. GNCHR has noted that where the deceased has not expressed any special preference as between cremation and burial, his/her family (in order of priority: spouse, adult children, siblings, as in the case of the donation of organs of the body) should be able to choose.

- ***Ratification of the Rome Statute of the International Criminal Court (7 December 2000)***: GNCHR called upon the Greek government to proceed to the ratification of the Statute of the International Criminal Court (signed by Greece in 1998, later ratified by Law 3003/2002).

- ***Human Rights Education and Promotion (2000-)***: GNCHR has initiated a programme of human rights education and promotion, giving priority to specific population groups, that is, policemen and policewomen, public servants, lawyers, journalists and students. In 2001 the Fourth Sub-Commission of GNCHR provided a number of Greek Universities with documentation with a view to establishing special human rights courses in their curricula. In April 2001 the Greek Open University accepted and started work on the proposal of the Fourth Sub-Commission of GNCHR, with a view to creating a new course on human rights. On 6 June 2002 the Fourth Sub-Commission provided the Greek Open University with more back-up information and ideas for the creation of the human rights course.

In June 2001 the Fourth Sub-Commission of GNCHR commissioned the Communication and Mass Media Department of the University of Athens to carry out a special study on Greek TV news bulletins and the promotion and establishment by them of stereotypes and discrimination mechanisms. The study was completed in February 2002 and widely publicised in December 2002, after a relevant public discussion which was organised by the Fourth Sub-Commission of GNCHR at the Athens Journalists' Association on 5 December 2002.

Also the Fourth Sub-Commission of GNCHR in 2001 had consultations with the Greek Ministry of Public Order and the National School of Public Administration. The Sub-Commission has urged the above Ministry (special educational material has also been provided to them by the Fourth Sub-Commission) and the National School to promote and strengthen human rights education in their curricula for policemen and public servants respectively.

- ***Amendment of the Greek Constitution in 2001 (1 February 2001)***: GNCHR submitted to the Greek government and to the parliamentary

political parties recommendations regarding the amendment of a series of constitutional provisions on: conscientious objection to military service, abolition of the death penalty in all circumstances (the death penalty in time of peace has been abolished in Greece), protection of personal data, the right of association of civil servants, Greek mass media, the right to property, the protection of the natural and cultural environment, the participation of civil servants in political parties and in national elections, the competences of the Greek Council of State, and the Greek independent administrative authorities.

• **Freedom of religion (1 March 2001):** In light of the recent case law of the European Court of Human Rights, GNCHR proposed the modification, according to the above-mentioned jurisprudence, of the current Greek legal framework regarding: 1. *Prosecution of proselytism*. The Greek state was urged to proceed to abrogating the relevant legislation in force and create a new relevant legal framework grounded in the right to freedom of thought, conscience and religion; 2. *The establishment of places of worship*. GNCHR urged the Greek authorities to abrogate the relevant antiquated legislation and comply with the judgments of the European Court of Human Rights; 3. *The situation of the Muslim minority in western Thrace*. In light of the ECHR case law, GNCHR pointed out that the competence of Muftis in Thrace should be contained in religious affairs only and not transcend to the fields of administration and justice; 4. *Discrimination against conscientious objectors*. GNCHR proposed the modification of Greek legislation with a view to eliminating legal and social discrimination against conscientious objectors to military service.

• **Use of force and of firearms by police forces (4 April 2001):** Upon request of the Minister of Public Order, GNCHR proposed the modification of the current relevant Greek legal framework in line with the relevant principles and norms of the United Nations and the Council of Europe. GNCHR stressed that the Greek legislation and police education and training were inadequate to confront modern forms of violence and criminality. According to GNCHR the new legislation should be squarely grounded in the principle of necessity and proportionality and guided, inter alia, by the 1979 UN Code of Conduct for Law Enforcement Officials and the 1990 UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. GNCHR also stressed the imperative of intensifying the training courses of all Greek police personnel and of effectively safeguarding the latter's right to life and physical integrity and their families' special social security rights.

• **Bill on organised crime (3 May 2001):** GNCHR submitted to the Ministry of Justice a series of recommendations, based mainly on European human rights principles and the UN Convention against Transnational Organised Crime (Palermo Convention), regarding the draft of the "Law on the amendment of the Greek Criminal Code and

the Code of Criminal Procedure for the protection of citizens from indictable acts of criminal groups" (later Law 2928/2001). GNCHR pointed out, inter alia, that mixed jury courts should not be excluded from the adjudication of organised crime cases, the investigative infiltration should be supervised by a judge and underlined the cautiousness with which DNA-related information (evidence) should be handled.

• **Protection of refugees (asylum) in Greece (8 June 2001):** GNCHR submitted to all competent Ministries proposals for a series of legislative and administrative amendments aimed at the modernisation and harmonisation of the Greek asylum framework with the established and emerging standards of international and European Community law. The main issues of concern were: 1. The free movement of refugees and asylum seekers; 2. Asylum seekers in transit areas of ports and airports; 3. Refugee reception centers; 4. The serious shortage of state trained interpreters and translators; 5. Asylum seekers without documentation, especially in Athens; 6. Review of asylum decisions and lack of judicial appeal on merits; 7. Inadequacy of legal aid to refugees and asylum seekers.

• **Establishment of a comprehensive legal aid system (25 June 2001):** GNCHR proposed to the Ministry of Justice the restructuring and modernisation of legal aid schemes in accordance with the legal aid standards established by the Council of Europe, the European Union and the case law on the European Convention on Human Rights. GNCHR expressed its concern at the inadequacy of legal aid as it was structured and applied in Greece and stressed that legal aid should be available to every person who is in need of it, in all jurisdictions and all procedural stages. Particular attention should be paid by the Greek state to vulnerable social groups such as asylum seekers, refugees and alien immigrants potentially discriminated against on the ground of their racial or ethnic origin.

• **Conditions of detention in Greece (5 July 2001):** GNCHR, in view of relevant recent reports of, among others, the European Committee for the Prevention of Torture and the UN Committee against Torture, having regard to recent case law of the European Court of Human Rights and having visited some Greek prisons and police detention centres, submitted to the Ministry of Justice and the Ministry of Public Order a series of proposals aiming at the urgent reformation and modernisation of the Greek detention centres and related legislation and practice. In particular GNCHR underlined the need for Greece to effectively comply with the recommendations of the above international and European organs, the need for creation of new modern detention centers, the separation of minor and adult detainees, the provision of adequate health care services to all detainees and the putting into effect of the new aliens legislation that provides for the creation of new detention centers for aliens under deportation.

• **Alternative civil-social service (5 July 2001):** GNCHR proposed to the Ministry of National Defence amendments for the modernisation of the Greek law regarding alternative civil-social service, instead of military service, in accordance with the relevant established principles of the Council of Europe and the case law of the European Court of Human Rights. GNCHR stressed, *inter alia*, that alternative service should be of a reasonable duration and never have the character of punishment, while the relevant authority should be independent from the military and provide adequate procedural safeguards.

• **Implementation by Greece of ILO Convention No 111 on non-discrimination in employment and occupation (20 August 2001 - a formal request for an opinion was submitted to GNCHR by the Greek Ministry of Labour):** GNCHR submitted its comments to the Ministry of Labour, placing particular emphasis on the important issues, requiring particular attention by the Greek state, of affirmative action in favour of women in Greece (following the new Article 116 para 2 of the Greek Constitution) and of the legal and factual gender equality in the framework of the relevant, evolving European Community law.

• **Resolution on terrorism and human rights after the events of 11.09.2001 (20 September 2001):** GNCHR was one of the first National Institutions that issued such a resolution calling upon states to abide by their international law obligations in the course of their struggle against terrorism that should in no way lead to new ethno-cultural divisions and enmities all over the world and to human rights violations.

• **Protection of social rights of refugees and asylum seekers in Greece (20 September 2001):** GNCHR submitted to the competent Greek Ministries a series of recommendations, based on European and international human rights standards, for the modernisation and the strengthening of the current, inadequate system of refugee social protection in Greece. The main issues tackled by GNCHR in its report are: 1. Reception centres for asylum seekers; 2. Employment and vocational training of refugees and asylum seekers; 3. Provision of aid and special allowances; 4. Education; 5. Special protection of unaccompanied minor refugees and asylum seekers.

• **Draft Report of the Greek Foreign Ministry on Racism, Intolerance and Xenophobia to the Committee of Ministers of the Council of Europe (22 October 2001):** Comments of the Second (Social, Economic and Cultural Rights) and Third (Application of Human Rights to Aliens) GNCHR Sub-Commissions were submitted to the Greek Foreign Ministry upon the latter's request. The above Sub-Commissions stressed, *inter alia*, that the Council of Europe should in no way proceed to the devaluation of the European Commission against Racism and Intolerance and that Greece should proceed to the ratification of the European Framework Convention for the Protection of National

Minorities, as well as Protocol No 12 of ECHR on the prohibition of all forms of discrimination.

- **Second Mediterranean Conference of National Human Rights Institutions (1-3 November 2001):** GNCHR successfully organised and hosted the above Conference from 1-3 November 2001 in Athens, which was attended by 14 National Institutions and was concluded with the adoption of the Athens Declaration (text available at www.GNCHR.gr). The major theme of the Conference was immigration and asylum following the Durban World Conference against racism of September 2001. The Conference was coupled with an open Colloquium on the above topic, organised by GNCHR in Athens.

- **Issues regarding protection of Roma in Greece (29 November 2001):** GNCHR submitted to the competent Greek authorities its report on Roma in Greece containing a long series of measures that Greece should take in order to meet the needs for social and legal protection of this particularly vulnerable social group. The main issues of particular concern to GNCHR have been the following: 1. The de facto social marginalisation of Roma; 2. Housing of Roma; 3. Provision of adequate health services to Roma; 4. Establishment of new education system tailored for the particular characteristics to Roma population; 5. Discrimination and violence against Roma by local indigenous populations and law enforcement personnel.

- **2001 Reports of the Ministers of Justice and of Public Order to the UN CAT (13 December 2001):** GNCHR submitted its comments on the above Reports, upon request of the relevant Ministries, in accordance with Law 2667/1998 founding GNCHR. GNCHR urged the Ministries to make particular reference in their Reports to the actual practice, that is, application of the UN Convention against Torture by Greek authorities. GNCHR also stressed the importance that Greek authorities should attach to the advancement of education and training of law enforcement personnel, to the amelioration of detention conditions in Greece and to the treatment by Greek authorities of immigrants and asylum seekers in accordance with international law and protection standards.

- **Main issues of racial discrimination in Greece - Proposals for the modernisation of Greek law and practice (20 December 2001):** With this report GNCHR underlined the major issues concerning racial equality in Greece already raised by competent UN and Council of Europe organs and proposed that the Greek government proceed to the overhaul of the relevant policy and legislation, taking in particular into account Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. GNCHR stressed that Greece should fully comply with the recommendations of the UN CERD and ECRI and proceed to the modification of Greek anti-racism legislation and policy with a view to living up to current EC law and relevant standards laid down by the Council of Europe.

• **2001 Greco-Turkish Protocol for the implementation of article 8 of the Greco-Turkish Agreement on combating crime, especially terrorism, organized crime, illicit drug trafficking and illegal migration (31 January 2002):** GNCHR issued an opinion expressing its serious concern at, inter alia, the non-inclusion in the above Protocol (Law 3030/2002) of any express clauses pertaining to the effective protection of asylum seekers arriving in Greece from Turkey, according to the Geneva/New York Refugee Convention and Protocol. GNCHR pointed out that in a number of cases the conditions of aliens' refoulement/readmission raise concerns as to the safeguarding of fundamental rights of all persons attempting to enter Greek territory, including illegal migrants.

• **Appeal to the Greek Foreign Minister pertaining to the treatment by the US authorities of Afghan detainees (28 February 2002):** GNCHR has called upon the Greek Foreign Minister to exercise his utmost influence so that international human rights principles are adhered to in this case, especially those emanating from the UN Convention against Torture, the International Covenant on Civil and Political Rights and international, conventional and customary, humanitarian law.

• **Appeal to the Greek Foreign Minister for the ratification by Greece of the anti-discrimination 12th Protocol to the European Convention on Human Rights, already signed by Greece (28 February 2002).**

• **Resolution on the 2001 proposals for an EU Council Framework Decision on combating terrorism and for an EU Council Framework Decision on the European arrest warrant and the surrender procedures between Member States (28 February 2002):** GNCHR commented on the above proposals dated December 2001 and stressed that these Decisions should be squarely based upon international and European human rights standards and principles. With regard to the decision on combating terrorism GNCHR stressed that EU member states should show utmost cautiousness to the identification of the aims by which terrorist acts are identified and that the right to a fair trial should be always adhered to in the course of the relevant procedures. As to the European arrest warrant decision, GNCHR pointed to the precarious situation that the above decision may engender especially for third country nationals who have occasionally been discriminated against and victimised by state measures and policies adopted by certain states following the events of 11 September 2001.

• **Research project on TV news bulletins and human rights protection (28 February 2002):** The Fourth Sub-Commission of GNCHR commissioned the Department of Communication and Mass Media of the University of Athens to carry out the above research that was concluded in February 2002. The research demonstrated the existence of a pattern of serious violations of human rights by TV news bulletins, which have taken the form of "infotainment", of mainly

private TV channels in Greece. The research attested to the fact that TV news in Greece tend to arbitrarily categorise and stigmatise particular ethnic and social groups infringing upon their human dignity and flagrantly violating fundamental contemporary standards of human rights protection, primarily the one of presumption of innocence. The research results were publicised at a special public discussion event in the premises of the Athens Journalists' Association, organised by the Fourth Sub-Commission of GNCHR on 5 December 2002.

• **2002 Core Document of the Greek Foreign Ministry to the UN Human Rights Committee (28 February 2002):** GNCHR submitted to the Greek Foreign Ministry, upon the latter's request, its comments on the above Core Document pertaining to basic information on the framework of human rights protection in Greece. The main issues that were regarded by GNCHR as insufficiently covered by the above Core Document were the following: 1. Human rights education of law enforcement officials and public servants; 2. Compliance and cooperation of Greece with the recommendations of the Council of Europe Social Rights Committee and ECRI, as well as with the judgments of the European Court of Human Rights; 3. Provision by Greece of data regarding religion and languages used in Greece.

• **Bill on combating trafficking in persons and providing protection to victims (28 February 2002):** GNCHR submitted to the Greek authorities a series of substantive proposals for the amendment of the above Bill (later Law 3064/2002 and relevant Presidential Decree 233/2003), in accordance with the relevant protection standards agreed upon by the United Nations, the Council of Europe and the European Union. The main issues on which GNCHR focused its attention are: 1. The necessary modification of the limited nature of the definition of trafficking included in the above Bill; 2. The necessity for expansion of the manners in which the victim's coerced acquiescence may be obtained; 3. The necessary establishment of a holistic legal and institutional framework for the provision of effective legal social protection to all victims of trafficking, especially during the phase of their repatriation; 4. The extensive protection that should be provided to minors; 5. The necessary criminalisation of professional exploitation of prostitutes.

• **Appeal to the Greek Foreign Minister for the signature and ratification by Greece of the 13th Protocol to ECHR (concerning the abolition of the death penalty in all circumstances, 24 April 2002 -** The death penalty in time of peace had already been abolished in Greece).

• **Restrictive quotas against women employed by the Greek Police and Fire Brigade (29 May 2002):** GNCHR issued a special report on the above issue calling upon the Greek Ministry of Public Order, in charge of Greek Police and Fire Brigade, to abide by the new provisions of the Greek Constitution on affirmative action in favour

of women, the relevant case law of the Greek Council of State and EC legislation. GNCHR stressed that according to the new article 116 para 2 of the Greek Constitution (2001) any kind of gender-based exclusion or restriction, including restrictive quotas against women, is to be considered as null and void. The competent Minister of Public Order in December 2002 put forward a Bill providing for the elimination of restrictive quotas against police women candidates.

• **Issues relating to reception and access of asylum seekers to the asylum procedure in Greece (6 June 2002):** GNCHR expressed its grave concern at reports of international NGOs regarding alleged instances of refoulement of asylum seekers by Greek authorities and issued a series of asylum law and practice-related recommendations with special reference to: the arrest of asylum seekers in border areas; these detainees' information about the Greek asylum procedure and their concomitant rights; provision of legal aid; facilitation of asylum seekers' communication with any person they wish to contact in order to inform them about their case; the creation of new permanent state reception centers for asylum seekers; the application of article 48 of Law 2910/2001, as amended by Law 3013/2002, which provides for the establishment of regional detention centres for aliens subject to administrative deportation.

• **Report on Law 2956/2001 pertaining to temporary employment through "companies of temporary employment" (4 July 2002):** GNCHR forwarded to the Greek government the above report underlining its concerns at the *raison d'être* itself and application of the above Law that provides for the leasing of employees through the above-mentioned companies to various businesses in Greece. GNCHR stressed that the above form of employment contravenes in practice human and labour rights of the persons employed through this system. GNCHR also pointed to the necessity of strengthening the efficiency of the competent Body of Labour Inspectors, in charge of safeguarding the proper application of labour law in Greece.

• **Bill on the Greek administration's compliance with judicial decisions (9 July 2002):** GNCHR submitted to the Greek authorities a number of proposals for ensuring conformity of the above Bill (late Law 3068/2002) with the prescriptions of the Greek Constitution, the International Covenant on Civil and Political Rights and the European Convention on Human Rights. The main points of GNCHR were the following: **1.** The most effective means of compliance by the administration would be the establishment by law of the "action for performance" against the Greek administration; **2.** Compliance should be provided for also in cases of judgments regarding interim protection; **3.** The judicial board in charge of supervising the administration's compliance should include judges who have already participated in the relevant proceedings; **4.** The waiting period regarding compliance should not be beyond the limits of reasonableness established in European human rights law. Finally

GNCHR pointed out that the above Bill should proceed to the abrogation of the antiquated preferential default interest of the Greek state, as prescribed by contemporary human rights law and principles.

• **Initial (2002) Report of Greece to the UN Committee on Economic, Social and Cultural Rights (4 September 2002):** GNCHR, upon urgent request of the Greek Foreign Ministry, submitted its comments on the above Report, which had been prepared by thirteen Ministries, in accordance with Law 2667/1998 founding GNCHR. GNCHR pointed to a series of issues falling under the scope of the Report that were not sufficiently, or at all, tackled by the above Report, such as: **1.** The inadequate Greek legal framework against racial or ethnic discrimination; **2.** The inadequate legal and institutional framework for the protection and integration of alien immigrants and refugees; **3.** Issues of unemployment and new forms of employment, such as temporary employment through "companies of temporary employment", that contravene modern human rights standards; **4.** High poverty rate and inadequate social welfare infrastructure; **5.** Implementation of the development and protection programme for Roma; **6.** Issues pertaining to socio-legal protection of aliens, especially women, victims of human trafficking; **7.** Issues regarding state education; **8.** Issues arising from the practice of mass media, especially from private TV channels, and the flagrant or indirect violation by them of human dignity.

• **Athens Conference on the Greek Presidency of the EU Council and the challenge of asylum and immigration, 8-9 November 2002 (co-organised with the Greek Ombudsman, UNHCR BO for Greece and the Greek Council for Refugees):** This was a two-day open conference attended by representatives of competent Greek Ministries, the EU Commission, UNHCR, GNCHR and Greek NGOs. The conference ended with the adoption of a series of conclusions on the European and Greek immigration and asylum law and policy, which were publicised and forwarded to all competent Greek, European and international organisations.

• **International Conventions on Migrant Workers and the position of Greece (12 December 2002).** GNCHR proposed that Greece accede to the following Conventions on Migrant Workers, regarding them as necessary for, inter alia, the planning and implementation of a contemporary, human rights-based immigration law and policy by Greece: ILO Convention (No 97) concerning Migration for Employment (revised 1949), ILO Convention (No 143) on Migrant Workers (Supplementary provisions, 1975) and the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

• **Issues relating to discrimination against alien workers with regard to their employment injury compensation (12 December 2002).** GNCHR recommended the abrogation of article 5 of Royal Decree of 24.07.1920 and of Law 551/1915 which condition employment injury

compensation to alien workers on the norm of reciprocity or the alien worker's residence in Greece, in violation of, inter alia, fundamental social rights provisions of the Greek Constitution and relevant provisions of the 1966 International Covenant on Economic, Social and Cultural Rights. With the same resolution GNCHR recommended also the ratification by Greece of the 1964 *Employment Injury Benefits* Convention of ILO (No 121).

• ***Commentary on the Bill of the Ministry of Public Order regarding arms possession and use of firearms by police personnel and their relevant training (12 December 2002)***. Upon request of the Minister of Public Order, GNCHR submitted its comments on the above Bill (later Law 3169/2003) of 12.11.2002. GNCHR regarded this Bill as moving in the right direction, in accordance with its own earlier proposals of 5 April 2001, the 1979 UN *Code of Conduct for Law Enforcement Officials* and the 1990 UN *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*. GNCHR proposed the modification of a series of provisions of the above Bill so that they conform to the principles of necessity and proportionality in which the relevant policy and practice should be grounded. GNCHR also stressed the necessity of intensification and streamlining by the Ministry of Public Order of human rights education and further training in the curricula of all law enforcement officials in Greece.

• ***Resolution on Greece's combat against terrorism in its territory (12 December 2002)***. GNCHR, following its former relevant Resolutions of 2001 and 2002, expressed its outright condemnation of acts of terrorism carried out in Greece and called upon all competent Greek authorities and professional associations, such as the Athens Bar and the Athens Journalists' Association, to ensure that the struggle against terrorism is not carried out to the detriment of the fundamental principles enshrined in international human rights law and in the Greek Constitution.

• ***Greece's compliance with the Conclusions of the European Committee of Social Rights (12 December 2002)***. Given the importance of the European Social Charter (ESC) and of the supervisory work of the European Committee of Social Rights (ECSR) for the protection of fundamental social rights in contracting states such as Greece, GNCHR proposed that Greece recognize the right of Greek NGOs to lodge complaints with ECSR, according to the 1995 Additional Protocol to ESC, and fully comply with the Conclusions of ECSR, pertaining to the collective complaints against Greece.

• ***The detention conditions in Greece in 2002 (12 December 2002)***: GNCHR paid particular attention and studied the latest relevant reports of the European Committee for the Prevention of Torture, the United Nations Committee against Torture and the Council of Europe Commissioner for Human Rights. Taking also into account the responses of the Greek authorities to the above reports, GNCHR proceeded to submitting to the competent Greek authorities a series

of recommendations with a view to ensuring, inter alia, the following: full compliance of Greece with the recommendations of the above United Nations and Council of Europe organs; promotion and strengthening continuous education of all personnel involved in the detention process; creation of detention centers of aliens under deportation according to Aliens' Law 2910/2001; special legislation for and attention to asylum seekers under detention, in accordance with the relevant GNCHR proposals of 06 June 2002; establishment of a detainee complaint procedure in all detention centers; decongestion of the prison and detention centers in the area of Athens through establishment of new prisons and detention centers in other regions; special treatment of detainees who are drug addicts and their strict separation from other detainees in all prisons and detention centers.

• **Proposals to the European Convention for the Constitutional Treaty of the European Union (07 May 2003):** GNCHR submitted to the European Convention a series of reasoned proposals pertaining to the following major issues: (a) The inclusion of peace and equality, especially equality between men and women, in the "values" of the European Union; (b) The addition to the Union's objectives of social objectives proclaimed by the EC and EU Treaties; (c) The addition to the Constitution of a provision mainstreaming the principle of, and concomitant right to, environmental protection and amelioration; (d) Providing the EU Charter of Fundamental Rights with constitutional force; (e) The entrenchment in the Constitution of the proscription of all forms of discrimination; (f) The express entrenchment in the Constitution of gender equality, protection of maternity and of paternity and of the reconciling of family and professional life; (g) The protection of public health in the European Union.

• **Resolution on Muslim weddings by proxy in Greece (29 May 2003):** GNCHR held extensive discussions on the complex legal and social issues arising from this subject. GNCHR stressed the importance of respect for cultural and religious identities in a pluralist, democratic society. Taking into consideration the relevant principles and rules of international, European and Greek human rights law GNCHR reached the following conclusions: (a) Muslim weddings by proxy should be considered by Greek law as "non-existent" with regard to the proxy and the principal's "spouse" and as "null and void" with regard to the principal; (b) The principle of legal security dictates that Muslim weddings by proxy already carried out in Greece should be considered as valid; (c) The minimum age for the conclusion of a Muslim wedding should be reviewed in the light of article 23 para. 3 of ICCPR and of the fundamental constitutional principle of gender equality.

• **Draft Agreements (a) on extradition and (b) on mutual legal assistance between the European Union and the United States of America (29 May 2003):** GNCHR expressed its reservation to the above Agreements and submitted to the Greek Government and the European

Union comments regarding the following major issues: (a) The need for amending article 4 para. 2 of the Extradition Agreement due the unwarranted lowering of the seriousness of the offence with which the persons under extradition are charged; (b) The need for an express inclusion of a provision proscribing the extradition of nationals; (c) The need for amending article 13 so that extradition should be proscribed in cases where no adequate guarantees are provided regarding the non-execution of a potential death penalty by the requesting State and the non-application by the same State of measures amounting to torture or inhuman or degrading treatment or punishment; (d) Article 14 should be modified so that the requesting State is expressly obliged to consult the requested State to determine the extent to which the particularly sensitive information can be protected by the requested State; (e) Article 9 of the Agreement on Mutual Legal Assistance should be amended so that there is guaranteed every person's right of access to personal data collected and exchanged between the contracting States; (f) Article 9 paras c and e of the same Agreement should be amended so that the requesting State is not provided with unlimited space of action in using personal data-related evidence or information obtained from the requested State.

• ***Supplementary reply of GNCHR to the Greek Foreign Ministry on the Initial Report by Greece to the Committee of the International Covenant on Economic, Social and Cultural Rights (29 May 2003)***: Upon the above Ministry's request, GNCHR submitted to it supplementary comments regarding the following main issues: (a) The independent nature, operation and work of GNCHR; (b) The protection by Greece of the social rights of Roma, refugees and asylum seekers. GNCHR stressed once again the need for Greece to intensify her efforts for the improvement of the socio-legal situation of the above specially vulnerable groups; (c) The need to improve the conditions relating to the education of children belonging to these social groups; (d) The promotion by the Fourth GNCHR Sub-Commission of human rights education in Greece in co-operation with the Ministry of Education.

• ***Bill on the reform of juvenile criminal law (29 May 2003)***: GNCHR recognised the improvement of the relevant legislation that the above Bill (later Law 3189/2003) brings with. However it submitted to the Justice Ministry a series of recommendations pertaining to the above Bill and the protection that should be afforded by Greek criminal law to the physical and mental health of minors. GNCHR proposed, inter alia, the following: (a) Introduction into Greek legislation of special protective measures aiming at the rehabilitation and social integration of juvenile offenders; (b) Amendment of the Bill so that specialised psychological care is provided to juvenile offenders; (c) The strict observance of the rule prescribing the separation of minor and adult detainees, especially if the latter are drug addicts and (d) The avoidance of institutionalized treatment of juvenile offenders.

• **Bill on the acceleration of criminal procedure (29 May 2003):** GNCHR submitted to the Justice Ministry a series of recommendations on the above Bill (later Law 3160/2003). The major issues are the following: (a) The need for furthering the protection of suspects, taking fully into account the case law of article 6 ECHR; (b) The preservation of the right of appeal against judicial council decisions; (c) Problems arising from the restriction of the right of appeal by the increase of the appeal ability limits. GNCHR stressed that the above new provision raises serious issues of incompatibility with ECHR and ICCPR; (d) The issue of restriction of the right of appeal against ultra vires acts. GNCHR proposed that the relevant restrictive grounds in the law should be indicative.

• **Proposals on the protection of the rights of mentally disabled persons subject to criminal security measures (19 June 2003):** Taking into account the international and European developments in the area of protection of the above particularly vulnerable persons, GNCHR proposed to the Justice Ministry a series of amendments of criminal law for the enhancement of the protection of these persons. In particular GNCHR submitted to the Greek State the following major proposals: (a) Amendment of Greek criminal law so that detention of the above persons is ordered solely by courts of justice following open court sessions; (b) The detention should be primarily conditioned on the existence of the relevant pathology and not on vague legal conditions such as "danger to public safety"; (c) Amendment of legislation so that detention is subject to a complete judicial control as prescribed by contemporary international and European human rights standards; (d) The entrenchment in Greek law of the right of the mentally disabled to be present in all relevant judicial proceedings.

• **Reply of GNCHR to the appeal of the "Committee for the recognition of the ancient Greek religion of the Twelve Gods" regarding human rights violations (25 September 2003):** GNCHR held an extensive discussion on the above issue with representatives of the aforementioned Committee and reached the following conclusions: (a) GNCHR advised the Ministry of Education and Religious Affairs that they respond immediately and definitively to the application of the above Committee regarding the granting of a permit for establishing a place of worship; (b) GNCHR also advised the above Ministry that they review the outdated legal framework regarding the establishment of churches/temples and places of worship, as already proposed by GNCHR on 01 March 2001 (see supra).

• **Bill regarding the provision of legal aid to persons with low income (30 October 2003):** GNCHR submitted to the Greek Ministry of Justice its comments on the above Bill (later Law 3226/2004). The major points raised by GNCHR were the following: GNCHR proposed that the Bill should not condition the provision of legal aid to non-nationals on the latter's legal residence in the European Union. GNCHR proposed that legal aid should be provided also with regard

to administrative law litigation and that it should cover early preliminary (legal counselling) stages of all legal proceedings (civil, criminal and administrative). GNCHR also recommended that special consideration should be given by the Bill to asylum seekers as well as to victims of racial discrimination, as already noted by GNCHR in its relevant recommendations of 25 June 2001 (see supra).

• ***The incorporation of the EU Charter of Fundamental Rights into the draft Constitutional Treaty of the Union (30 October 2003):***

Following up to a relevant document of the French National Human Rights Commission, GNCHR submitted to the Greek Government and the European Union a series of proposals the most important of which are the following: (a) The incorporation of the Charter into the Constitution keeping intact the letter and spirit of the Charter as adopted at Nice; (b) Avoidance of Charter amendments that would restrict the interpretation potentials of European domestic courts; (c) The deletion of all Charter amendments made by the Convention (except for the purely "drafting adjustments"); (d) The need for informing the jurists and the public of the EU Member States on the above legal documents given their utmost politico-legal significance.

• ***The continuing use by Greece of anti-personnel mines in border areas (30 October 2003):***

GNCHR welcomed the deposition by Greece of the instrument of ratification of the Mine Ban Treaty (Ottawa, 1997, Law 2999/2002) at the United Nations on 25 September 2003. However GNCHR expressed its grave concern at the continuing use by Greece of anti-personnel mines in border areas that have caused a large number of victims including asylum seekers and illegal immigrants. This has been a practice that violates the fundamental human right to life entrenched in international human rights law, as well as basic international principles of refugee protection. GNCHR called upon the Greek State to immediately demine the above areas, to destroy the anti-personnel mines currently on stock and to avoid their use in the future.

• ***The loss of Greek nationality by virtue of ex article 19 of the Greek Nationality Code (GNC) and the procedure for its reacquisition (30 October 2003):***

The above provision, in force until 1998, led to the denationalisation of approximately 60,000 Greek citizens, mainly of Muslim/Turkish origin in Thrace, who had left Greece "with no intention of return". GNCHR expressed its concern at the fact that the Greek State did not provide through statutory legislation for the reacquisition of Greek nationality in the above cases, given the fact that ex article 19 GNC was considered as contrary to the Greek Constitution and to contemporary human rights protection standards. GNCHR also pointed out that it would be necessary the promulgation of specific statutory legislation providing for the possibility of reacquisition of Greek nationality in these cases. GNCHR also proposed that Greece accede to the 1961 Convention on the Reduction of Statelessness.

• **Defining the position of cultural rights in domestic legal order and the relevant action of GNCHR (17 December 2003):** The above issue was forwarded to the Plenary by the Second Sub-Commission that decided to propose to GNCHR the promotion of the position of cultural rights in Greece. GNCHR took into account the international, European and national standards of cultural rights protection and concluded that even though in Greece there are institutional safeguards of cultural rights the latter have not been adequately advanced or protected by the State in actual practice. GNCHR pointed out the need for protecting not only "horizontal" cultural rights covering the whole population of the country but also "vertical" cultural rights regarding members of minority groups who live in Greece and constitute a significant part of modern Greek society.

• **The protection of "de facto" refugees in Greece (17 December 2003):** GNCHR expressed its concern at the practice of the Greek Ministry of Public Order by which the renewal of de facto ("humanitarian") refugee permits was unjustifiably denied. GNCHR welcomed the declaration of the above Ministry that this practice has ended but called upon it to give express and clear orders to the competent authorities so that they correctly apply current Greek asylum law and they treat favourably de facto refugees, according to the international and European standards of refugee protection. GNCHR reemphasised that refugee and immigration law and policy should be seriously overhauled by the Greek State and be characterised by clarity and broadmindedness in accordance with the European rule of law.

• **Bill entitled "Application of the principle of equal treatment irrespective of racial or ethnic origin, religious or other beliefs, disability, age or sexual orientation" (transposition of Directives 2000/43/EC and 2000/78/EC) (17 December 2003):**

GNCHR submitted to the competent Ministries a series of comments on and amendments to the above very significant Bill that attempts to introduce into Greek law new standards of protection against discrimination. Main weaknesses: (a) Derogations: The Bill's explanatory memorandum should recall that Art. 116(2) of the Greek Constitution allows no derogations anymore from gender equality and requires positive action, in particular in favour of women, and that it prevails, as more protective than EC law; Art. 5 of the Bill is less strict than the Directives; it should be adapted to them; (b) Scope of Bill (Arts. 4 & 8): more limited than that of the Directives; (c) Direct discrimination: the definitions are more restrictive than those of the Directives; (d) Positive action: the concept does not correspond to that of the directives; (e) Age: the Bill is less protective than the directives and Art. 10(11) of Act 3051/2002; (f) Defence of rights - Burden of proof - Social dialogue: all NGOs with a legitimate interest in human rights should have locus standi in courts and participate in the social dialogue;

effective judicial protection requires amendments to the Procedural Codes and improvement of the legal aid mechanisms; (g) Criminal sanctions: the Bill should be harmonised with the anti-racism Act 927/1979; (h) Equality bodies should have a wider scope of action; the Labour Inspectorate is not an independent body and has insufficient human and material resources.

• ***The prevention of torture and other cruel, inhuman and degrading treatment or punishment and the accession and application by Greece of the Optional Protocol to the relevant United Nations Convention (2002) (17 December 2003)***: GNCHR reminded the Greek State of the significant issue of protection of the rights of detained persons in Greece and especially of detainees who are mentally disabled, of alien detainees and of detainees belonging to minority groups, all of whom are especially vulnerable. As a consequence, GNCHR stressed the particularly important role that the above Optional Protocol may well play in human rights protection and especially for the protection of detainees. GNCHR underlined in particular the significance of the new Subcommittee on Prevention and of the independent National Preventive Mechanisms provided for by the Protocol. These organs, especially through their visits to places of detention and the relevant reports, have the potential to enhance the detention conditions and to prevent detainees' ill treatment worldwide. As a consequence, GNCHR called upon the Greek State to accede to the above Protocol and proceed to its effective implementation, especially through the independent National Preventive Mechanisms provided for by the Protocol.

• ***Human rights violations through the provision and application of inhuman and degrading penalties in certain States (17 December 2003)***: Following a proposal by the Marangopoulos Foundation for Human Rights (MFHR, NGO member of GNCHR) GNCHR decided to deal with the issue of inhuman and degrading penalties provided for and imposed by criminal legislation of certain States. MFHR has submitted to GNCHR a relevant study that, after its approval by GNCHR, will be forwarded to the other three NHRIs members of the European Coordinating Committee of NHRIs requesting their cooperation. The Greek Society of Criminology has also accepted to cooperate with GNCHR on the same issue.

• ***Translation into Greek, publication and distribution of the Booklet on Human Rights for the Police entitled "International Human Rights Standards for Law Enforcement" (United Nations High Commissioner for Human Rights, UNHCHR)***: In 2003 the Fourth Sub-Commission of GNCHR (Promotion of Human Rights) received the permission by the Office of UNHCHR to translate into Greek, publish and distribute the above Booklet to the Greek police. The Booklet was published by the Greek National Printing House in early 2004 and is scheduled to be distributed to all Police Academies in Greece.

**PROPOSALS TO THE EUROPEAN CONVENTION
FOR THE CONSTITUTIONAL TREATY OF THE UNION**

We have the honour to present to you the following proposals for the reformulation and completion of provisions of the Draft Constitutional Treaty of the E.U.² : 1

PART É

Article 2. Values of the Union:

- Add: «**peace**», as the first value; «**equality, in particular, equality between men and women**».

Article 3. Objectives of the Union

- Add: "***maintaining in full the acquis communautaire and building on it***», "***improvement of the quality of life and employment***», "***improvement and protection of health***», "***combating violence and trafficking in persons***», "***combating racism and xenophobia***".

- Add a 6th paragraph repeating current Art. 3(2) TEC: «**In all its activities, the Union shall aim to eliminate inequalities, and promote equality, between men and women**»

- Add a 7th paragraph: "**The Union shall integrate the protection and improvement of the natural and cultural environment into the definition and implementation of all its policies and activities (mainstreaming), in a way that will ensure the best possible conditions of corporal and mental health and the fullest possible development of the personality of each individual.**"

Article 5

1. *The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out in a Protocol annexed to this Constitution.*

2. *The Union may accede to international human rights treaties, in particular to the European Convention on Human Rights.*

3. **The Union respects and applies fundamental rights, as guaranteed in the Charter of Fundamental Rights of the Union, the other provisions and principles of Union law and the international treaties to which the Union or Member States are parties, including the European Convention on Human Rights, and as they result from constitutional traditions common to the Member States.**

Note: Irrespective of the modality of "*incorporation*"³ of the Charter in the Constitution, it is absolutely necessary that the "*drafting adjustments*" proposed by the competent working group be rejected, as they will give rise to great confusion and to a serious risk of further restriction of the rights included in the Charter and of other rights that constitute an *acquis*.

Following Article 6 (prohibition of discrimination on grounds of nationality):

Article 6A (new)

1. Any direct or indirect discrimination based on any ground, such as sex, racial, ethnic or social origin, genetic features, language, religion or belief, political or other opinion, membership of national minority, property, birth, disability, age or sexual orientation, is prohibited. Everybody has a right to equal opportunities, without discrimination.

2. The Council and the European Parliament shall, according to the procedure provided in Article [co-decision, majority of Council], adopt European laws and framework laws for the implementation of the 1st paragraph of this Article.

Article 6 B (new)

1. Women and men have equal rights in all fields.

2. With a view to ensuring full equality in practice between men and women, positive measures should be adopted, in all fields, aiming in the first instance at improving the situation of women, including for ensuring the balanced participation of women and men in decision making.

3. The Council and the European Parliament shall, according to the procedure provided in Article [co-decision, majority of Council,] adopt European laws and framework laws for the implementation of the 1st and 2nd paragraphs of this Article.

Article 6C (new)

1. The protection of maternity and paternity, natural or stemming from an adoption, as well as the reconciling of family and professional life by men and women, shall be ensured. Any unfavourable treatment, in any field, directly or indirectly related to pregnancy, maternity, paternity, or the reconciling of family and professional life is prohibited.

2. The Council and the European Parliament shall, according to the procedure provided in Article [co-decision, majority of Council,] adopt European laws and framework laws for the implementation of the 1st paragraph of this Article.

Article 6C (new):

1. Everyone has the right to a healthy and ecologically balanced environment, apt to ensure the development of his/her personality.

2. The above right includes in particular the right to environmental information and the right to access to justice.

3. The Council and the European Parliament shall, according to the procedure provided in Article [co-decision, majority of Council,] adopt European laws and framework laws for the implementation of the 1st and second paragraphs of this Article.

Article 12. Shared Competences

Add: "equality between men and women", "protection of maternity and paternity", "reconciling of family and working life, "combating discrimination",
"employment".

PART II

Article corresponding to current Article 152(4)(c) (public health).

Delete the sentence "[...] *excluding any harmonisation of the laws and regulations of the Member States*".

The Protocol on the application of the principles of subsidiarity and proportionality must require that the application of these principles should respect the *acquis communautaire*, as currently required by the Protocol on the same subject, which is annexed to the Amsterdam Treaty, and should repeat the criteria of application of these principles which the current Protocol provides for.

EXPLANATORY NOTE

PART I

A. The Values of the EU

a) We consider it necessary for "peace" to be the first value of the EU, since it constitutes a precondition for the realization of all values and fundamental rights. Moreover, both the European Community and the United Nations had as their primary inspirational value the establishment and the preservation of peace in the world.

Today's dangers of suppression of peace with a series of wars, which have already begun, with devastating consequences on humans, material possessions, and cultural goods, demand it.

It must be noted that nations have proclaimed their commitment to the preservation of peace both in the UN Charter, where it is considered as a fundamental objective of the Organization, and in the Universal Declaration of Fundamental Rights and Freedoms.

The tight bond and the interdependence between human rights and peace is recognized in the preambles of the International Treaties for the protection of human rights ratified by all the EU member - states and in particular the ICCPR, ICECSR and the CEDAW.

It also has to be noted that, on the European level, the members of the Council of Europe recognize in the ECHR preamble that peace is a value that is closely related to respect of human rights.

The commitment towards peace is confirmed in the UN Millennium Declaration of the UN and in the recent resolution 61/2003 of the UN Human Rights Committee (59th Session, 24.4.2003), where it is considered to be a basic condition for the effective respect of all human rights. Equally, the General Assembly of the UN in its resolution 39/11 (12.11.1984) had already declared the right of peoples to peace.

b) We consider it equally necessary that "equality, especially equality between men and women", is added to the values of the EU, as it has been recommended by the "Social Europe" working group of the Convention. Although it is undoubtedly a basic value and a fundamental element of Europe's cultural identity, suggestions have been made to include only the word "equality" without specific reference to gender equality. However, this does not suffice.

i) It is argued that the reference to "equality" is sufficient, since it also includes gender equality. It is, however, historically proven that "equality" by itself is not sufficient for the suppression of inequality on the grounds of sex - particularly against women - and the establishment of gender equality. For that reason gender equality, and in particular substantial gender equality, is expressly required and continuously reinforced through international treaties, Community legislation⁴ and a continuously increasing number of national constitutions⁵. International and European developments, as well as the fact that CEDAW is the second most ratified UN convention, show that gender equality is a universal fundamental value.

ii) It is equally argued that gender equality is not a clear legal concept. It is, however, known that it constitutes one of the most clearly and specifically delineated concepts of Community law, at least as clear as than "values" included in Article 2. The concept of gender equality has been elaborated by the European Court of Justice (ECJ), in about 200 cases, while it is clearly defined in the CEDAW with respect to all areas of social, economic, and political life. Moreover, a definition of gender equality is included in Directive 2002/73/EC.

iii) It is argued, finally, that it is sufficient that gender equality is quoted as an objective of the EU and that it is not necessary for it to be included in the EU's values. It is, of course, essential that gender equality constitutes an EU objective, especially a horizontal one, as it is today on the basis of Article 3(2) of the EC Treaty. But this is not enough. According to the "Explanatory Note" accompanying the Draft of Articles 1-16 of the Constitutional Treaty "while Article 2 enshrines the basic values which make the peoples of Europe feel part of the same «union», Article 3 sets out the main aims justifying the creation of the Union for the exercise of certain powers in common at European level." Therefore, the legal value and function of "values" and "objectives" are different and it is obvious that gender equality belongs to both the aforementioned Articles.

B. The Union's objectives (Article 3)

a) We consider it necessary that the general objectives of the EU are completed with the addition of social objectives that are currently proclaimed in the EC Treaty and the EU Treaty. Such objectives that are ignored by art. 3 are especially "social and economic progress" (1st general aim of the EU since its

establishment - Article 2 TEU) "to maintain in full the *acquis communautaire* (horizontal objective of the Union - Article 2 TEU) "the raising of the standard of living and quality of life" and "a high level of employment and of social protection" (general objectives in force - Article 2 TEC, Lisbon strategy).

b) The "battle against violence and trafficking in persons" must also be a general objective. These issues constitute well-known wide-spread and growing concerns in the Union. It is crucial that legislative measures are taken on a European level for their efficient confrontation. Finally, it is necessary that the "fight against racism and xenophobia" is also included. It is at least odd that the Draft, in contrast with the TEC in force, nowhere includes the words "xenophobia" and "racism."

c) We consider it equally necessary to maintain the provision of Article 3(2) TEC, that proclaims **gender equality as a horizontal objective**. This provision concerns substantive gender equality, which constitutes a fundamental *acquis communautaire*. It imposes on the Union the positive obligation to eliminate all inequalities (not only formal forms of discrimination, but also discrimination in practice) and to promote substantive gender equality in all fields (mainstreaming).

C. Provisions Related to the Environment

a) We consider as necessary the addition of a 7th paragraph to Article 3 which will proclaim the protection and improvement of the environment as a horizontal objective of the EU (mainstreaming) and will establish, with Constitutional force, the principle of integration of environmental protection in all policies and actions of the EU. The principle of integration constitutes one of the most important principles of Community law and is already included in Article 6 of the TEC. This principle means that environmental protection must be taken into account even within the framework of commercial and regional policy, and in all other policies and actions, for example transport policy, development policy, agricultural policy, etc.

The suggested provision combines environmental protection with the protection of health and the development of the personality, thereby including in the concept of environmental protection both the ecological and the human dimension. The insertion of the aforementioned provision is necessary for the effective fulfilment of the obligations undertaken by the Union by its accession to the international Treaty of Aarhus.

b) We also consider it necessary that the fundamental right to a healthy and ecologically balanced environment is expressly established, since it constitutes an important factor for the formation and the development of the personality and the safeguarding of an adequate standard of living. The importance of the abovementioned right is recognized by numerous international and regional texts. But above all, well-known facts, especially during

the last few years, clearly prove the devastating consequences of the serious damage on the natural environment with repercussions obvious in international climatological conditions, on human health and on social conditions of living.

In the Millennium Declaration the member - states of the UN have recognized the importance of environmental protection.

In the context of the Council of Europe, environment is recognized as a value that must be protected. Towards this aim two conventions have been adopted: the Lugano Convention of 1993 concerning state liability for actions dangerous to the environment and the Strasbourg Convention of 1998 for the protection of the environment through criminal law, which is not yet in force.

According to the TEC the achievement of a high standard of improvement and protection of the environment constitutes a task of the Community (art. 2 TEC), while according to Article 6 of the TEC, environmental protection requirements must be integrated into the definition and implementation of all Community policies and activities (principle of integration). Articles 174 s. refer in detail to the policy of the Community in the field of the environment.

At national level, most of the member - states of the EU have included in their constitutions provisions guaranteeing the right to the environment and its protection. As an example, we mention art. 66 of the Portuguese Constitution, 45 of the Spanish, 24 of the Greek, 21 of the Constitution of the Netherlands, 23 of the Belgian Constitution, 2 and 73-80 of the Swiss Constitution, 20A of the German, 14A of the Constitution of Finland and 110B of the Constitution of Norway. Even where such a right is not expressly provided at Constitutional level, it is provided by other legal provisions such as Article L-110-2 of the French Environmental code. All these constitutional provisions recognise the right of every person to live in a healthy and ecologically balanced environment.

The enrichment of environmental protection with a constitutional fundamental right, at Union level, enables persons to have recourse to justice in case they risk suffering environmental harm or in any case environmental goods are in danger. For the exercise of such a right it is of course necessary that everyone has free access to environmental information, a right established by the EC Directive 2003/4/EC of 28 January 2003.

Moreover, the right to environmental information as well as the right to access to justice are in conformity with the fundamental principles of preservation and protection, laid down in Article 174 of the European Convention.

Finally, it must be emphasised that these rights are regulated in detail in the Aarhus Treaty, to which the EU has acceded.

We note that the suggested provisions assure the protection of the environment **in particular as a directly effective right.**

We consider that environmental protection, as a process of continuous progress, is not satisfactory, for the reason that an economic - mainly, if not exclusively - dimension is often attributed to progress, as it ought not to be, despite general trends. Consequently, the environment remains without adequate protection when its damage serves economic profits. Actually, almost every reaction against its effective protection is motivated by profiteering reasons, concealed under the "decent" mantle of progress.

Besides, everyone knows that progress in reality follows a process that has broadened and deepened the gap between rich and poor countries and peoples. "Environment" should stop being used as a facilitating factor of this process.

We consider that all the aforementioned reasons sufficiently justify our suggestion to protect the right to a healthy and ecologically balanced environment as a directly effective right, which will be respected by the EU in all policies and activities.

c) For the effective protection of the suggested fundamental right we propose an unambiguous **legal basis** for the adoption of legislative measures by the EU (according to Articles 24 and 25 of the Draft, "European laws" correspond to present regulations, while "European framework laws" will correspond to directives).

These proposals are also necessary for the effective fulfilment of the obligations undertaken when the EU adhered to the international treaty of Aarhus. It is obvious that diverse and very serious problems concerning the environment can be dealt with only by European legal rules.

D. Fundamental Rights (Article 5)

a) We believe that the Charter of Fundamental Rights should obtain constitutional status. This will be achieved either by introducing it in the Constitutional Treaty, or by including it in a Protocol annexed to the Constitutional Treaty. Article 5 of the Draft alternatively proposes two solutions stipulating that in both cases the Charter will obtain the same force. This is in accordance with the case law of the ECJ on the status of protocols.⁵ Many experts express the opinion that, while the adoption of the second solution will ensure that the legal status of the Charter is not reduced, it will also help avoid legal uncertainty regarding certain rights in the Charter which are limited as compared to the *acquis communautaire*. At the same time, experts contend that the second solution will help prevent confusion and further limitation of the Charter's scope that would arise from the "drafting adjustments"⁶ that have been suggested by a Working Group of the Convention.

Irrespective of the method by which the Charter will be incorporated, it is of utmost importance that the "drafting adjustments" proposed by the competent working group of the Convention are not accepted, as they limit the scope of the Charter

and create confusion and legal uncertainty, which may well lead to regression in human rights protection.

b) We consider that it is important that the EU has the possibility to accede to any international human rights treaty, besides the ECHR.

c) It is essential that all human rights sources are mentioned in Article 5(3), so that the entire *acquis communautaire* can be preserved.

E. Prohibition of any form of discrimination - requirement for equal opportunities without any discrimination (new Article 6A)

a) It is indispensable that the Constitutional Treaty includes, according to the model of international human rights treaties ratified by all Member-States, a directly effective Article prohibiting any discrimination. This prohibition is, however, not sufficient for the effective elimination of discrimination. This is why equal opportunities for all people should be also ensured without any discrimination.

b) The Constitutional Treaty should also include **a legal basis** for adopting EU legislation for the implementation of the aforementioned provisions (last para. of the Article, see *supra* C. (c)).

F. Provisions for gender equality, the protection of maternity and paternity as well as the reconciling of family and professional life (new Articles 6B and 6C)

a) It is essential that the Constitutional Treaty, in line with human rights treaties and most of the constitutions of member-states, requires expressly **equal rights for women and men** in all fields, and provides for the necessity to adopt **positive measures** for ensuring effective equality, in particular in favour of women, who are the main victims of discrimination and inequalities in practice. The necessity of these measures, as well as the fact that they do not constitute discrimination or derogations from the principle of gender equality, but on the contrary, means for promoting substantive equality, are recognized by the ECJ, under Community Law, as well as by the CEDAW and other international treaties. The proposed Article constitutes an application of Article 3(2) of TEC and it is inspired by Article 141, para. 4 of TEC and Declaration 28 annexed to the Amsterdam Treaty. Moreover it corresponds to provisions of international treaties ratified by all member-States⁸ and provisions of many national Constitutions.

b) It is also indispensable that an Article be included ensuring the protection of maternity, paternity and the reconciling of family and professional life, which are corollaries to gender equality and constitute necessary prerequisites for substantive equality, while they are extremely important for the future of Europe, indeed its very survival and the quality of life of its population, including children.

c) The Constitutional Treaty should also include a **legal basis** for the adoption of EU legislation for the implementation of the above provisions (last para. of both Articles, see also *supra* C', c).

G. Shared competences of the EU (Article 12)

a) In order for the EU to be able to legislate with regard to **gender equality**, the **protection of maternity and paternity and the reconciling of family and professional life** as well as **combating discrimination** (proposed Articles 6A-6B), relevant issues should fall into shared competences.

b) The Draft classifies **employment** in a general and absolute manner in the areas of "*supporting actions*" of the EU (Article 15), where harmonization of national legislations will be excluded. In this way, it will not be possible for employment legislation, which constitutes a source of workers' rights, to continue. Furthermore, it will not be possible to improve existing employment EC legislation, on the basis of experience and ECJ case law, as it is done now and this will create a risk of deregulation of employment relationships. Employment should be included in the areas of "*shared competences*", in which the EU will continue to legislate. Multiple problems of employment can be handled effectively only by European laws. However, this does not exclude the adoption of other, non-legislative measures, such as guidelines on employment policy.

PART II

Provisions relevant to public health in States-members of the EU

In light of constantly increasing health problems, the confrontation of which, in order to be effective should be made at European level, it is indispensable that the harmonization of legislative provisions and regulations of member-States is included in the Article that will correspond to the current Article 125(4) (c) of TEU.

It is essential also for the future that the harmonization of national legislations is not excluded on this extremely important issue and we consider that in view of the very serious dangers that have to be dealt with, difficulties that appear today will be overcome.

PROTOCOL ON THE APPLICATION OF THE PRINCIPLES OF SUBSIDIARITY AND PROPORTIONALITY

The Protocol in force on the application of the principle of subsidiarity and proportionality, which is annexed to the Amsterdam Treaty, demands that the application of these principles should respect the *acquis communautaire* and provides criteria for the application of these principles. The Draft Protocol determines only the procedures for the application of these principles and does not refer to the *acquis communautaire*, nor does it include any criteria for their application. This implies serious risks of regression and

deregulation in many fields. For that reason, the Protocol should reiterate the criteria of the current Protocol and require the respect of the *acquis communautaire*.

Athens, 23 May 2003.

**RESOLUTION OF THE GNCHR AT ITS PLENARY SESSION OF THE 30TH OCTOBER
2003 ENTITLED: «THE INCORPORATION OF THE CHARTER
OF FUNDAMENTAL RIGHTS INTO THE DRAFT TREATY ESTABLISHING
A CONSTITUTION FOR EUROPE»**

The Commission at its plenary session,

After having heard the oral presentation of the report of its member Ms Sophia Koukoulis-Spiliotopoulos entitled: "***The Incorporation of The Charter of Fundamental Rights into the Draft Treaty Establishing a Constitution for Europe***",

After a general debate on the subject,

Adopted unanimously the following resolution, based on the report of Ms S. Koukoulis-Spiliotopoulos.

1. In an electronic message dated 3 October 2003, the French National Consultative Commission for Human Rights (CNCDH) drew the attention of the National Commissions of other European countries to the dangers posed to the protection of fundamental rights by certain amendments made to the general provisions of the Charter of Fundamental Rights of the European Union (the Charter) by the European Convention (the Convention) in order to incorporate it into the «Draft Treaty establishing a Constitution for Europe» (the Draft). This Draft was presented to the Intergovernmental Conference (IGC), which commenced on 4 October and is competent—according to Article 48 EC—to take the final decisions on the future of Europe and the content of its Constitution. Whereas the incorporation of the Charter, which was "proclaimed" in December 2000 at the European Council of Nice, is presented as a major achievement of the Convention, no mention of the amendments is made in the Draft.

É. The dangers to which the CNCDH draws attention

2. The CNCDH attached to its message, which bears the title «The scope of social rights in the Draft Constitution for Europe», an extract from a letter sent by its Chairman to the French Prime Minister on 8 July 2003, in which the former expressed the CNCDH's concern about certain amendments made by the Convention to Article 52 of the Charter; specifically, the addition of a 5th and 6th paragraph to this Article.

3. The letter stressed that the 5th paragraph (added to Article 52) makes a distinction between the «rights» and the «principles» contained within the Charter, and provides that the principles «*may be implemented by legislative and executive acts taken by Institutions and bodies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable² only in³ the interpretation of such acts and in the ruling on their legality*».

4. The letter stressed that this new paragraph is contrary to the intentions of the drafters of the Charter: namely that the

«principles» should have the value of fundamental rights, and that it primarily affects the social rights included in the Charter.

5. In its letter, the CNCDDH also draws attention to the 6th paragraph of the Convention added to Article 52 of the Charter, according to which: «*Full account shall be taken of national laws and practices as specified in this Charter*». The CNCDDH underlines that this paragraph «reinforces the restrictions already so patent in the Charter»; a reference on the part of the CNCDDH to certain of the Charter's provisions—most of which deal with social rights—by which these rights are recognized or exercised in accordance with national laws and practices.

6. The CNCDDH stresses that it is of the opinion that these amendments, far from being minor, may in fact void the Charter of its social content, therefore rendering it useless as compared to the rights already recognized by the European Convention on Human Rights (ECHR).

7. The CNCDDH let us know that it had deemed it necessary at its recent plenary meeting to inform the members of the European network of national bodies for human rights of its concerns, and that it would be glad to receive our comments and suggestions with a view to the formation of an eventual common position on this issue of such importance to our future.

ÉÉ. Commentaries

8. First of all, let us recall that in its «Proposals for the Constitutional Treaty of the Union», of 23 May 2003⁴, the Greek National Commission stressed that the Convention should reject the amendments to the Charter as proposed by working group II of the Convention. It pointed out that, although presented as "drafting adjustments", these amendments in fact restricted the scope of the Charter, and created confusion and a degree of legal uncertainty which may well lead to regression in the protection of fundamental rights.

9. We must therefore thank and congratulate the CNCDDH for their initiative and inform them that we share their concerns regarding the Charter's amendments, and agree on the necessity of the National Commissions adopting a common position and coordinating their action with a view to, on the one hand, informing national authorities and the public, and, on the other, to demanding that national governments prevent the incorporation of the Charter—as modified by the Convention—into the European Constitution, incorporating the Charter's text as proclaimed in Nice in its stead.

10. The amendments to the Charter are indeed crucial to the future of fundamental rights, and the future of Europe, more generally. The Convention incorporated the Charter into the Draft (as Part II thereof) after making a number of amendments to it which are not limited to those pointed out by the CNCDDH, or even those proposed by the competent working group of the Convention, to which our

Commission had expressed its opposition. The obvious objective, as the Convention itself has admitted, was to limit the power of interpretation available to the courts of the Union and the Member States.

11. This objective is pursued via two methods: a) the amendment of certain of the Charter's general provisions, which—according to working group II of the Convention and the 'explanation' of these provisions (*infra* No. 12)—introduce «rules of interpretation»; and b) by the last minute addition, on the initiative of the Convention's Praesidium, of a sentence to the Charter's Preamble, which also seeks to provide guidance for the interpretation of the Charter. Let us briefly look at these amendments in the order in which they appear in the Charter's text.

a) The addition to the Preamble to the Charter and the updating of the explanations

12. The Convention added a sentence at the end of the 5th paragraph of the Preamble to the Charter, according to which «*the Charter shall be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared at the instigation of the Praesidium of the Convention which drafted the Charter*». These explanations have in fact been "updated" by the Praesidium of the European Convention without this being mentioned in the Draft. The updated explanations appear in a text presented to the members of the Convention «for their information» by the Praesidium on the day the Draft was presented to the Italian Presidency for discussion at the IGC. The updating of the explanations does not concern the amendments made to the Charter by the Convention alone; it may be useful in so far as it completes the references to ECJ case law and the development of secondary EC law, as well as to the extent that it replaces references to provisions of the Treaties by references to provisions of the Draft. However, this updating is also quite often aimed at reinforcing not only the "rules of interpretation" introduced into the Charter by the Convention, but certain weaknesses of the original text of the Charter, as well.

b) The amendments of the Charter's general provisions

13. Regarding the amendments to the Charter's general provisions, let us observe, in the first place, that paragraph 5 of Article 52, which is mentioned by the CNCDH, is in fact very dangerous. This new provision, which undervalues the principles and downgrades them from constitutional norms and sources of fundamental rights to mere guidelines, seeks to affect not only the social rights, but other rights as well, since other provisions of the Charter, besides those concerning social rights, could be considered to contain «principles».

14. This is a matter of interpretation and falls within the competence of the ECJ. The ECJ constantly rules that the general principles it formulates are binding upon both the institutions and bodies of the Union and those of the Member States; they produce direct effects and confer rights on individuals. It is also well established in ECJ case law that when the principles proclaimed by the Treaty fulfill certain criteria, they share this same character and function. The ECJ's power of interpretation cannot be limited.

15. Moreover, paragraph 6 of Article 52 is also very dangerous, since it may well—as the CNCDH points out—reinforce and extend the limitations of the rights contained within the Charter, and create misunderstandings regarding the hierarchy of norms, and the primacy of Union law, in particular.

16. It should be noted that in updating the explanations, the Convention was seeking to reinforce these two new paragraphs (5 and 6). In particular, the explanation to paragraph 5 ignores the well established case law of the ECJ, with a view to justifying and reinforcing the downgrading of the principles. Moreover, the Convention made a number of other amendments which are just as dangerous as those highlighted by the CNCDH, the most important of which are the following:

17. Amendment of the title of Article 52: The original title of Article 52 was: «*Scope of guaranteed rights*». The Convention reformulated it as follows: «*Scope **and interpretation of rights and principles***». The terms «*interpretation*» and «*principles*» were therefore added, while the term «*guaranteed*» was deleted. This reformulation highlights the objective of the amendments: namely, to restrict the power of interpretation of the courts of the Union and the Member States. As for the repeal of the term «*guaranteed*», what could that mean?

18. Amendment of the 2nd paragraph of Article 52: The original text of this provision reads: «*Rights recognised by this Charter which are based on the [EC or EU] Treaties shall be exercised under the conditions and within the limits defined by those Treaties*». It is thus clear that this provision concerns not only the rights proclaimed by the Treaty itself, but also those that have their source in secondary EC law—since these too are based on the Treaties—as well as rights which have their source in general principles formulated by the ECJ; thus, the whole *acquis* in fundamental rights is preserved. However, instead of merely replacing the term «*Treaties*» with the term «*Constitution*» (which would have been a purely drafting adjustment), the Convention, replaced the expression «*are based on the Treaties*» with the expression «*for which provision is made in other Parts of the Constitution*». This new wording gives the impression that it concerns only the rights provided by the Constitution itself, and may well raise doubts as to the preservation of the other rights

mentioned above. The updating of the explanation to Article 52 seeks to reinforce this impression.

19. **CONCLUSION:** Of course, the *acquis* in fundamental rights cannot be affected by any of the amendments made to the Charter, and there can be no doubt that the ECJ will take into account none of the restrictions that the Convention attempted to impose on it. The ECJ will neither stop nor limit its case law that provides protection for fundamental rights. This case law has developed on the basis of Article 220(1) CE—a provision repeated in Article 28(1)(b) of the Draft, entrusting the ECJ with the task of «ensuring respect for the law»—and often goes further than written Union law. However, if the IGC endorses the amendments made by the Convention, there is a danger of legal uncertainty which may well lead to regression regarding the protection of fundamental rights. Consequently, the CNCDH is utterly justified in raising the alarm.

20. We believe that the National Commissions must demand the repeal of all the amendments made by the Convention with the exception of those that are purely «drafting adjustments»: namely those replacing the terms «Treaty» or «Treaties» and «Community law» by the terms «Constitution» and «Union law». No other amendment to the text of the Charter as proclaimed in Nice is necessary.

21. At the same time we must proceed with the task of keeping both jurists and the public informed, given that the incorporation of the Charter into the Draft is presented as one of the Convention's most important achievements without the fact that the Convention has made amendments to the Charter being mentioned anywhere, or appearing in the text of the Charter as incorporated into the Draft. The national courts must know that these amendments must be ignored even if they are retained, since they touch upon fundamental principles of Union law. In fact, they shake the very foundations of the Union and affect our European identity.

Athens, 30 October 2003

¹ Convention document CONV 850/03, 18 July 2003. All the documents of the Convention are on its website (<http://european-convention.eu.int>). OJ No C 169, 18 July 2003, pp. 1-105.

² In the French text: "Leur invocation devant le juge n'est admise.." (they may be invoked in the courts...).

³ Emphasis added.

⁴ See these proposals, in Greek and English, on the Commission's website www.nchr.gr.

⁵ CONV 828/1/03 REV 1, 18 July 2003.