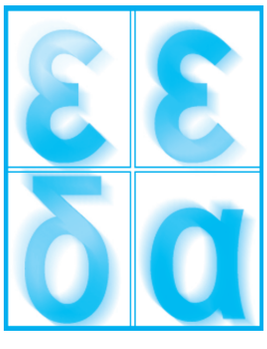
NATIONAL COMMISSION FOR HUMAN RIGHTS

ANNUAL REPORT 2010



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Foreword by the NCHR President
mr. Kostis Papaioannou

FOREWORD

by the NCHR President, Kostis A. Papaioannou

Foreword

This year's annual report of activities of the NCHR covers a period of time exceptionally adverse for the country. The fiscal crisis has severe repercussions on the social fabric and on large groups of the population. As we were already pointing out in the previous year's annual report of activities, there is hardly any level in the protection of human rights that may remain unaffected by the socioeconomic conjuncture.

The scope and intensity of the social pressures bewilder the human rights defenders as to defining the appropriate response. In the western democracies, the conventional focus of the human rights protection bodies on defending the civil and political rights seem both inadequate and out of context, if it is not combined with addressing the threat on social and economic rights, which is particularly acute. In addition, the extent and severity of the forms of protest reflecting the profound social discontent, combined with the unprecedented delegitimisation of the institutions of political representation, create a context particularly explosive and, therefore, dangerous to the democratic stability and the rule of law.

The generalization of fear and wrath may easily take populist facets. Nevertheless, both at the national and the European levels, there is a net demand for regaining the sphere of politics, which is lately and by and large dominated by the forces of the so-called 'financial markets'. If this process is successfully concluded, it may reinstate public trust vis-à-vis the institutions of representation.

These are the challenges to which the NCHR has devoted its attention, notably with the adoption of its resolution on 'the need for abiding respect of human rights during the implementation of the exit strategy from the debt crisis'. The epicentre of its considerations was the need to strike a balance between the measures adopted and the respect of human rights.

In this context, a particularly critical aspect is the generalization of a sense of lawlessness in which violence becomes tolerated. Greece has become a place where the networks of organized crime thrive, such as those of human trafficking. There are documented cases of persons literally enslaved by their employers, subjected to physical or psychological violence, or threatened to be so, who 'belong' to an employer, and who are ill-treated and physically confined. Furthermore, the functioning of the State's control mechanisms proves to be severely inadequate.

Similar findings can be observed in the field of fight against hate crimes and racial violence. Crimes of racist motive are not registered as such, let alone properly investigated. The violent racist groups that rule over certain parts of the capital's centre and in some other parts of the country are never dealt with in their capacity as organized groups of militia type, which commit well prepared violent crimes, assaults, arsons in places of worship, etc.

The main issue is the social exclusion to which are convicted the contemporary pariahs of the metropolitan centre. The vicious circle of acts of severe delinquency and of racist violence in response, require a coherent response from a human rights perspective. Nevertheless, the State needs to penetrate in these violent/racist groups, so that it can protect their victims. In addition, the perception that the protection of human rights is inevitably in conflict or in rivalry to the need for public security, needs to be re-addressed: one should not perceive the fear vis-à-vis the organized crime of immigrant groups as a priori xenophobic or racist reaction. It is the underestimation of this fear, on the part of the State, that may indeed nurture racist acts. An efficient policing does not necessarily contradict the respect of human rights. The overall need of to implement policies of social inclusion, which in themselves will contribute to public security. Crime affects Greeks and immigrants alike. One of the effects of the crisis is that it pushes parts of the society which were until now not tolerating racist acts, to invent a moral basis for the racist violence, or even to commit themselves acts of racist violence.

In this foreword -and in spite of the fact that technically it falls out of the period of reporting- we cannot possibly omit to make reference to the

Public Statement concerning Greece, which was publicised on March 15, 2011 by the European Committee for the Prevention of Torture (CPT). The Statement focused on the conditions of detention of irregular migrants as well as on the detention conditions in the penitentiary. The issuance of Public Statements is the ultimate recourse used by the Committee, and it has only been used extremely rarely so far. In its reports following the visits of recent years to the country, the CPT had underlined that detaining irregular migrants for weeks or even months in very poorly furnished and inadequately lit and/or ventilated premises, without offering them either the possibility of daily outdoor exercise and adequate health care, is unacceptable and could even amount to inhuman and degrading treatment. The government was warned about the possibility of the Public Statement and the Committee repeatedly put forward recommendations on practical measures to be taken. In spite of assurances that action was being taken, the findings made during the CPT's most recent visit to Greece, in January 2011, demonstrated that the information provided by the authorities was not reliable and that the detention conditions were still appalling, in particular in the area of Evros Greek-Turkish border.

This being said, the efforts made on the part of the Greek administrative authorities should not be underestimated, in particular in a context of minimal resources available. What should also be considered is the persistently immense flows of irregular migrants that Greece is expected to handle. The international community and the EU must, indeed, provide Greece with adequate assistance over that matter. However, this has to keep up with the net commitment of the Greek authorities to address the situation in the appropriate manner.

In terms of resolutions and thematic reports of the NCHR adopted in the course of 2010, we will indicatively note a few. The Commission submitted observations on the Bill of the Ministry of Interior, titled "Political participation of non-citizens of Greek origin and third country nationals who reside legally and long-term in Greece", and it also made an oral intervention in the Parliament on the matter. The NCHR supported the Bill, which it regards as a step of major importance aiming at the factual social inclusion of legal migrants who live and work in Greece for a considerable number of years, and of their children who are born or raised in Greece.

In addition, the Commission closely follows the developments in the asylum procedures and has acknowledged the positive steps undertaken, provided that they are properly implemented.

The NCHR has also submitted detailed 'Observations on the Bill of the Ministry of Citizen Protection titled: «Bureau for Addressing Incidents of Arbitrariness and other provisions», which it criticised as inconclusive, in terms of addressing the urgent need to create an independent and efficient mechanism to investigate cases of police misconduct, as requested by a series of international monitoring bodies.

I mean to underline, once more, that the overall work that the NCHR produces is the result of the ever renewable ideas, suggestions and positions of its members. The meetings of the Commission are the ground for a genuinely vivid and fertile dialogue. Nevertheless, this creative process would remain inconclusive without the excellent, though small in number, staff of the NCHR. I need to highlight over and over again, the commitment, professionalism and ethos in which the staff performs its load of tasks.

Legal Framework and Organisational Structure of the NCHR

1. Law No. 2667/1998 establishing the NCHR[1]

THE PRESIDENT OF THE HELLENIC REPUBLIC

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

SECTION A
National Commission for Human Rights

Article 1
Constitution and mission

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

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

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

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

5. The Commission shall have as its mission:

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

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

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

6. The Commission shall in particular:

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

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

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

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

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

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

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

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

(i) organize a Documentation Centre on human rights;

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

Article 2
Composition of the Commission

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

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

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

(c) Four representatives of non-governmental organizations whose activities cover the field of human rights. The Commission may, without prejudice to Article 9, decide upon its expansion by the participation of two further representatives of other non-governmental organizations (on 06.02.2003 NCHR included in its NGO membership the Greek League for

1. As amended by Law 2790/2000, Law 3051/2002 and Law 3156/2003.

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

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

(e) (deleted by Law 3156/2003);

(f) The Greek Ombudsman;

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

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

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

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

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

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

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

(m) One member of the Athens Bar Association.

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

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

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

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

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

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

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

Article 3
Commissioning of specialist studies

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

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

Article 4
Operation of the Commission

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

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

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

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

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

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

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

Article 5
Annual report

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

Article 6
Assistance of public services

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

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

Article 7
Research officers

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

These posts shall be filled following a public invitation by the Commission for applications. Selection from the candidates shall be in accordance with the provisions of paragraphs 2, 5 and 6 of Article 19 of Law 2190/1994 (OJHR 28 A), as replaced by Article 4 of Law 2527/1997 (OJHR 206 A), by five members of the Commission who have a vote, to be nominated by

its President.

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

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

Article 8
Secretariat of the Commission

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

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

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

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

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

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

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

Article 9
Transitional provisions

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

[Regulations on the Bioethics Commission follow.]

SECTION C
Final provision

Article 19

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

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

Athens, 17 December 1998

CONSTANTINOS STEPHANOPOULOS
PRESIDENT OF THE REPUBLIC
CONSTANTINOS G. SIMITIS
PRIME MINISTER
THE MINISTERS (…)
Endorsed and the Great Seal of State affixed
Athens, 18 December 1998

2. Current Members of the NCHR

1. The President of the Special Parliamentary Commission for Institutions and Transparency, Mr. M. Papaioannou.

2. A representative of the General Confederation of Greek Workers, Mr. I. Panagopoulos Fotopoulos and Mrs. E. Varchalama as his alternate.

3. A representative of the Supreme Administration of Civil Servants' Unions, Mr. K. Smyrlis and Mr. N. Hatzopoulos as his alternate.

4. Six representatives of Non-Governmental Organizations active in the field of human rights protection: for Amnesty International Greek Section, Mr. K. Papaioannou and Ms. G. Zervou as his alternate; for the Hellenic League for Human Rights, Mr. G. Ioannidis and Mr. K. Tsitselikis as his alternate; for the Marangopoulos Foundation for Human Rights, Mr. L.-A. Sicilianos and Ms. A. Yotopoulou-Marangopoulou as his alternate; for the Greek Council for Refugees, Ms. A. Chrissochoidou-Argyropoulou and Ms. I. Nikolakopoulou-Stefanou as her alternate; for the Greek League for Women's Rights, Ms. S. Koukouli-Spiliotopoulou and Ms. X. Petrinioti as her alternate; and for the Panhellenic Federation of Greek Roma Associations, Mr. V. Dimitriou and Mr. E. Tsatsanis as his alternate;

5. Representatives of the political parties represented in the Greek Parliament: for New Democracy, Mr. C. Naoumis and Mr. G. Nikas as his alternate; for PASOK, Mrs. D. Marouda; for KKE Mr. I. Malagaris and Mr. D. Kaltsonis as his alternate; for SYRIZA, Mr. N. Theodoridis and Mr. S. Apergis as his alternate; for LAOS Ms. V. Tsabieri and Mrs. E. Deska as her alternate.

6. The Greek Ombudsman, Mr. G. Kaminis and his alternate, Mr. A. Takis and from 18.2.2010 Mr. V. Karydis;

7. One member of the Authority for the Protection of Personal Data proposed by its President, Mr. A. Roupakiotis and Ms. P. Fountedaki as his alternate.

8. One member of the National Radio and Television Council proposed by its President, Ms. I. Avdi-Kalkani and Ms. E. Demiri as her alternate.

9. One member of the National Commission for Bioethics proposed by its President, Mr. G. Maniatis and Mr. T. Patargias as his alternate.

10. Two personalities widely recognized for their expertise in the field of human rights protection, designated by the Prime Minister: Mr. S. Perrakis and Mr. K. Remelis.

11. One representative of the: Ministry of Interior, Public Administration and Decentralisation, Mr. I. Zannetopoulos and from 19.1.2010 Mr. A. Takis (Ms. A. Belia; from19.1.2010 Mr. I. Zannetopoulos and from 12.11.2010 Mr. K. Kintis as alternates); Ministry of Foreign Affairs, Mr. E. Fotopoulos and from 01.03.2010 Mrs. M. Telalian (Mr. E. Katsanas as alternate); Ministry of Justice, Ms. E. Filippaki and from 07.01.2010 Ms. L. Pappa (Ms. K. Milioni and from 07.01.2010 Ms. K. Hatzi as alternates); Ministry of Citizen Protection, Mr. V. Koussoutis (Mr. S. Panoussis and from 05.01.2010 Ms. A. Al Salech as alternates till September 2010); Ministry of National Education and Religious Affairs, Ms. T. Dragona, till 25.5.2010 (Mrs. E. Petraki as alternate) (from 11.01.2010 Ms E. Petraki, as alternates); Ministry of Labour and Social Security, from 07.01.2010 Mr. R. Spyropoulos till 28.7.2010 and from 1.10.2010 Mr. D. Daskalakis (Mr. K. Koutsourelakis and from 1.1.2010 Mr. A. Karydis as alternates); and Secretariat General of Communication and Information, Ms. M. Papada-Chimona and from 04.01.2010 Mr. G. Petroulakis (Ms. K. Kallimani and from 30.6.2010 Mrs. M. Zakynthinaki as alternates).

12. From the Faculty of Law, National Kapodistrian University of Athens, Mr. P. Sourlas (Ms. I. Iliopoulou-Stragga and Ms. E. Divani as alternate); Aristotle University of Thessaloniki, Mr. A. Manitakis (Mr. P. Stangos, as his alternate); Faculty of Political Science and History, Panteion University, Mr. D. Christopoulos (Ms. A. Anagnostopoulou as his alternate).

13. One member of the Athens Bar Association, Mr. E. Zerveas and from 28.08.2008 Ms. M. Kouveli (Ms. M. Kouveli and from 28.08.2008 Mr. T. Christopoulos as alternates).

It is worthy to note the originality of the law provisions concerning the NCHR membership and the election of Members, of the President and the two Vice-Presidents. Each institution participating in the NCHR 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 the NCHR. This particular, liberal system ensures the NCHR's independence and impartiality.

3. The organisational structure of the NCHR

Since October 2006, Mr. Kostis Papaioannou (representing Amnesty International-Greek Section) is the President of the NCHR. Ms. Angeliki Chryssohoidou-Argyropoulou is the 1st Vice-President, and Ass. Prof. Linos-Alexandros Sicilianos is the 2nd Vice-President. Their term of office has been renewed from the Commission's elections in March 2009 for a three year period.

NCHR 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 the Plenary convenes every two months. In practice the Plenary meets every 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 NCHR (Plenary) for discussion and decision.

The NCHR employs three Legal/Research Officers (Ms. Christina Papadopoulou, Ms. Lydia-Maria Bolani and Ms. Tina Stavrinaki); it also employs mainly one Secretary (Ms. Katerina Pantou; till May 2010 Ms. Aggeliki Vassilaki was detached to the NCHR Secretariat).

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

RESOLUSIONS, DECISIONS AND OPINIONS OF THE NCHR

1. Comments on the bill by the Ministry of Interior titled: "Political participation of non-citizens of Greek origin and third country nationals who reside legally and long-term in Greece"

I. Introduction

This legislative initiative constitutes a very important step for substantive inclusion of documented migrants living and working in Greece for several years, and in particular of their children who were born or raised in Greece. This initiative is based on two pillars which must characterize every measure and policy on migration: on the one hand, respect and promotion of human rights of everyone who resides in Greece, and on the other hand the guarantee of social cohesion of the whole population in combination with the guarantee of safety of the borders. This legislative initiative attempts to ensure the full enjoyment of rights of those people who constitute a part of Greek society, while it clarifies the position of the Administration towards irregular immigration. The said bill gives the right to acquire the Greek citizenship only to those who reside in Greece legally.

The NCHR would like to point out that it is fully aware of the fact that there must be a criterion, in this case the criterion of legal status, set as the main condition for the acquisition of the Greek citizenship. However, the NCHR expresses its concern for the fact that the acquisition of legal status has been problematic in practice, due to the inadequacy of measures and practices of migration policy that have been applied so far.

Citizenship signifies the bond between an individual and a particular country, based on the will of the former to be part of a specific State by accepting its laws and principles and by joining its political community. Therefore, the status of citizen is not related with his/her cultural or ethno-religious identity.

Furthermore, the NCHR notes that the title of the bill does not fully reflect its content, i.e. the acquisition of Greek citizenship by aliens residing legally and for a long period of time in Greece. Instead, it recommends the following bill title: "Acquisition of the Greek citizenship by aliens who reside legally and long term in Greece - Political participation of non-citizens of Greek origin and third country nationals residing legally and long term in Greece".

On the specific provisions of the bill, the NCHR notes the following:

II. Chapter A: Acquisition of Greek citizenship by third country nationals' children who were born or have attended school in Greece

Article 1 of the bill

Par. 1: According to this provision, aliens' children born in Greece, the so called "second generation of immigrants", may acquire the Greek citizenship under specific conditions. This evolution constitutes a very important step, since Greek citizenship law was based exclusively on the principle of jus sanguinis.

Par. 2: This provision concerns the so called "one and a half generation", i.e. the children of aliens who have not been born in Greece, but have come to the country at a very early age and have, therefore, been integrated into the Greek educational system, The NCHR considers that the distinction between the three first years of compulsory education and the other six is reasonable, due to the importance of the first years of education for the learning of the Greek language and the social integration of the child. Furthermore, it has to be noted that the provision is of relevance for children of aliens who, after reaching adulthood, have legal residence status in the country. If this is not the case, they do not have the right to file a statement in the Municipality of their domicile. This condition has to be **clarified,** at least in the **explanatory memorandum** of the bill, so that misinterpretations are avoided.

Common statement of parents: According to article 1 of the bill, an aliens' child may acquire the Greek citizenship under the specified conditions, if his/her parents file a common statement and an application for registration to the records of their Municipality. The wording of the provision does not clarify, though, whether the legal residence of both parents is a precondition, unless one of the

parents resides abroad. It needs to be reminded that according to article 84, par 1 of Law 3386/2005, aliens who do not reside legally in the country do not have access to public services. Consequently, it is not possible to file a common statement in case one of the two parents is in irregular situation in terms of his residence status in the country.. Therefore, it is needs to be clarified that par. 1 of article 1 of the bill concerns: a) alien parents who both reside legally in the country, while the condition of five years residence may be fulfilled by either one, and b) the case of one parent residing legally for five years in the country, while the other one resides abroad. In the second case the parent residing abroad may file the relevant statement to the competent Greek consulate.

Furthermore, the condition of common statement cannot be fulfilled in the case of single-parent families. Therefore, it needs to be provided that in case only one parent exercises the full custody of a child, the required statement may be filed by him/her.

Voluntary renunciation of citizenship: According to article 1 of the bill, aliens' children may acquire the Greek citizenship after submittal of a common statement by his/her parents. The bill should provide for the possibility of renunciation of the Greek citizenship by the child upon reaching adulthood, if he/she so wish.. Therefore, it is recommended that article 19 of Law 3284/2004 "renunciation of Greek citizenship by children naturalized Greek", also applies to the cases of article 1 of the Bill.

The NCHR would like to point out that aliens' children who will acquire the Greek citizenship will have in many cases the citizenship of their parents as well. Dual citizenship may raise several issues that the Administration will have to address, such as the one of multiple military obligations.. On this particular issue, the NCHR refers to article 21 of the European Convention on Nationality of 1997, which offers a fair and balanced solution, and calls upon the Greek Government to ratify it.

II. Chapter B: Harmonization of naturalization with the rule of law

A) Article 2 of the bill

Element (b): The NCHR considers that the wording of element (b) enumerating a large number of offences does not render clear the ratio of the provision, especially if one takes into account the fact that offences of different gravity – such as the one of treason and the one of theft – entail exactly the same consequences i.e. exclusion from the naturalisation process. The existence of a large number of offences, which, if perpetrated -regardless of the penalty imposed and the time of conviction-, block the access to the naturalization process, constitutes a non-proportionate "sanction".

The NCHR considers more suitable a general provision according to which the applicant must not have been convicted for a felony in the 20 years before the filing of the naturalization application. Furthermore, and in combination with its aforementioned recommendation, the NCHR calls upon the Government to review the list of offences under element (b), retaining only the most serious categories of offences, as those against the Greek State and international crimes, whose perpetration justifies the rejection prima facie of a naturalization application.

The NCHR takes the view that in this way the ratio of the provision will be more clear. Furthermore, it is noted that the competent public services request the criminal record of judicial use of the applicant, while examining an application for naturalization . Moreover, the obligation for stating the reason for the eventual rejection of the application of naturalization, allows the Administration to state the conviction for an offense as reason for refusing Greek citizenship to an applicant. The NCHR recommends the rewording of the provision.

In any case, the NCHR recommends the maintenance of the amendment to Law 3284/2004: the amendment was the result of article 41 of Law 3731/2008 that removed the violations of the legislation regarding entry of aliens in Greece from the list of offences blocking the naturalization process to applicants.. In

particular with regard to refugees – where no penalties for illegal entrance or residence in the country are permitted–, the abolishment of the aforementioned impediment was very important since they would not have to go through the costly and time-consuming procedure of preclusion of convictions' consequences for illegal entry.

Element (d): The element (d) sets as a condition for naturalization the legal residence in Greece for a period of five years within the last decade prior to the submission of the naturalization application.. It is advisable that a shorter period of time is required for refugees along the lines of Law 3284/2004. Regardless of the fact that Law 3284/2004 took into consideration the need for different treatment of refugees, according to article 34 of the Convention of Geneva relating to the status of refugee: "The Contracting States shall as far as possible facilitate the integration and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings". It is also noted that the same obligation of facilitation applies to stateless persons according to article 32 of the UN Convention Relating to the Status of Stateless Persons of 1954. Therefore regarding these two categories of aliens a more favorable time condition is required.

Furthermore, element (d) does not require the five years time condition for non-citizens of Greek origin and individuals having the citizenship of an EU member state. The different treatment between aliens and non-citizens of Greek origin constitutes a historic pillar of Greek citizenship law and the formation of the contemporary Greek society. However, this cannot lead to different regulations concerning the acquisition of citizenship. Besides, the differentiation between aliens and non-citizens of Greek origin has been criticized by the European Commission against Racism and Intolerance. Furthermore, and in spite of the fact that Greece has not so far ratified it, it should be noted that this provision is incompatible with article 5 of the European Convention on Nationality of 1997.

Moreover, the facilitation regarding individuals with an EU member state citizenship does not constitute an obligation of the State imposed by EU. Therefore, the NCHR calls upon the Government to reconsider the extent of differentiation and set the same time condition for non-citizens of Greek origin, EU member-states citizens, refugees and stateless persons.

B) Article 3 of the bill

Element (d): The exemption from the obligation to submit along with the application a birth certificate should also apply to stateless persons.

Furthermore, the NCHR recommends the inclusion of the social security number (SSN) to the necessary documents for the naturalization procedure. The SSN is the means of identification in terms of employment and social security of any person residing in Greece, and it is an indication of integration into the society.

C) Article 5 of the bill

Par. 2 provides for the "reasoned rejection of a naturalization application according to the Code of Administrative Procedure". The current Law on citizenship does not provide for the reasoning of affirmative decisions, -although in practice this does happen-, while it states that negative decisions are not reasoned. The Conseil d' Etat has ruled that "an alien's naturalization constitutes sovereign right of the State, which exercises it according to its volition. Besides, for this reason it is provided that the rejection of a naturalization application does not require reasoning [...]". However, it has also ruled that "when the negative decision or other document, which has been referred to by the decision, include specific reasons on the basis of which the Administration rejected the naturalization application, these reasons must be legal and are reviewed by judge".

The obligation for reasoning is a very important development for citizenship law; it constitutes a development that entails the modification of the nature of the act, since it will be subject to judicial review. The NCHR considers that this modification complies with the principles of legality and the rule of law, but also

with article 11 of the 1997 European Convention on Nationality that provides for the obligation naturalization decisions to be reasoned. Furthermore, the NCHR takes the view that any second thoughts regarding the way judicial review will work in practice, especially when a negative decision is based on reasons of national security and the relevant information may not be rendered public, can be overcome. According to the jurisprudence of the Conseil d' Etat "the fact that a document is classified may justify the restriction of the parties' access to the file, but not the access of the court to the relevant document [...]. Therefore, if the reasoning of the administrative act against which an annulment application has been filed is based on classified information, the Administration is not obliged to mention the facts that derive from that information in the administrative act, but it is obliged to bring it to the attention of the Court. Then the Court will review the reasoning of the administrative act without informing the parties of the classified information and without including it in its decision".

E) Article 19 of the bill

The Bill should also require the applicability of deadlines for the pending naturalization applications. Therefore, a deadline must be set, during which the examination of the pending applications will be concluded, e.g. within two or three years after the entry into force of the law.

III. Chapter C: Participation in the first degree of local administration election

The NCHR would like to express its satisfaction for this initiative, which constitutes an important step towards the social inclusion of third country nationals living in our country, although such an obligation does not derive from international law, but merely from EU law regarding the citizens of EU member-states. The NCHR, already in 2005, had recommended granting to third-country nationals - who live in Greece for a long period of time- the right to vote and be elected in the first degree of local administration elections.

However, the NCHR takes the view that the right to vote should be granted to all categories of aliens entitled to apply for naturalisation and not solely to holders of particular types of residence permits, provided they wish to enroll in the relevant election catalogues. The enrolment to the electoral catalogues might be perceived as an indication of their social inclusion and willingness to take part in the political life of Greece for naturalisation purposes.

2. Observations of the NCHR on the Draft of the Greek Report to the Committee against Torture of the United Nations concerning the implementation of the Convention against Torture and other cruel, inhuman or degrading treatment or punishment

The NCHR studied the draft of the fifth and sixth Greek periodic reports concerning the implementation of the United Nations Convention Against Torture and other cruel, inhuman or degrading treatment or punishment. The draft was sent to NCHR by the Ministry of Justice, Transparency and Human Rights.

I. Remarks concerning the drafting and submittal procedure of the periodic reports to the competent UN Committee:

Until 2007, the procedure was the following: after the submittal of the periodic report and before its examination by the Committee, the latter was addressing a "list of issues" requiring a response by the State Party. The list contained questions arising from the State Report itself or from issues pointed out by national human rights institutions and/or NGOs. In the context of this procedure, the GNCHR was asked by the Committee to contribute to the composition of the list of issues prior to the examination of the 4th Greek Periodic Report in 2004. In the middle of 2007 the Committee adopted a new procedure, which started to be put into practice in 2009. From now on, the State Party's answers to the list of issues will constitute the Periodic Report itself. According to the new procedure, in February of 2009 the Committee addressed the list of issues to Greece and the draft report in question constitutes the combined 5th and 6th Greek periodic report. However, this time the GNCHR was not approached by the Committee to contribute to the composition of the list of issues to which Greece has to respond.

Following the examination of Greece's 4th Periodic Report, the Committee adopted its 'Concluding Observations' and for a number of issues of priority, it requested additional information on the part of Greece. In its response, and as is often the case, Greece did not go beyond the citation of the relevant legislative framework and did not provide answers to the questions of the Committee The GNCHR has on several occasions dealt with issues related to the implementation of the UNCAT, and has addressed opinions and recommendations to the competent Ministries. Moreover, the GNCHR is systematically called to meet with the European Committee for the Prevention of Torture (CPT), in the context of regular or ad hoc visits of the Committee to Greece. In January of 2004, the GNCHR submitted to the relevant Greek authorities a comprehensive proposal for the ratification of the Optional Protocol to the Convention against Torture (OPCAT), which enhances the effective implementation of the Convention.

With regards to the draft report, the GNCHR submits the following remarks, which are meant to enrich the content of the Greek Report.

A) The structure of the Draft Report

The draft is question is demonstrating a remarkable effort of the competent authorities to provide comprehensive responses to the Commission's questions. However, the fact that the answers are provided in a totally separated manner by the two ministries involved in the implementation of the provisions of the Convention, do not allow to the Committee to acquire a global picture on the application of the Convention. The current Draft Report does, indeed, include significantly more quantitative and qualitative information than the past reports. However, the GNCHR reiterates its recommendation that the citation of the legislative framework in place needs to be combined with the analytical description of the challenges in the implementation of the law on the ground.

B) On the part of the Draft Report which concerns the area of competence of the Ministry of Justice

a) Directorate of Legislation

The new legislative provision of art. 79 of the Penal Code, is correctly mentioned (on the commitment of a criminal act on racist motives, as

aggravating circumstance). However, it does not fully respond to the relevant concluding observation of the Committee. Moreover, since the Greek responses do not follow the order of the "list of issues", it is not possible to see whether all the issues have been addressed. Reference of the provisions of L. 3500/2006 (on addressing violence within the family), is of relevance. It is to be noted that the law in question takes into consideration the recommendation of the GNCHR, which had expressed the view that acts of violence within the family should be considered as aggravating circumstance for all types of criminal offenses. Concerning the effectiveness of the penal mediation stipulated by L. 3500/2006, it is reminded that the Committee on the Elimination of Discrimination Against Women had recommended to Greece to implement the institution of penal mediation, in particular in the cases of violence within the family, so as to address the impunity of the perpetrators. It had also recommended that the Greek judges receive special training on considering the gender dimension when judging cases. The GNCHR had proposed the creation of a specialized body of social workers, which would contribute to the process of penal mediation. It had also recommended the introduction of the relevant legal provisions in all Codes (Penal Code, Civil Code, Code of Civil Procedure, Code of Penal Procedure). The Greek Report is wisely noting the law 3727/2008, ratifying the CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. On the issue of trafficking in human beings, it is reminded that the GNCHR has formulated detailed recommendations/observations on both the legislative and policy frameworks back in 2007, which could be consulted in order to enrich the Greek Report on that specific matter. The GNCHR has identified some problematic areas with regards of the framework to address trafficking, such as the inefficiency of the system of witness protection and the need for extension of the period of one month of deliberation provided to the victim in order to decide whether or not they want to collaborate with the authorities for the prosecution of the perpetrator. It is reminded that the GNCHR has (in 2005) proposed to the Greek State the ratification of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organized Crime, and the CoE Convention against Trafficking in Human Beings. The Draft Report states that Greece has addressed the terrorist threat by adopting a series of legislative and administrative measures (L. 3251/2004, L. 3691/2008, inter alia) that do not affect the protection of human rights. The GNCHR considers that the Report should rather allow for the reflection of the difficulties Greece is having when aiming at the desired balance between protecting human rights and, simultaneously, addressing security concerns. These difficulties are common to all States and should rather be expressed in a report, rather than omitted. The GNCHR has, on several occasions, issued reports and recommendations on the topic of combating terrorism in Greece and abroad.

b) General Directorate of Correctional Policy

The Draft Report states a series of statistical data on the detainees held in the correctional institutions. However, the answers to the rest of the issues of the list are inadequate. Once more, the Report is phrased as if the provisions of the Correctional Code were implemented without any difficulty. Nevertheless, the Committee is in a position to be aware of the reality on the ground, as it collects information from various sources, including the reports of other treaty bodies. The GNCHR has submitted an extensive report on "the rights of the detainees and the detention conditions in prisons", which includes a series of recommendations for the improvement of the correctional system both institutionally and administratively. In the above mentioned report, and in the issues of top priority the GNCHR has included the need for the establishment of an independent supervisory body for the prisons and the other detention facilities. This is an issue systematically raised by the Committee, but it is left without adequate response. The GNCHR has, in addition, highlighted the need for the Greek

administration to change its way of responding to the recommendations of treaty bodies, as well as to those of the GNCHR itself. It has also proposed that the answers be co-ordinated between the relevant ministries, so that a complete and clear image of the situation on the ground be reflected in the Greek Reports. Furthermore, the GNCHR had expressed the opinion that the fundamental problem concerning the conditions of detention is that the majority of the provisions of the Correctional Code are not implemented in reality, either due to the lack of the necessary infrastructure, or due to inadequate staffing, material resources and administration. The Draft Report accurately states L. 3727/2008, harmonizing the Greek legislation with the framework decision 2004/757 of the Council of the EU, on measures for the decongestion of prisons. The Report omits reference of L. 3772/2009 (on reform of the forensic service and the therapeutic treatment of drug-addicts) and of L. 3811/2009 (on the compensation of victims of acts of violence), which include a series of correctional provisions lying in the right direction. In the overall context related to the correctional system and the detention conditions, the GNCHR has already proposed the ratification of the Optional Protocol to the UN Convention Against Torture, which establishes National Preventive Mechanisms (NPMs). Concerning the construction of new prisons, the GNCHR believes that this should be combined with measures for reducing the number of detainees. The Draft Report refers in detail to the functions of «EPANODOS», an institution aiming at the reintegration of the ex-detainees in the society. While it is obvious that such an institution is indispensable, it seems that the functioning of this body so far is far from being adequate.

Finally, the GNCHR notes that the Draft Report does not include any information on the filed complaints of ill-treatment in prisons, the procedure of investigating those complaints, and on the disciplinary and/or penal prosecution of the perpetrators, as it is requested in the list of issues. Given the convictions of Greece by the European Court of Human Rights for cases of ill-treatment of detainees in prisons or in police detention centres (violation of article 3 of ECHR), the Committee surely expects to be informed on the efforts of the State Party towards prevention and punishment of the perpetrators of such acts.

C) Remarks on the part of the Draft Report which concerns the area of competence of the Ministry of Citizen Protection (previously known as the Ministry of Public Order)

The Draft Report refers in detail to the legislative and administrative provisions on the prevention and punishment of cases of use of brutal force by policemen on citizens. The provisions Presidential Decree 120/2008 (modifying the disciplinary measures of the Police force) are described in great detail. Furthermore, the Draft informs about the production of a leaflet on the rights of the detainees, which also includes a form for filing a complaint. It also refers to a series of orders and circulars on the police rules of conduct, following the conviction of Greece (Celniku v. Greece) by the ECHR, and other convictions for cases of use of brutal force by police. The GNCHR notes its 20010 report on the use of force and weapons by State authorities, as well as its observations on the relevant bill of the Ministry of Public Order in 2002. Although the Draft Report states that the Greek Police pays great attention to the respect of the rights of the detained, the observations of many national and international competent bodies seem to present a different reality on the ground. The GNCHR reminds of the two recent (2009) convictions by the ECHR for the violation of the article 3 ECHR (prohibition of torture). The Draft Report does not provide any answer to the Committee's question regarding measures meant to prevent the ill-treatment of Roma by police during the operations of forced evictions, nor on the eventual punishment of those responsible. Police conduct vis-à-vis Roma has systematically been criticized by several local and international bodies of human rights protection; besides, the country is more than once convicted for use of brutal force by police against Roma. It is reminded that the GNCHR has highlighted the issue of police misconduct in its 2008 extensive report on the situation of Roma is Greece.

The Draft Report includes some statistical

data (as requested by the Committee) on cases of use of fire weapons by the police, on filed cases for ill-treatment of detainees or of citizens by police, and on the eventual disciplinary or penal sanctions. The GNCHR underlines that the Greek Police has the obligation to exhaustively investigate all the complaints against police and impose the necessary sanctions to those responsible; in this context, it reminds of the recent 'Opinion' of Thomas Hammarberg, the Commissioner for Human Rights of the CoE, 'concerning the independent and effective determination of complaints against the Police'. The GNCHR draws the attention of the Ministry to the need for a reform of the training of the police. In 2008, the GNCHR has submitted to the then Ministry of Public Order, a proposal for the elaboration of a comprehensive educational program of the police on human rights protection in policing.

The Draft Report provides detailed description of the procedures of reception of illegal immigrants. In the description of the situation regarding unaccompanied minors, the Draft Report states that the Police take into serious consideration the relevant recommendations of the GNCHR. However, as it is stated in the recent remarks of the GNCHR on the Draft Initial Report of Greece concerning the implementation of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, several trustworthy sources, such as the UN High Commissioner for Refugees, the Greek Council for Refugees and the Human Rights Watch, present a situation on the ground that is far from being ideal and that requires serious improvements. This concerns the situation of unaccompanied minors, but also the situation of all migrants and refugees in general. One of the Concluding Observations of the Committee on the Elimination of Racial Discrimination, after the examination of the most recent Greek Report, is actually recommending that Greece adopts effective measures towards a more humane treatment of asylum seekers and immigrants, and that the duration of detention of asylum seekers - and of minors, in particular- be reduced. Moreover, the Committee on the rights of the Child, after the examination of the Greek Report in 2002, addresses many recommendations on the treatment of unaccompanied minors and the overall system on the granting of asylum status.

On the issue of the appointment by the State of a "guardian" for the unaccompanied minors (according to PD 220/2007), the information that the GNCHR disposes of, demonstrate significant difficulties on the ground, mainly due to the big number of children placed under the responsibility of each guardian.

The GNCHR reminds the long list (more than twenty, so far) of its reports and recommendations touching upon different aspects of the protection of the rights of immigrants and refugees.

The absence of statistical date concerning the asylum seekers who are victims of torture, is mentioned in the Draft Report. In this context, the GNCHR wants to remind that the Medical Centre for the Rehabilitation of Victims of Torture, which used to be the specialized body for the identification and the therapeutic treatment of victims of torture, has been forced to suspend its operation in 2009 due to the lack of financial resources.

II. Recapitulation of the GNCHR's observations on the Draft Report

a) The GNCHR notes the significant improvement of the overall Report compared to previous State Reports submitted to the Committee.

b) It considers that it would be preferable to draft combined responses by the two Ministries involved, following the list of issues.

c) It reiterates its recommendation that the Greek Report notes and endeavours to explain the reasons for the differences between legislation and practice. This is what all treaty bodies require, including the Committee Against Torture.

d) Last but not least, the GNCHR underline once more the importance of the ratification of OPCAT, which would oblige the country to create the necessary mechanisms in order to comply with the recommendations of the Committee Against Torture and those of other relevant bodies.

3. Comments regarding Law 3304/2005 «Implementation of the principle of equal treatment irrespective of racial or ethnic origin, religious or other beliefs, disability, age or sexual orientation» and recommendations for its amendment

I. Introduction

Law 3304/2005 "Implementation of the principle of equal treatment irrespective of racial or ethnic origin, religious or other beliefs, disability, age or sexual preferences" incorporated in the Greek legal Directive 2000/43/EC «implementing the principle of equal treatment between persons irrespective of racial or ethnic origin» and Directive 2000/78/EC «establishing a general framework for equal treatment in employment and occupation».

Greece belongs to the majority of member states which, prior to the adoption of the two directives, did not have specialized legislative framework establishing equal treatment and prohibiting discrimination. Nevertheless, Greece did not incorporate correctly the two EU legislative instruments.

A) The comments of the National Commission for Human Rights in 2003

The National Commission for Human Rights took the initiative, in 2003, to comment upon the Bill incorporating the two directives into the Greek legal order. In its Advisory Opinion it underlined several provisions which were directly opposed to the letter of the two directives. The NCHR recommended a number of amendments to the Bill so as to comply with the letter and the ratio of the two directives.

Few of the recommendations were followed by the State. However, they were crucial for the compliance with the EU law. Specifically, the law prohibits expressly, as it ought to, every direct or indirect discrimination. Moreover, the law defines correctly the terms of «direct» and «indirect» discrimination, «harassment», as well as the requirements of limited exceptions to the principle of equal treatment.

Nevertheless, since the enactment of Law 3304/2005 until today, the majority of the recommendations of the NCHR, regarding the correct adjustment of Greek law to the letter and ratio of the two directives, has not been taken into account.

B) The comments of the Economic and Social Committee

The Economic and Social Committee (hereafter ESC) -designated by Law 3304/2005 as the body for social dialogue aiming at the implementation of Law 3304/2005, the promotion of the principle of equal treatment and the taking of measures to combat discrimination- ascertains that the population of the country is «composed» of groups with distinctive cultural, linguistic and religious features and that «the problems that hinder» the equal treatment of the members of «special» and «vulnerable» social groups (such as the migrants, ethnic minorities, Romas, people with disabilities, the elderly) are due to «mistaken stereotypes (of the majority) towards the others».

The ESC holds the view, in its Annual Reports regarding the implementation of Law 3304/2005, that the substantive application of the equal treatment principle requires initiatives and actions on the part of the State, which will not be restricted simply to the enactment of rules for the legal protection of those social groups, but they will provide for cohesive practices aiming at combating social and labour inequality and the positive support of the «different» social groups.

C) The need to amend Law 3304/2005

The NCHR, taking into account a) the existing situation in Greek society regarding the treatment of «different» national (migrants), ethnic, social groups and categories of persons falling under the scope of the law, and b) the fact that the majority of its 2003 recommendations for the full compliance of Law 3304/2005 with the directives were not followed, feels the need to repeat some of its recommendations and to propose the amendment of the current legal framework on equal treatment.

II. Incorporation into the Greek law of the substantive provisions of the Directives concerning equal treatment

A) The prohibition of multiple discrimination

Directives 2000/43/EC and 2000/78/EC, have partly a common field of application regarding the activities in which discrimination is prohibited (access to employment, vocational training, terms and conditions of employment, unions, etc.). However, they cover different grounds of discrimination.

This differentiation has generated the impression that the Directives do not prohibit multiple discrimination, i.e. actions or omissions entailing discrimination on more than one grounds (e.g. due to racial origin and religion or age and/or sex, which is common). By a teleological interpretation of the directives, and in the light of the principle of non discrimination provided for expressly by article 10 of the Treaty on the Functioning of the EU, the prohibition of multiple discrimination against persons belonging to the vulnerable groups protected by the directives may be deduced. This interpretation is corroborated by the following:

The preamble of both directives refers to several international human rights treaties (CEDAW, CERD, ICCPR, ICESCR) ratified by all member states. These instruments provide interpretational tools and are directly binding to Greece. Furthermore, the respective treaty bodies require from states parties to eliminate multiple discrimination.

The recent International Labour Conference of ILO (June 2009), in its report for gender equality strongly urges public authorities to adopt policies and programs combating multiple discrimination, victims of which are mainly women.

Moreover, the EU Commission in its proposal to the Council, in June 2008, regarding the so-called «horizontal directive» which expands beyond labour market the principle of equal treatment irrespective of religion or beliefs, disability, age or sexual orientation, moved towards a more general prohibition requiring protection from discrimination «irrespective of grounds». The European Parliament, in its relevant legislative resolution recommended the inclusion of the explicit prohibition of multiple discrimination.

The NCHR, in its 2003 advisory opinion had recommended that par. 1 of article 2 should establish the prohibition of discrimination "on all grounds provided for in article 1" of the bill and not just "on one of the grounds".

Taking into account the aforementioned, the NCHR recommends the amendment of article 2, par. 1 of Law 3304/2005 in order to provide for the prohibition of direct or indirect discrimination ***«on one or more of the grounds enumerated in article 1».***

B) Discriminatory treatment of third country nationals

Law 3304/2005, in articles 4 and 8, provides that it does not cover difference of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence and the legal status of third country nationals and stateless persons on the territory of Greece. However, according to the preambles of Directives 2000/43 and 2000/78: "This prohibition of discrimination should also apply to nationals of third countries, but does not cover differences of treatment based on nationality and is without prejudice to provisions governing the entry and residence of third-country nationals and their access to employment and to occupation". Therefore, if a discriminatory treatment is based on one of the prohibited grounds by the Directives, the nationality of the victim should not be examined.

The NCHR notes that different treatment based on nationality often conceals discriminatory treatment due to the racial or ethnic origin of the affected person. The NCHR takes the view that the law should prohibit the pretextual invocation of nationality covering up racial or ethnic grounds of discrimination.

C) The scope of application of equal treatment, positive action and occupational requirements

In order for Law 3304/2005 to comply fully with the Directives, articles 4 and 8 (scope), 6 and 9 (positive action) and 9 (occupational requirements) need to be amended:

(a) In articles 4, par. 1(a) and 8, par. 1(a), after the word "employment" the words ***"self-employment and occupation"*** should be added.

(b) Articles 6 and 8 of the Law concerning positive action, should begin with the phrase ***"With a view to ensuring full equality in practice …",*** which clarifies that positive measures are the means to substantial equality.

(c) Article 9, par. 2 concerning occupational requirements, in order to be consistent with article 4, par. 2 of Directive 2000/78, should be phrased as follows: ***"This difference of treatment shall be implemented taking account of the provisions of the Constitution and the consistent with it laws …».***

D) Different treatment due to age

The NCHR reiterates its 2003 observation that article 11 of Law 3304/2005 (justification of differences of treatment on grounds of age) does not incorporate correctly article 6 of Directive 2000/78.

The NCHR, once more, highlights that a special legislative provision already exists, which was enacted on the basis of the said directive. Article 10, par. 11 of Law 3051/2002 abolishing maximum age limits for hiring employees in the public sector, should be repeated in Law 3304/2005 while at the same time expanding its scope of application in the private sector and the other activities covered by the Law.

III. Incorporation in the Greek law of increased and effective legal protection of the right to equal treatment

A) Incorporation of the procedural provisions of the directives in the codes of procedure

The NCHR, in 2003, has underlined the need for the procedural provisions of the two directives (locus standi of legal entities and burden of proof) to be incorporated in the Code of Civil Procedure and the Code of Administrative Procedure, after their phrasing is improved. However, the relevant provisions of Law 3304/2005 are still defective and have not been incorporated in the Codes of Procedure. Consequently, judges and other competent authorities, lawyers, employees and their organizations ignore these provisions and they are not applied in practice. Thus, very few cases have been filed in courts. Therefore, the NCHR reiterates its previous recommendation for the incorporation of the relevant provisions on the Codes of Procedure.

B) The locus standi of organizations in the context of judicial protection of discrimination victims and for the recourse to administrative authorities

As the NCHR underlined, in 2003, the number of legal entities which are given the right to defend discrimination victims is very limited, since it includes only those which, according to their statutes, state the safeguard of the equal treatment principle as one of their purposes. So far, the implementation of the Law does not indicate a broad interpretation of the relevant provision in order for every organization defending human rights to have locus standi.

Moreover, in order for the aims of the relevant provision to be fulfilled, it does not suffice for the aforementioned legal entities to be able to represent discrimination victims, but they should also be able to act in their own name. In that way discrimination victims will be encouraged to report their rights without fear of retaliation by their employers. The NCHR had also emphasized that it needs to be explicitly provided that a negative res judicata in a case that was filed by a legal entity in its own name will not be binding for the discrimination victim

Furthermore, the requirements in order for legal entities to represent discrimination victims provided for in article 13, par. 3 of Law 3304/2005 (prior consent of the discrimination victim given before a notary or in writing signed and having the authenticity of the signature certified) hinder the application of the provision. The Directives

require the victim's "approval", which can be given later on, and not his/her "consent", which must be given in advance. Moreover, with the requirement of "consent" there is the risk that the deadline for recourse to the court or to another competent authority will elapse.

Therefore, the NCHR recommends the amendment of article 13, par. 3 of the Law on the basis of the aforementioned.

Lastly, if the State wishes to ensure the administrative review of the administrative acts violating Law 3304/2005, a special provision should be added in par. 1 of article 13, which will expressly provide for the right to have administrative recourse to the administrative authority issuing the act entailing discrimination. This recourse will result in the review of both the legality of the act and the substance of the case by the administrative authority, and the latter will be able to abrogate the act, in whole or in part, or to modify it. This amendment is procedurally necessary, because through the special administrative recourse provided for in article 25, par. 2 of the Code of Administrative Procedure (to which article 13, par. 1 of Law 3304/2005 refers) only a legality review is permitted. Moreover, according to the Code of Administrative Procedure, only the victim may exercise the administrative recourse. The NCHR asks for a provision according to which the legal entities of article 13, par. 3 may exercise the administrative recourse for violations of Law 3304/2005.

IV. Compliance of domestic law with the requirement for social regulation of equal treatment and combating discrimination

A) The Commission for Equal Treatment of the Ministry of Justice

There is no doubt that the Greek legislator did not interpret correctly the institutional provisions of Directive 2000/43/EC – especially article 13 which requires the establishment, in every member state of the E.U., of an equality treatment body.

The NCHR, in its 2003 opinion, criticized the fact that the Commission for Equal Treatment, founded by Law 3304/2005 as the Greek equality body, functions simply as an advisory body of the State –only for the interpretation of the law- and as a conciliatory body between the parties in cases of discrimination, although the Directive does not provide for similar duties. Moreover, the independence of the Commission for Equal Treatment is debatable since its members are appointed by the Minister of Justice and it is chaired by the Secretary General of the Ministry. Therefore, it could not be given the competence of providing independence assistance to victims of discrimination (article 13, Directive 2000/43/EC). The independence of the Labour Inspectorate- designated as an equality body for employment and occupation in the private sector- is also debatable.

B) The need to institutionalize a central and independent action for the promotion of the equal treatment principle - The role of the Greek Ombudsman

Taking into account, the need for the effective promotion and application of the principle of equal treatment and the problems of discrimination that segments of the population face because of their racial or ethnic origin, age, religion, disabilities or sexual orientation, as well as the delay on the part of the State to shield the society with public institutions able to combat effectively discrimination, the NCHR recommends that the Greek Ombudsman be given the primacy in promoting and monitoring the implementation of the equal treatment principle. To this end the NCHR also recommends the necessary readjustments of the competences of the other designated equality bodies.

Although Directive 2000/43/EC does not require the equality bodies to be set up as independent authorities, the relevant features are "indirectly" required given the emphasis it places on the condition of independence.

In particular, the NCHR recommends:

(a) The expansion of the competence of the Ombudsman in the private sector, apart from the case of access to and supply of goods and services, which should be assigned to the Ombudsman for Consumers. Moreover, every public authority,

which receives complaints or information regarding the violation of the equal treatment principle, including the Labour Inspectorate, should communicate them to the Ombudsman (or the Ombudsman for Consumers) for investigation and mediation. The respective competences of the Labour Inspectorate and the Commission for Equal Treatment of the Ministry of Justice should, therefore, be abrogated.

(b) The provision of independent and specialized assistance by the Ombudsman (and the Ombudsman for Consumers) to victims of discrimination. Furthermore, the Codes of Procedure should be amended in order to provide for the locus standi of the Ombudsman (and the Ombudsman for Consumers) as a third party before civil or administrative courts or as a civil party before criminal courts.

(c) The expansion of the ratione temporis "jurisdiction" of the Ombudsman over cases which have been filed in courts until the first hearing of the case or the issuing of interim measures. Given that a complaint submitted to the Ombudsman does not suspend the deadlines for judicial remedies, if the mediation of the Ombudsman is not fruitful, the discrimination victim might be deprived of his/her right to judicial protection. This expansion might encourage discrimination victims to have recourse to the Ombudsman and limit the number of potential cases before the courts, a procedure which is more time-consuming and costly.

(d) The systematic monitoring by the Ombudsman, in cooperation with the Labour Inspectorate, the Department for Equal Opportunities of the Ministry of Labour and the Organization of Mediation and Arbitration, of the developments in employment and occupation, collective agreements, codes of ethics and practices regarding combating discrimination.

(e) Given that none of the aforementioned may be successfully fulfilled without the systematic communication of the State with the NGOs, unions, and the society, the NCHR deems necessary for the role of the ESC to be enhanced. To this end, the NCHR recommends the creation, within the ESC, of a permanent consultative body, composed of representatives of NGOs and organizations in general, with the participation of the Ombudsman, which will conduct with the plenary of the ESC the social dialogue concerning equal treatment.

Finally, the NCHR considers that, as a result of the recommended expansion of the Ombudsman's competences, its budget and staff should be increased accordingly.

V. NCHR's recommendations

The NCHR, on the basis of all the above, recommends the following:

1. The expansion of the competence of the Ombudsman also in the private sector, apart from the case of access to and supply of goods and services, which should be assigned to the Ombudsman for Consumers.

2. The amendment of Law 3304/2005 so as to prohibit multiple discrimination.

3. The amendment of several articles so as to prevent the prohibited discriminatory treatment against third country nationals by invoking their different nationality.

4. The amendment of a number of articles concerning the scope of the Law, positive actions, the occupational requirements and the different treatment due to age in order for the Law to comply fully with the Directives.

5. The improvement of the phrasing and the incorporation of the procedural provisions of the directives (locus standi of the organizations and burden of proof) in the Code of Civil Procedure, the Code of Administrative Procedure and the Code of Administrative Process.

6. To provide for the recourse to administrative authorities by NGOs in their own name.

4. Cameras surveillance of public areas, image and sound recording, DNA analysis in criminal proceeding and the national data base of DNA profiles

I. Introductory remarks

A. The cameras surveillance and the DNA use law amendment

According to para. 2 c) of article 3 Law 2472/1997, data protection mechanism is not applied in cases of data processing by a public authority using special technology for sound or image recording in public areas for the protection of State security, for purposes of defence, public security, and in particular for the protection of persons and possessions as well as for the management of traffic/circulation. Data which is not used in criminal proceedings is kept for 7 days and then destroyed on the basis of an act issued by the competent Public Prosecutor. The violation of this provision is punished by imprisonment of at least 1 year, unless any other provision providing for a more severe punishment is applied.

Furthermore, according to article 200A of the Criminal Code as amended, "if there is serious evidence that a person has committed a crime or an offence punished by imprisonment of at least 3 months, the prosecuting authorities take compulsorily genetic sample in order to identify the offender. If the analysis is negative, the genetic sample and the DNA profiles are destroyed immediately. If the analysis is positive, the genetic sample is destroyed immediately but the DNA profiles of the allegedly perpetrator are retained on a special data base at the Headquarters of the Hellenic Police. All data are retained for the investigation of any other crime and they are destroyed in any case after the person's decease. The data base is put under the supervision of the Deputy Attorney General or the Court of Appeals Attorney General.

The law on data protection was amended without taking into consideration the opinions of the Hellenic Data Protection Authority that found that the law amendment was not compatible with the constitutional and conventional guarantees for the protection of personal data (article 9A Constitution and article 8 ECHR).

B) The artificial dilemma between freedom and security

The amendment reflects an expanded worldwide preventive policy of an imperceptible danger that transforms security into a super-right absorbing all restrictions of individual rights and presenting them as the sole rescue from the fear.

The GNCHR shares the Hellenic Data Protection Authority's concern for "security in a freedom context and not freedom in a security context". The need for security in a democratic society enjoying freedom should be satisfied by respecting all guarantees for fundamental freedoms and human rights.

C) The Minister's of Justice commitment

The GNCHR welcomes the commitment announced by the Minister of Justice related to the abrogation of the last amendment concerning the surveillance cameras in public areas. The GNCHR states its willingness to follow-up the implementation of this commitment and fully agrees with the Hellenic Data Protection Authority's opinion on the incompatibility of the provision with the Constitution and the ECHR, as: a) it does not provide for clear and sufficiently precise conditions for the operation of cameras and the data processing, b) it does not specify adequately the objective, the criteria according to which cameras are installed and operate, the conditions for the collection, the registration, the processing and the transmission of data, it does not provide for any remedy against a violation and c) it removes an important and broad sector of State action from the competence of the Hellenic Data Protection Authority. The GNCHR notes that the surveillance cameras have been proved ineffective, according to studies related to the same system of surveillance in the UK.

II. The new article 200A of the Criminal Code

A) Unforeseeability

According to the European Court for Human Rights case-law, the law imposing the restriction

must be accessible and foreseeable. In the case of the DNA use in criminal proceedings, the individual should be able to foresee when his DNA sample would be taken and in which cases it would be retained in order to regulate his conduct. The provision must afford adequate legal protection against arbitrariness and accordingly indicate with sufficient clarity the scope of discretion conferred on the competent authorities and the manner of its exercise. It is rather difficult to foresee with certainty the meaning of serious evidence, in particular given the fact that the relevant competence of the judicial council has been abrogated. Furthermore, since the DNA analysis constitutes interrogatory act and can be ordered during the preliminary investigation, it is more complicated to foresee which evidence the competent agent would consider to be serious.

The general and brief terms in which the provision is formulated does not comply with the requirements set in the Recommendations No. 87 (15) and No. 92 (1) of the Council of Europe or the principles stipulated in the preamble of the Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime.

B) Legitimate aim and disproportionate measures

The DNA analysis and retention are a part of the State anti-criminal policy. In the GNCHR's view, the legitimate aim of crimes investigation, as a part of the Police action presenting an aspect of coercion should leave the least margin of appreciation to the authorities. In the light of this, the new Article 200A of the Criminal Code does not strike a fair balance as: a) it extends the list of crimes for the investigation of which the measures are provided for, b) it is not an extraordinary measure, c) it prolongs without distinction of any kind the period of retention at the national data base, d) no special measures are provided for in cases of minors, acquitted persons or victims of discriminatory treatment during the investigation, e) no study has been presented to support the necessity of the measures.

C) Lack of adequate guarantees and remedies

In addition to the suppression of the competence of the judicial council as regards the order of the measure, Article 200A of the Criminal Code as amended, has put the national data base under the supervision of the Deputy Attorney General or the Court of Appeals Attorney General. The GNCHR expresses its concerns due to their lack of special technical knowledge and adequate staffing. The Greek Constitution reserves to the Hellenic Data Protection Authority, an independent authority, the protection of personal data.

III. Proposals

While the GNCHR expects the abrogation of the provision related to the surveillance cameras in public areas, it recommends the following modification concerning the DNA analysis and retention in criminal proceedings:

1. Taking samples and analysing the DNA should be ordered by the judicial council according to the principle of proportionality and only in cases the identification is not possible by other les intrusive means.

2. Genetic fingerprints should be used only in criminal proceedings for crimes and offences against sexual freedom or related to financial exploitation of sexual life.

3. Genetic fingerprints of an adult person should be retained after his/her conviction only for a precise period of time determined by the court accordingly to the gravity of the crime, the personality of the convicted person and other individual factors.

4. Genetic fingerprints should be destroyed after the acquittal of the accused person.

5. The protection of genetic data should be monitored by the Hellenic Data Protection Authority.

5. Detention Conditions in Police Stations and Detention Facilities for Aliens

I. Introduction

The National Commission for Human Rights (hereinafter NCHR) addressed for the first time the question of detention conditions in 2001 based on the Report of the CPT after its ad hoc visit in Greece in 1999.

In 2002, it addressed new recommendations to the competent Ministries on the basis of the CPT Report after its visit in 2001, the observations of CAT, the observations of the CoE Commissioner for Human Rights after its visit in Greece in 2002 and the responses of the competent Greek authorities.

In 2004, the NCHR recommended the ratification of the Optional Protocol to the Convention against Torture.

In 2008, the NCHR issued an extensive report titled "Rights of Detainees and Detention Conditions in Greek Prisons", whereas in February 2010 it commented the Draft 5th and 6th Periodic Report of Greece regarding the implementation of the CAT.

The NCHR, based on secondary sources –reports of international and national monitoring bodies, reports of international and national NGOs– decided to focus on: a) detention conditions in police stations, b) conditions in detention facilities for aliens (border guard stations, "Special Detention Facilities for Aliens"), and c) ill-treatment during detention.

II. Conditions in police stations

A) European Committee for the Prevention of Torture

The CPT in 2007 visited several police stations in Attica and Evros and it took the view that the conditions were appropriate only in three police stations but for short-term detention. The rest were problematic regarding adequate natural and technical lighting, ventilation, levels of hygiene, overcrowding and outdoor exercise area.

In 2008, the CPT visited again several police stations. The CPT following its observations after the 2007 visit, noted that despite the declared intentions of the Greek Government to renovate the spaces that it had visited, there has been no significant improvement to the spaces visited in 2008. As a conclusive remark it noted that the detention conditions remain sinister and that overpopulation remains the rule, aggravating the already bad infrastructure and the hygiene conditions (par. 24-25). The problems that, overall, were noted by the CPT in many detention facilities apart from the one of overpopulation are: limited or no access to natural light, inadequate ventilation, deficient cleanness especially in the hygiene spaces, lack of sanitary ware, lack of beds and blankets, lack of a foreyard or/and limited usage of the above.

The Greek Government in its response regarding the 2007 Report, acknowledged the existing problems, such as the inadequacy of the existing facilities, the unsuitability of many buildings and the lack of natural light, ventilation and heating and it proceeded to a detail enumeration of the measures that it took for the improvement of the detention conditions in the facilities the CPT visited. (e.g. installation of new insulation in the Piraeus Alien Department, installation of artificial light to the Acropolis Police Department etc). In its response regarding the 2008 Report it followed the same approach. Nevertheless, we should note that some of its responses to the CPT observations are either not persuasive (e.g. every usage of plastic bottles for urination was attributed to mentally unstable detainees) or do not constitute an excuse (e.g. the detainees of the Kypseli Police Department do not enter the foreyard because of the neighbours' complaints and because it would require a significant number of police officers for their surveillance.)

B) The European Court of Human Rights (ECtHR)

Greece was convicted for the first time by the ECtHR for violating article 3 in the Dougoz case. The Court held that the detention conditions in the Police Department of Alexandras Avenue and the detention facility in Drapetsona and in particular the great congestion and the lack of sleeping conveniences combined with the extremely long duration of Dougoz's detention under these conditions for ten and two months

respectively constituted humiliating treatment. In December of 2009, the Committee of Ministers of the Council of Europe closed this case considering that Greece had taken the appropriate general measures for its compliance with the Court's decision.

Unfortunately, in the last years, Greece has been convicted 6 times for violating article 3 because of bad detention conditions. In the Kaja case the Court ruled that "the detention space of the Security Sub-Division of Larissa was not an appropriate space for such a long detention as the one that was imposed to the petitioner and lasted for three months. From its own nature it is a space that should be used for a short stay of the detainees. Because of its features, without a foreyard, without internal infrastructure for the preparation and the supply of foodstuffs, without radio or television in order for the detainee to be in contact with the outside world [...] it cannot satisfy the needs of an extensive detention". In regard to this case, and within the framework of the general measures for the compliance of Greece with the Court's decision, the Committee of Ministers has requested information from Greece as for the measures that it intends to take on the issue of the long stay of detainees in police stations, including aliens under deportation and it will examine the case in a subsequent session.

In the case of Siasios and others the complainants were held under custody for a time period of approximately 3 months in the Katerini Police Department until their transfer to the Prisons of Thessalonica. The ECtHR repeating its line of thinking from the Kaja case, it held that the detention of the complainants constituted humiliating treatment.

In the case of Vafiadis the complainant –a drug addict- was held in the Thessalonica Police Department for approximately one hundred days due to no availability in the prisons. The ECtHR after repeating what it had already mentioned in the cases of Kaja and Siasios and underlining the fact that "the money of 5,87 euros per day that the petitioner was afforded for his food was minimal and it could not ensure adequate and appropriate daily food, since he had to order his food from restaurants which apply the market's prices", it concluded that the long detention under these conditions constituted inhuman and degrading treatment.

The Court in its most recent decision, in the case of Tabesh, held once again that the detention for approximately three months of the complainant who was under expulsion in the Alien Sub-Division of Thessalonica under the same conditions as in the previous cases constituted humiliating treatment in breach of article 3 of the ECHR.

C) The Greek Ombudsman

In 2007 the Greek Ombudsman (hereafter GO) issued a report on the subject of the "Detention of 'criminal' offenders in police stations".

According to the Report, since 2005 onwards a high concentration of detainees has been observed in police stations in the wider area of Thessalonica. Apart from the significant number of aliens who remain detained waiting for their deportation, there is also a large number of detainees who are under transfer. Their detention in police stations extends from 10 days to three or more months. Their long stay in the detention facilities of the police stations is due to the refusal of the Judicial Prison of Thessalonica to receive them.

The GO noted, as the ECtHR has done before, that the infrastructure of the detention facilities in police stations aims to accommodate the detention of persons for very short time periods either before the trial or in case of transfer. Furthermore, as the GO notes, according to article 66, par. 6 of PD 141/1991 "in the detention facilities of the police departments, the detention of persons whose trial is pending or of convicts that are supposed to enter a Penitentiary Facility, is prohibited with the exemption of the time that is absolutely necessary before the transfer and only if the direct transfer and delivery in the appropriate facility is not possible".

Furthermore, the GO on 27.08.2009 visited the detention facilities of the Alien Division of Attica. The visit of the GO unit focused on the usage of the foreyard for detention purposes of detainees under transfer. According to its estimations, the stay and even more the fact that

these aliens were spending the night in the open space of the foreyard having only blanket, even if it is considered as an absolutely exceptional measure, according to the Administration's allegations, because of the circumstances, it touches upon disproportionately their dignity.

III. Conditions in Detention Facilities for Aliens

A) European Committee for the Prevention of Torture

The CPT visited in 2007 many detention facilities for aliens. In regard to Border Guard Stations, it considered the conditions generally unacceptable even for short-term detention and it emphasised the problems of inadequate natural light, ventilation and cleanness, overpopulation and lack of foreyards. The CPT expressed its satisfaction for the closing down of the "Special Detention Facility for Aliens" (hereafter SDFA) located in Peplo. However, it affirmed that the new installation does not meet the requirements that it had recommended (par. 27). The observations of the CPT for the other facilities that it visited may be summarized as follows: lack of foreyard, beds, cleanness, activity spaces, access to hygiene spaces, inadequate space per detainee, inadequate personnel, briefing of the detainees for their rights.

The CPT visited again in 2008 many detention facilities for aliens. We are briefly noting again the problems that were spotted by the CPT apart from overpopulation: problematic access to the toilets, lack of foreyard space or/and limited use of it, lack of beds, lack of sanitary ware, lack of activities, lack of adequate personnel, inadequate food, detention of women and men in the same facilities.

The CPT also visited the Mitilini SDFA in Pagani and it described the conditions there as "repulsive". We need to note that this facility closed down in the autumn of 2009 by a decision of the Ministry of the Citizen Protection. The conditions in SDFA in Filakio that started functioning in the spring of 2007 were certified by the CPT as satisfactory and it emphasized that this is the result of the good cooperation between the Police and the Prefecture (par. 41).

The responses of the Greek Government to the CPT's Reports of 2007 and 2008 acknowledge some of the problems – trying to minimize them, nevertheless- and they mention the measures (reconstructions, repairs) that the competent Ministry has already taken or intends to take, such as the closing down of the SDFA of Peplos and Vrysikas. However, certain responses were not persuasive, such as for example that the overpopulation that had been observed in Border Guard Stations in Alexandroupoli is due to the fact that the SDFA of Peplos was shut down, given that even if it were operational, it still wouldn't be able to accommodate the needs of the area.

B) European Court of Human Rights

In the case of S.D. the complainant was detained under deportation for two months in the detention facility of the Border Guard Station in Soufli. The Court held that the fact that "he remained detained for two months in a unsuitable facility without being able to go outside or to make phone calls and without having blankets, clean sheets and adequate sanitary products" constituted degrading treatment.

C) Council of Europe Commissioner for Human Rights

The Commissioner for Human Rights of the Council of Europe visited Greece on December 8-10, 2008 focusing on the rights of asylum seekers. In regard with the Border Guard Station in Fera that the Commissioner visited, he noted that there was no telephone in the detention space, there was lack of beds, lack of cleanness in the hygiene spaces, while the detainees complained that almost never did they go outside. We further note that the Commissioner visited Greece once again in February 2010 and he met with the chair of the NCHR. During his visit, he focused inter alia on the issue in question, for which a relevant report has not been published yet.

D) The Greek Ombudsman

During the summer of 2007 a unit of the GO

carried out visits in detention facilities for aliens in Samos, Mytilini, Evrosand in Rodopi. The problems found may be summarized as follows: inadequate administration of personal sanitary ware, issues of cleanness, inadequate number of telephone devices that operate with telephone cards, limited access to a foreyard, inadequate heating, inadequacy of interpreters. We need to note that when the GO visited the alien detention facility in Pagani, it had considered the center's facilities as good and satisfying the basic conditions for a decent stay. However, after two years the situation had deteriorated in such extent that the Administration decided the closing down of the center. Moreover, the GO was very judgmental regarding the conditions, at that time, in the alien detention facility in Samos (an old tobacco factory), which closed down after a few months.

E) Human Rights Watch

Human Rights Watch in the summer of 2008 carried out a field research. It interviewed 173 aliens and it visited many detention facilities for aliens. Its findings can be summarized as follows: inadequate food, limited access to a foreyard, overpopulation, lack of cleanness, inadequate sanitary ware. We note that it considered as satisfactory the conditions in the new detention facility for aliens in Samos.

F) Hellenic League for Human Rights

A unit of the Hellenic League for Human Rights visited the Prefectures of Evros and Rodopi form 25-29.11.2009, in the framework of its investigation on the detention conditions of undocumented migrants. It visited the detention facilities on the Border Guard Stations Iasmo, Ferres, Kipi, Tichero, Soufli, Issakio, the SFSA of Venna and Fylakio and it issued a Report.

According to its findings: a) the conditions do not comply with the specifications of detention facilities. Especially the SFSA of Venna and the Department of the Guard of the Borders in Tichero are in such condition that offend the human dignity and cannot be improved; b) the detention facilities have no distinctive signs or marks that indicate the presence of a public service and particularly the police; c) in many cases there is no adequate light, ventilation and heating of the facility, with the exception of Kyprino; d) frequently men, women and children are detained in the same premises; e) access to a foreyard is practically non-existent. Even in the detention facilities where there is a proper foreyard, the detainees have access to the foreyard only for very short time periods and not on a daily basis due to the increased number of detainees and the lack of guard personnel; f) in many cases food is inadequate, while the quantity and the quality varies; g) the hygiene conditions and the distribution of sanitary ware are either inadequate or non-existent; h) there is limited medical and nursing personnel and only occasionally; i) the detainees are not properly informed regarding their rights, the time of their detention, asylum procedures, while there are no interpreters and j) overpopulation exacerbates the existing problems of inadequate infrastructure, especially regarding hygiene.

IV. Ill-treatment in places of detention

A) European Committee for the Prevention of Torture

The CPT in its 2007 Report stressed that there has been no improvement as regards the manner in which persons detained by law enforcement agencies are treated. Once again it heard a considerable number of allegations of ill-treatment of detained persons by law enforcement officials. Most of the allegations consisted of slaps, punches, kicks and blows with batons, inflicted upon arrest or during questioning by police officers (par. 11). In several cases, the delegation's doctors found that the allegations were consistent with injuries displayed by the detained persons concerned (par. 13).

In the 2009 Report, it is stated that the CPT received a considerable number of allegations of ill-treatment of persons held by law-enforcement officials under suspicion of having committed a criminal offence. The alleged ill-treatment consisted mostly of kicks, punches and blows with batons, often inflicted during questioning. In addition, a few persons claimed that they had been

threatened with various objects (par. 10). By contrast, the CPT received few allegations of ill-treatment of irregular migrants. The allegations that were received consisted mainly of slaps, kicks and verbal insults. These allegations often appeared to relate to situations where the migrant had not understood a staff instruction due to language barriers (par. 11). However, the CPT reached the conclusion that the information gathered during the 2008 visit indicates that apprehended persons continue to run a considerable risk of being ill-treated by law enforcement officials (par. 13). Furthermore, the CPT stressed that the rights of detainees, such as the right to inform a close relative of their situation, to have access to a lawyer or a doctor, to be informed of their rights on a language they could understand are not always respected in practice. (par. 19-20).

The Greek Government in its response to the CPT does not accept the allegations concerning incidents of ill-treatment to the extent they are not corroborated by specific evidence. It refers to the orders and material concerning human rights which has been distributed, and the relevant syllabus in Police Academies. At the same time it is not in favour of the establishment of a new independent service for the investigation of ill-treatment complaints considering the existing framework sufficient and effective.

B) European Court of Human Rights

Bekos and Koutropoulos case concerned the beating of the two complainants by police officers during arrest and questioning. ECtHR took the view that that acts of the police constituted inhumane and degrading treatment in violation of article 3 ECHR. Furthermore, regarding the procedural aspect of article 3, the ECtHR held that: "on several occasions, during both the administrative inquiry that was conducted into the incident and the ensuing judicial proceedings, it has been acknowledged that the applicants were ill-treated while in custody. However, no police officer was ever punished, either within the criminal proceedings or the internal police disciplinary procedure for ill-treating the applicants. [...] It is further noted that the involved officers were not at any time suspended from service, despite the recommendation of the report on the findings of the administrative inquiry. In the end, the domestic court was satisfied that the applicants' light clothing was the reason why the latter got injured during their arrest. Thus, the investigation does not appear to have produced any tangible results and the applicants received no redress for their complaints." Thus, the ECtHR held that there article 3 was violated due to lack of effective investigation.

The *Alsayed Allaham* case concerned the beating of the complainant by police officers when he went to a police station to report a robbery. After the disciplinary proceedings were concluded the involved police officers were fined, whereas the one who was criminally prosecuted was acquitted. The ECtHR recalled that: "where a person is injured while in detention or otherwise under the control of the police, any such injury will give rise to a strong presumption that the person was subjected to ill-treatment. It is incumbent on the State to provide a plausible explanation of how the injuries were caused, failing which a clear issue arises under Article 3 of the Convention. It is not sufficient for the State to refer merely to the acquittal of the accused police officers in the course of a criminal prosecution, and consequently, the acquittal of officers on a charge of having assaulted an individual will not discharge the burden of proof on the State under Article 3 of the Convention to show that the injuries suffered by that individual whilst under police control were not caused by the police officers." The Court found that neither the authorities at the domestic level, nor the Government in the proceedings before the Strasbourg Court have advanced any convincing explanation as to the origin of the applicant's injuries. Therefore, the Court considered that the physical harm suffered by the applicant at the hands of the police must have caused the applicant suffering of sufficient severity for the acts of the police to be categorised as inhuman and degrading treatment within the meaning of article 3.

Cases *Zelilov and Galotskin* concerned the same incident of beating in a police station, but they were tried separately. The involved police

officers were acquitted in the disciplinary proceedings, whereas the criminal procedure did not end up in a hearing of the case. The ECtHR held that article 3 had been violated because there had been excessive use of force. Furthermore, it held that the procedural aspect of article 3 had also been violated because the investigations of the incident were sufficiently effective and in particular: the disciplinary investigation was not thorough as required, it evaluated selectively and inconsistently the evidence, it did not take into consideration the forensic report, the criminal investigation was not initiated ex officio and it was basically based on the disciplinary investigation without examining as witness the complainant. With the same reasoning the ECtHR held in *Galotskin* case that both substantive and procedural aspect of article 3 had been violated.

The *Stefanou* case concerned the beating of an under-age Roma in a police station. The ECtHR considered that the Government had not established beyond reasonable doubt that the bruises on the applicant's head pre-dated his questioning at the police station and found a violation of article 3.

C) The Greek Ombudsman

The Greek Ombudsman issued in 2004 a special report titled "Disciplinary-Administrative Investigation of Complaints against Police Officers". Out of 176 complaints received by the Greek Ombudsman concerning the behavior of police officers, 26 concerned brutality/ill-treatment. The outcomes of the Greek Ombudsman's survey in relation to all filed complaints were the following: a) crucial factors for the reliability of the conducted investigations are the strict implementation of the disciplinary procedure and the sufficiently reasoned decision in writing, b) whereas the legal framework aims at providing the investigation of the most serious offences with increased guarantees, in practice there is extensive use of the informal procedure, c) there is lack of initiating Sworn Administrative Inquiries in cases where there were evidence to justify disciplinary proceedings, even in cases where the alleged treatment would fall under article 3 of the ECHR, d) in cases where the investigation was conducted by the Commanding Officer of the involved police station there were indications of less scrutinized investigation that the one required on the basis of the available evidence. For that reason the assignment of the investigation to an Officer of another Directorate should be expanded in all internal police investigations. E) The Greek Police could enhance the transparency and reliability of its internal investigations by consistently suspending the officer against whom a Sworn Administrative Inquiry has been initiated for a serious disciplinary offence. f) A number of violations of the principle of full and reasoned evaluation of evidence has been substantiated. g) There are serious and fundamental violations of the rules regarding the evidentiary procedure, h) There are shortcomings with regard to substantive and efficient reasoning of decisions, i) There is an abusive expansive interpretation of the provisions regarding the discretionary powers for conducting a disciplinary investigation. J) Sanctions are imposed only in the cases of particularly serious offences, possibly due to publicity. k) The sanctions provided by the legal framework do not always correspond to the severity of the offences. Thus, the commanding officers are led to the mitigation of their findings.

D) Other Monitoring Bodies and Institutions

The question of police ill-treatment and efficient investigation of relevant complaints has been addressed also by both the Committee against Torture and the European Commission against Racism and Intolerance. Both bodies acknowledge the fact that the situation is problematic without referring to specific incidents.

Furthermore, the Human Rights Committee in the case Kalamiotis, which concerned ill-treatment during arrest, took the view that there had been a violation of article 2 par. 3 ICCPR in conjunction with article 7 because of the inefficient and prejudicial investigation of the complaint. The disciplinary procedure was limited to an informal investigation, the complainant and the witnesses were not questioned and the judicial council closed the case on the basis of the police investigation.

Moreover, Human Rights Watch in its Report

refers to incidents of ill-treatment of aliens detainees by police officers.

V. Observations

The aforementioned reports of both international and national monitoring bodies and NGOs depict a problematic situation regarding detention conditions in non-correctional facilities which is need of urgent both short-term and long-term interventions. The NCHR would like to underline that in order for the problems to be addressed effectively a holistic approach is required concerning detention conditions in all facilities as well as the issue of undocumented migrants. Given that these issues are interlinked fragmentary measures will not produce viable solutions.

A) Detention Conditions

The fact, for example, that remand detainees are detained for long periods of time in police stations because of non-available places in correctional facilities renders necessary addressing the problem of overpopulation in prisons via policies which are not limited to the construction of new prisons.

Furthermore, the fact that many aliens under deportation are detained in police stations due to lack of special facilities for aliens detention requires measures for curtailing undocumented migration which will not be limited to the construction of new detention facilities.

Thus, addressing the problematic detention conditions in police stations, apart from improving the existing facilities, lies on taking measures for the two aforementioned issues. As far as correctional facilities are concerned the NCHR reiterates its previous recommendations.

Regarding detention of aliens under deportation, the NCHR would like to stress that the prolongation of the maximum time of detention from three to six or up to 18 months (according to article 48 of Law 3772/2009 which amended article 76 of Law 3386/2005) surely it may not contribute to the improvement of detention conditions for aliens. The NCHR notes that the said amendment took place while: a) it is a well known fact that the existing detention facilities for aliens are insufficient, and many of them inappropriate, and b) the maximum time of three months for administration detention was promulgated by Law N. 2910/2001 (article 44, par. 3) as one of the general measures that Greece took in order to comply with the ECHR Dougoz judgment.

It needs to be noted that the said amendment incorporates selectively a similar provision of the so called Return Directive (Directive 2008/115/EC) which allows Member States to *prolong the maximum time of detention "without prejudice to the right of the Member States to adopt or maintain provisions that are more favourable to persons to whom it applies"* (article 4, par. 3). The amendment exhausts the maximum permissible time provided for by the Directive. However, article 15, par. 1 of the Directive provides that a person may be detained *"unless other sufficient but less coercive measures can be applied effectively in a specific case".*

Furthermore, whereas the prolongation of the maximum time of detention is in line with the provision of the Directive (article 15), the amendment does not incorporate those guarantees which render the detention compatible with article 5 of the ECHR and the Constitution, in particular its constant review of its legality by judicial authorities. Among the guarantees that the amendment did not incorporate, generating serious doubts as to its compatibility with the letter of the Directive, are indicatively free legal aid (article 13, par. 3 and 4) and the periodic review of the detention decision (article 15, par. 3).

Therefore, it is necessary for the Administration to provide for the required guarantees concerning administrative detention of aliens and to consider reinstating three months as the maximum.

In relation to the administrative detention of aliens who have requested asylum, the NCHR needs to note the following: article 13 of Presidential Decree 90/2008 sets the conditions under which an asylum seeker may be detained. However, the way this provision is applied in practice is problematic. Firstly, according to par. 1 a person who has filed an application for asylum while he/she is detained and a deportation order

is pending against him/her remains in detention and his/her application is examined by priority. However, the ECtHR held in S.D. that the detention of an asylum seeker which is based on a deportation decisions violates article 5, par. 1 since "an asylum seeker may not be deported before a decision re the asylum application is issued" (par. 62). Therefore, the detention does not serve the aim for which it was imposed and its legal basis needs to be modified. Secondly, article 13, par. 2 of Presidential Decree 90/2008 enumerates the reasons for which police authorities may order the περιορίζει of asylum seekers in an appropriate place, inter alia, public interest or public order. Apart from the fact that the provision speaks of περιορισμό and not detention, in practice the detention of asylum seekers is ordered for reasons of public interest or public order without these to be specified in the relevant decision. The ECtHR in S.D. noted that the authorities are required to specify the reasons after they examine and evaluate each individual case (par. 66). On the basis of the above it is evident that the detention of asylum seekers in some aspects is problematic.

Detention of asylum seekers deteriorates the already deplorable detention in police stations or detention facilities for aliens since they are added to population detained. The solution of this problem lies in the establishment of a fair, effective and prompt asylum procedure and not in the abusive or incorrect implementation of the existing legal framework. The NCHR welcomes the announcement of the Ministry of Citizen Protection regarding the establishment of an autonomous Asylum Department and a new procedure underlining the need to be staffed with appropriate –both in numbers and qualifications- personnel.

Regarding the so called "Special Detention Facilities for Aliens", the NCHR notes that their legal framework is almost inexistent. According to article 81, par. 1 of Law 3386/2005 an alien under deportation "until his/her deportation is completed remains in special facilities which are established by a joint decision of Ministers of Interior, Economics, Health and Public Order. The same decision determines οι προδιαγραφές and the functioning of those facilities". According to par. 2 "Greek Police is responsible for guarding those facilities". Furthermore, according to Circular No. 38 of 23.12.2005 of the Ministry of Interior (OG 212 A'/23.08.05) "illegal migrants are guarded according to σχέδια "Posidonio" and "Balkanio" in centres of temporary stay of illegal migrants the functioning of which lies with the Prefectures".

It is to be noted that the required Ministerial Decision has never been issued. The only legal framework that exists is the aforementioned circular. The fact that there is no decision establishing those facilities nor κανονισμός λειτουργίας τους, has been repeatedly underlined also by the CPT. Furthermore, the fragmentation of the various competences regarding their functioning between the Police and the Prefecture generates serious problems. For example, the Prefecture is responsible for the food, clothing and medical care of the detainees, for the payroll of the employees, whereas many times "directors" of the centres are Police Officers (as was the case with Pagani Centre in Mytilini).

The NCHR welcomes the statement of the Ministry for Citizens Protection regarding the establishment of Screening Centers at the entry points of Greece. However, it needs to be noted that the raison d'etre of the Screening Centres is different than the one of the Special Detention Facilities since the purpose of the latter is the detention of aliens under deportation. Given that the two types of centres fulfill different goals and their roles are distinct, the establishment of Screening Centres does not refute the necessity of Special Detention Facilities and therefore the regulation of their functioning is extremely urgent.

As far as detention of aliens is concerned, the NCHR would like to note that special care should be taken for minors. Given that minors constitute a special group and that their appropriate treatment is the result of many factors combined, the NCHR is planning to address this issue in detail in the future. For now it would like to reiterate its recommendations regarding unaccompanied minors such as a) the abolition of detention of alien minors for illegal entry in the country and its replacement by alternative measures of hospitality and/or protective custody in suitable facilities; b) the enactment of measures

of systematic registration, identification, information, legal representation and custody of alien minors; c) tracking down family members.

B) Ill-treatment

Regarding ill-treatment of detainees by police officers, the NCHR would like to stress that the effective curtailing of this phenomenon is linked with the appropriate training in human rights and interrogation techniques –both initial and periodic– of police officers.

The NCHR would like to note the announcement of the Ministry for Citizens Protection regarding the reform of policemen's training. It wishes to express its discontent for not being invited to participate in the working group given its previous initiatives and its cooperation with the Ministry in this field.

Furthermore, the NCHR notes that in order for the incidents of police ill-treatment to be reduced a clear message of zero tolerance on the part of the Ministry is necessary; a message which is materialized through the thorough and effective investigation of related complaints and respective sanctioning.

In September 2008, Presidential Decree 120/2008 "Disciplinary Law of Police Personnel" was adopted. Unfortunately, few of the Greek Ombudsman's recommendations were adopted. The recommendation regarding the investigation of a disciplinary offence by a high ranking officer of another department was adopted only in relation with torture or other offences of human dignity in accordance with article 137A PC. However, the maximum possible impartiality needs to characterize disciplinary investigations of all complaints. Therefore, the disciplinary law needs to be modified furthermore on the basis of the Greek Ombudsman's recommendations.

Moreover, the NCHR would like to note the initiative of the Ministry for Citizens' Protection for the establishment of an Investigative Office of Abusive Incidents provided for in a bill under drafting. The establishment of an independent mechanism investigating complaints against police officers has been repeatedly requested by the CPT and other bodies.

VI. Recommendations

On the basis of the aforementioned, the NCHR recommends the following:

1) Compliance with all recommendations of the CPT and in particular those concerning the better coordination between police and border guard stations for curtailing overpopulation and the separation between men and women in detention facilities for aliens.

2) Adoption and implementation in practice of the NCHR's recommendations regarding detention conditions in correctional facilities.

3) Ratification of the Optional Protocol to the UN Convention against Torture.

4) Immediate adoption of Ministerial Decision regarding the establishment and function of Special Detention Facilities for Aliens.

5) Construction of new Special detention Facilities for Aliens and staffing with appropriate personnel.

6) Enactment of the guarantees required by the Directive 2008/115/EC for the administrative detention of aliens and consideration of reinstating the maximum time of three months.

7) Strict implementation of the legal framework concerning the detention of asylum seekers.

8) Taking special measures for the detention of minors.

9) Reforming the training of police officers by emphasizing on human rights and interrogation techniques.

10) Establishment of an Investigative Office of Complaints against police officers with the necessary guarantees of personal and functional independence, whose views will be binding for the Administration.

11) Adoption of the Greek Ombudsman's recommendations regarding the disciplinary law of police personnel which have not already been incorporated in PD 120/2008.

12) Establishment and functioning of the new Asylum Department.

13) Establishment and appropriate staffing of the new Screening Centers.

6. Observations and Proposals on the Bill "Ratification of the Revised European Social Charter"

Introductory Observations

1. The NCHR is content for the State's decision to proceed to the ratification of the Revised European Social Charter. This has been a consistent recommendation of the Commission for the improvement in the protection of social rights.

2. This decision coincides with a time period during which, due to the international economic crisis and its impact on the States, serious obstacles have been raised for the exercise and the enjoyment of fundamental social rights by the citizens. The European Committee of Social Rights (ECSR), which is the supranational instrument that monitors whether the European States are in conformity with the provisions of the European Social Charter, during the conclusion of last year's circle of examination of the contracting states (December 2009) had among others underlined that:

"The ECSR is obliged to remind that the contracting States have undertaken the obligation to pursue with all the appropriate measures the achievement of the conditions, under which the right to health, the right to social security, the right to social and medical assistance and the right to enjoy social services among other rights, will be able to be fulfilled. From this point of view, the ECSR considers that the economic crisis should not have as a consequence the reduction of the protection of the rights that the Charter establishes. Accordingly, the governments are obliged to take all the necessary measures in order to ensure substantially the rights of the Charter in periods that the holders of the rights have a greater need for protection. Furthermore, the ECSR reminds that 2010 is the European Year for Combating Poverty and Social Exclusion, which focuses on the promotion of solidarity, social justice and social integration. One of the basic priorities is the acknowledgement of the fundamental right of persons in conditions of poverty and social expulsion to live with dignity and to participate fully in the society. Within this framework, the ECSR repeats that the right of protection against poverty and social expulsion is a fundamental right established by the Charter".

3. According to the Bill for the ratification of the Revised ESC that is under the consideration of the NCHR, the State ratifies a large majority of the provisions of the Revised ESC; it attaches a reservation to Article 5 (the right to organize) and it does not accept certain other provisions, namely: paragraphs 4 of Article 3 (promotion of occupational health services with preventive and advisory functions), 12 of Article 19 (facilitation of the teaching of the mother tongue to the children of the migrant workers) and 3 of Article 27 (prohibition of termination of employment due to family responsibilities) and Articles 6 (collective bargaining), 24 (protection in cases of termination of employment) and 31 (the right to housing).

4. The NCHR ascertains with content that the State, with the suggested choice of the provisions of the Revised ESC that is going to ratify, respects the limits of such a "selective" or "à la carte" accession, that the Revised ESC draws in Article A § 1, instances b and c, (Part III). The protection of the social rights at the national level and at that of the Revised ESC do not necessarily coincide on the minute of every accession. This is the reason why the European conventional text allows this kind of acceptance of its provisions. Accordingly, the possibility is afforded to the States to accede to the Charter, but on the basis of a "step-by-step" approach, having regard to the elevation of the minimum level of protection that the states may offer in comparison with the level that the Charter dictates (article A § 3, first phrase- Part III).

5. At first, the NCHR affirms that for many of the provisions of the Revised ESC that the Bill suggests to be approved, the protection level of the social rights that is granted by the existing Greek legislation is higher than the one of the Charter. For example, this is the case with paragraph 1 of Article 8 (the right of employed women to protection of maternity). This article

establishes a leave of a total duration of 14 weeks, while the Greek legislation establishes a leave of 17 weeks for the private sector and of 5 months for the public sector. The same happens with paragraph 2 of the same article, which considers it as unlawful to give a woman notice of dismissal during the period from the time she notifies her employer that she is pregnant until the end of her maternity leave. According to the Greek legislature, such a thing is prohibited and the dismissal of a pregnant woman is absolutely void, no matter if the employer has given a previous notice or if he has gained the knowledge from the pregnant herself. The protection continues for a time period of one year after the delivery or during her absence for a longer time period due to illness that is caused by the pregnancy or the delivery, unless there is a great reason for the dismissal.

6. It is remarkable that in such cases, article G of Part V of the Revised ESC averts every allegation or decision of a government for the reduction of the protection level on the occasion of the Charter after the accession to it. Such a reduction could have taken the form of new restrictions on an already established right. This provision prescribes:

I. The rights and prin-ciples set forth in Part I when effec-tively realised, and their effective exercise as provid-ed for in Part II, shall not be subject to any restric-tions or limitations not specified in those parts, except such as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.

II. The restric-tions permitted under this Charter to the rights and obliga-tions set forth herein shall not be applied for any purpose other than that for which they have been prescribed.

Nevertheless, Article G of the ESC, due to its neutral wording, covers the reverse situations as well. Namely, when at the time of an accession the protection level that the existing legislation provides is lower than the one that the Charter dictates. Neither in this situation is the State obliged to annul the restrictions that apply at the minute of the accession in order to accede and since the restrictions are compatible with the particular provision. As validly it has been characterized by reliable barristers, the clause of article G is a "standstill" clause that stabilizes the national legislation that is applied at the moment of the accession.

7. In agreement with the above, the NCHR considers that the State can ratify Article 6 of the Revised ESC, which establishes the right to bargain collectively. Especially with regard to paragraph 4 which provides "the right of workers and employers to collec-tive action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into", the NCHR considers that the prohibition of counter-strike under Law 1264/1982 (OGG A'79) constitutes a permissible restriction, provided by the law, has an adequate explanation (the safeguard of social peace and coherence) and accordingly, it is covered by article G. Therefore, from a legal point of view the acceptance of Article 6 will not compromise the prohibition of counter-strike in our national legal system. Moreover, the NCHR confirms that the ECSR does not attribute a great consideration to the statutory right of the employers to counter-strike: In 1984, the interpretation given by the ECSR in the relevant provision of paragraph 4 and which firmly remains in force until this day, is that the Charter does not imply that the legislation of a State needs to deal in a tantamount way with the right of the employees to strike and the right of the employers to counter-strike, and that the ECSR itself does not intend to ever animadvert a contracting state to the Charter for not establishing in its national legislation a regime for the lock-out.

In any case, the reservations of the syndicate movement on article 6 and the State's displeasure for paragraph 4 of article 6, as it is expressed with the Bill, leads to the en-masse non-acceptance of all the paragraphs of article 6. The NCHR does not consider this as constructive, by taking into consideration that article 6 is integrated in the

complex of the provisions that provide possibilities to counterbalance the opposite interests of employers and employees and aims in the effective resolution of the collective differences and in peace in the working place.

For all these reasons, the NCHR suggests the acceptance of the whole of article 6 by our country, including paragraph 4, but with the submission in the ratification documents of a reservation, according to which: "With the acceptance of article 6, there shall be no alteration in the prohibition of counter-strike within the national legislation". This was exactly the solution followed by Portugal, which faces the same issue with our country. For reasons of legal order, the ratifying law should include an additional, separate article that will repeat this particular reservation.

8. The NCHR further opts for the acceptance of article 24 of the Revised ESC that provides for the causal termination of an employment contract by the employer, under the following rationale: the standing Greek legislation does not require the justification of the termination of an employment contract. However, the dismissed employee has a right to full compensation and to judicial protection in case of improper dismissal. Besides, in this last case, the employer bares the burden to prove that the dismissal is not improper. Accordingly, the employer is the one who justifies the dismissal in the end. Since the dismissal's regime is changing considerably, as it can be seen by article 2 paragraph 9 of Law 3845/2010 (O.G.G. Aæ65) which provides the measures for the application of the mechanism for the support of the Greek economy by the E.U., I.M.F. and E.C.B., the NCHR considers that article 24 will be in the end a significant safety valve and perhaps a counterbalance to the potential change of the compensation regime. Article 24 acknowledges the right of the dismissed to appeal to an impartial body, in order to decide whether there is an absence of a valid reason for the termination of the employment. A basic reason for dismissal is defined as the one connected with their capacity or conduct or based on the operational requirements of the undertaking. Lastly, it acknowledges to the dismissed the right to receive adequate compensation in case there is an absence of a valid reason. In short, it prevents the causeless and abusive dismissal.

9. The NCHR considers that there is no substantial reason not to accept paragraph 3 of article 27, since both E.U. Law and the Greek legislation prohibit the termination of employment due to family engagements. This prohibition aims to safeguard the equal treatment of men and women. In particular, article 9 of Law 3488/2006 (O.G.G. A' 191) which incorporated Directive 2002/73/EK for the application of equal treatment as regards access to employment, vocational training and promotion, and working conditions, prohibits the termination of employment as well as any unfavourable treatment for reasons of family status. Furthermore, according to article 14 of Law 1483/1984 (O.G.G. A' 153), family engagements of employees in the private sector do not constitute a reason for termination of the contract.

10. The NCHR further proposes the ratification of article 31, paragraph 12 of article 19 and paragraph 4 of article 3. The NCHR reminds and shares the rationale of ECSR that was underlined in note 3 and reiterates that all the provisions of the Charter aim to promote the concern of the states for the more vulnerable social groups within their population. Accordingly, in the very difficult current economic circumstances in Greece, an adequate legal underpinning is going to be introduced in the public order of our country for policies that will ensure and promote the level of the State's contribution to the protection of the standard of living of these groups. Besides, this is required by the existing E.U. Treaties (particularly in paragraph 3 of article 3 of the European Union Treaty and 9 of the Treaty on the Functioning of the E.U).

More specifically, it is observed by the general wording of article 31 (the right to housing) that the adoption of measures does not necessarily entail a certain cost. The adoption of measures for the effectuation of the obligation of article 31 is of equal importance. Such measures involve the prohibition of eviction during the winter months,

the inclusion of guarantees for the equal treatment of vulnerable groups (single-parent families, elderly, unemployed persons etc), respect from the owners of basic hygiene rules and basic security measures.

Similarly, paragraph 12 of article 19 regarding the promotion and facilitation of the teaching of the migrant worker's mother tongue to the children of the migrant worker does not necessarily entail an excessive cost. The facilitation of classes conducted by NGOSs and volunteers in collaboration with the interested migrant societies conduces to the fulfilment of this obligation. This procedure will assist in the more harmonious integration of the migrants, which constitutes a declared goal of the State and befits with the spirit of recent legislative documents (see L. 3833/2010, O.G.G. A' 49 «Contemporary provisions for the Greek Citizenship and the political participation of expatriates and of legally residing migrants and other regulations").

Lastly, paragraph 4 of article 3 regarding occupational health services for all workers belongs to the obligations – as it stems also from the wording of the provision (e.g. "progressive development") – which can be fulfilled according to the principle of the progressive effectuation of the human rights that the ESC establishes.

11. Contrarily, the NCHR considers justified the reservation that the State has raised and submitted to the Council of Europe, regarding the non binding character of article 5 which establishes the right to organize as regards the military personnel of the armed forces. Article 5, according to the applied wording in the original French and English text of the Revised ESC and as it has been interpreted by the ECSR,, leaves in the discretion of the states to allow or to prohibit the unionism of the military personnel of their armed forces.

12. The NCHR suggests that the ratification of the Revised ESC will give to the State the motive to acknowledge that the Non Governmental Organizations which are, according to the Additional Protocol to the European Social Charter which provides for a system of a collective complaints (L. 2595/1998. O.G.G. A 63), "representative and have particular competence in the matters governed by the Charter" (art.2, para 1 Add. Protocol) to lodge "réclamations » or complaints to the ECSR for violations of Greece to the Revised ESC.

Summary of the observations of the NCHR

The NCHR by recapitulating its preceding observations:

1. Salutes the decision of the State to ratify the Revised ESC.

2. Considers that the reservation of Article 5 regarding the right of the military personnel of the armed forces to organize does not contravene the spirit and the wording of the article and the case law of ECSR. (supra, on 11).

3. Proposes the acceptance of article 6 in its whole, accompanied by a reservation on the correlation between paragraph 4 and the standing Greek legislation. (supra, on 7).

4. Proposes the acceptance of article 24 under the scope of the alteration of the dismissals regime. (supra, on 8).

5. Proposes the acceptance of paragraph 3 of article 27, in the light of article 4 of Law 3488/2006 and article 14 of Law 1483/1984 (supra, on 9).

6. Proposes the acceptance of the provisions of article 3 paragraph 4, article 19 paragraph 12 and article 31, considering that the arising obligations are implemented with the adoption of measures important for the protection of vulnerable groups and the facilitation of the exercise of the particular rights from these groups. This does not necessarily entail costs. (supra, on 10).

7. Proposes to the State to make the necessary statement in order to acknowledge the right to submit collective complaints before the ECSR by the national NGOs, which are representative and particularly competent on the issues that the Revised ESC regulates. (supra on 12).

8. Calls upon the State, immediately after the passing of the ratifying law, to cooperate with the Executive Secretary of the ECSR on the matter of translating the Charter in Greek in the series of

publications that the Council of Europe addresses to the public, to take action for the dissemination of this publication to the Greek public and beyond, to raise awareness of the provisions of the Charter and of the ECSR's case law, to specialized individuals, groups and private organizations, whose competence falls within the scope of the Revised ESC.

7. The need for constant respect of human rights during the implementation of the fiscal and social exit strategy from the debt crisis

"The National Commission for Human Rights, in the context of its statutory role as the consultative body to the Greek State on issues pertaining to the protection of Human Rights

I. Taking into account:

A. On the one hand:

1) the rapid and important developments at the level of the Greek finances, though interconnected with the observed instability of the finances of other countries, as well as the activation of the support mechanism comprising the Euro zone Member States and the International Monetary Fund;

2) the broad authorization granted by the provisions of Law 3845/2010 for the adoption of additional measures, that touch upon fundamental civil and social rights, mainly by means of Presidential Decrees;

3) the fact that the financial and debt crisis cannot be exclusively perceived as an economic issue, but as one having serious political, legal, social and ethical dimensions;

4) the fact that the current economic crisis already has and will continue to have serious impact on the social fabric, thus resulting into an important deterioration of living standards and threatening vulnerable groups of the population with social exclusion.

B. On the other hand, the Government's duty to abide by:

1) the constitutional framework for the protection of fundamental human rights;

2) the international and European safeguards for human rights and the fundamental principles that are binding for Greece, as a member state of the European Union, the Council of Europe and the United Nations;

3) the established case law "shield" at the national, international and European levels aiming at the full and equal enjoyment of all human rights, which requires:

i) the undisputed due respect of the principle of proportionality while adopting measures aiming to serve the public interest, even in particularly difficult or/and extraordinary situations in times of peace, so as that adopted measures do not unilaterally, unjustly or disproportionately burden only a part of the population, and in particular the most vulnerable social groups with a serious and permanent impact on the enjoyment of their fundamental rights (art. 25 paragraph 1 of the Greek Constitution),

ii) the respect of the principle of necessity and adequacy in a democratic society, that respects and protects the human value and dignity and does not deviate neither from the principle of equity nor from the principle of each citizen's contribution to public charges in proportion to his/her means (art. 4 paragraphs 1 & 5 of the Greek Constitution),

iii) the promotion of social justice during the enactment of economic policies governed by transparency and with undeviating respect of fundamental rights, as well as the State's timely actions in order to secure social peace and cohesion (art. 25 paragraph 4 of the Greek Constitution)

iv) the respect of the principle of public trust vis-à-vis State Institutions, which is encompassed in the concept of the Welfare State's rule of law acting upon the principle of proportionality, and the principle of good and accountable governance according to the Constitution (art. 1 and 25 paragraph 1 of the Greek Constitution),

v) the State's duty to take steps, individually and through international assistance and co-operation, utilising the maximum of its available resources, with a view to progressively achieve the full realization of economic and social rights (art. 2 paragraph 1 of the International Covenant on Economic, Social and Cultural Rights),

vi) the realization, through international co-operation of the overall goal of peace, security, development and respect of human rights,

II. Reminding to the State the NCHR's previous opinions on:

1) the urgent need to adopt measures to safeguard fundamental individual and social rights

during the financial crisis by establishing conditions of economic and social development, intergenerational solidarity and social trust through economic equity and social justice;

2) the civil society's demand for the due respect of all individual and social rights, such as the value and dignity of the human being (art. 2 paragraph 1), the right of equal access to healthcare (art. 21 paragraph 3) and education (art. 16 paragraph 2), the right to full, stable and decent work with social security based on redistribution (art. 22), and the freedom of association (art. 23 of the Greek Constitution).

III. Conveys to the State:

1) the NCHR's great concern, already expressed in previous Resolutions, that the developments on the domestic economic environment, as aggravated by international financial pressures and the reluctance of international creditors' to pursue sustainable solutions to the debt crisis, result to the real disturbance of social balances at the expense of human rights with multiple spill-over and parallel consequences on the enjoyment of individual rights and vice versa;

2) the consistency of its view that the protection of fundamental rights should not be disregarded during the implementation of measures aiming at the exit from the debt crisis; the measures adopted should be to the benefit of the society as a whole and to the service of public interest through economic sustainability, social efficiency and sustainable development, which should guarantee recovery and development with equity and social justice;

3) its strong conviction that the country's binding international obligations as regards the protection of fundamental freedoms and social rights, especially during the current economic and social situation, must be fully respected, according to the constitutional principle of the supremacy of ratified international Conventions over any contrary provision of Law (art. 28 paragraph 1 of the Greek Constitution). The due observance of these obligations is not only imposed to the State, but also to the international organisations with whom the country co-operates in order to address the external debt crisis (Report of the UN Independent Expert on the effects of external debt and other related international financial obligations of States on the full enjoyment of all human rights, 12 August 2009, paragraph. 30);

4) according to the NCHR, the State's respect of fundamental human rights while exercising its powers to exit from the external debt crisis is imperative, as stipulated by:

i) the International Covenant on Economic, Social and Cultural Rights as interpreted by the UN Committee monitoring its implementation according to which, in times of severe resource constraints caused by economic recession, the obligations remain for a State Party to strive to ensure the widest possible enjoyment of fundamental rights and protect the vulnerable members of society by the adoption of relatively low cost targeted programmes (General Comment No. 3, paragraphs 11-12);

ii) the International Labour Organisation Convention No. 87 (L.D. 4204/1961) and No. 98 (L.4205/1961), as well as the settled case-law of the Committee on Freedom of Association, according to which in case that a Government, as part of its stabilization policy, considers that wage rates cannot be settled freely through collective bargaining, such a restriction should be imposed as an exceptional measure and only to the extent that is necessary, without exceeding a reasonable period, and it should be accompanied by adequate safeguards to protect workers' living standards (CAS, Digest of Decisions, 2006, paragraph 1024);

iii) the European Convention on Human Rights of 1950 (L.D. 53/1974) and the case-law of the European Court of Human Rights, according to which, inter alia, a drastic reduction of social security benefits as a result of statutory changes in the conditions on the basis of which the former have been established, may constitute infringement of the provisions of the Convention (Kjartan Asmundsson v. Iceland – judgment of 12.10.2004, Goudswaard-van der Lans v. Netherlands – judgment of 22.9.2005, – judgment of 2.2.2006);

iv) the European Social Charter of 1961 (L. 1426/1984) and the case law of the European Committee of Social Rights, according to which, inter alia, when a State has to strike a balance

between contradictory interests and make choices in terms of priorities and resources, given the current social situation, the adopted measures should be compatible to three criteria: to be implemented within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources (ECSR decisions on complaint No. 13/2002 of 4.11.2003, paragraph 53 and No. 31/2005 of 18.10.2006, paragraph 35).

8. Observations regarding the bill «Adjustment of domestic law to the provisions of the Statute of the International Criminal Court, ratified with L. 3003/2002 (OG Aæ 75)»

I. Introduction

A) General Comments

The bill constitutes an extraordinary legislative intervention in the Greek legal order, since it aims to fill in a very important gap of the current legislation regarding the punishment of war crimes, crimes against humanity and genocide. Specifically, the bill adjusts the domestic legislation to the provisions of the Statute of the International Criminal Court (ICC Statute), which was ratified by the Greek Parliament in 2002. The aims of this bill are: first, that the Greek courts be able to try war criminals, if they so desire, irrespective of where those crimes have been committed and second, to refer cases to the International Criminal Court (ICC) or cooperate with it.

B) Greece and International Humanitarian Law (IHL): The compliance of domestic legislation with the obligations deriving from IHL

Greece is bound by the basic corpus of IHL, having ratified the Hague Convention on Laws and Customs of War on Land and its annex of 1899, the four Geneva Conventions of 1949 and the three Additional Protocols of Geneva of 1977 and 2005 respectively, the Hague Convention of 1954 and its two Protocols (1954, 1999) for the protection of cultural property in the event of armed conflict, the Geneva Convention of 1980 on certain conventional weapons and its Protocols, the Ottawa Convention of 1997 on antipersonnel mines etc.

The existing legal framework for the punishment of IHL violations, however, is far from being a functional and effective framework capable to address the challenges in this field, from the perspective of individual criminal responsibility. And this, while the obligation to enact legislation for the national suppression of war crimes is expressly stated in the Geneva Conventions of 1949 (L. 3481/1956, OG Aæ 3) and its 1977 Protocols (L. 1786/1988, OG Aæ 125 and L. 3804/2009, OG Aæ 166), whereas regarding genocide under the relevant Convention of 1948 (articles 4-6).

Thus, the ratification of the ICC Statute with L. 3003/2002 which introduced to the Greek legal order a comprehensive framework of international criminal justice, rendered the Criminal Code and the Military Criminal Code insufficient to affront those crimes of international interest, which have also been subjected to interpretation by the institutions of international criminal justice that are functioning for more than 15 years via their case-law.

The current Greek legal order for the suppression of IHL violations is fragmentary and incomplete. There are no specific provisions or a law that standardizes those three categories of international crimes. The only relevant provisions are included in the Criminal Code and the Military Criminal Code which refer to acts that constitute «serious violations of international law» and several others, but without any clarification as to whether they refer to the protected persons under the Geneva Conventions of 1949 or as to whether they are committed during an international or non-international armed conflict. Furthermore, other violations of IHL (genocide, most of the crimes against humanity etc) are not even criminalized.

In Greece, except for the principle of territoriality (article 5 Criminal Code) and of citizenship (article 6 Criminal Code), the principle of universal jurisdiction is also applied concerning piracy or «every other crime for which special provisions or international treaties signed and ratified by the Greek state provide for the application of Greek criminal laws» (article 8, el. (ia) Criminal Code). It could be assumed that this provision of the Criminal Code suffices to fulfill the obligations of Greece deriving from the Geneva Conventions of 1949 and of the Additional Protocols of 1977; however it needs to be modified so as to expressly provide for the Greek courts to prosecute individuals for war crimes, crimes against humanity and genocide irrespective of where those crimes were committed.

C) The ICC Statute and its application

The ICC Statute presents a comprehensive standardization of the crime of genocide, war crimes and crimes against humanity. Specifically, it incorporates the first coherent definition of crimes against humanity, expands the list of punishable war crimes and crimes against humanity and defines as war crimes, acts committed during non-international armed conflicts. The recent adoption of the definition of "aggression" during the Conference of States parties in Kampala sets interesting perspectives, beyond the scope of the said bill.

The main contribution of the ICC Statute until today is that it mobilized States to adopt relevant legislation and also national courts to prosecute and punish individuals responsible for the crimes falling under the ICC's jurisdiction with greater ease than in the past. The ICC Statute imposes implicitly the obligation of prosecuting the crimes falling under the ICC's jurisdiction. This obligation derives from the principle of complementarity (article 1 ICC Statute), but also from the reference to the principle of universal jurisdiction. In other words, the ICC reinforces the national systems for the punishment of IHL violations, since its jurisdiction is triggered only when it is affirmed that a State is unable or unwilling to carry out the investigation or the prosecution (article 17 ICC Statute).

D) The Greek administration's approach for the harmonization with the ICC Statute (special law)

For the adaptation of Greek legislation, there are 3 options: a) enactment of special criminal legislation (Code of International Crimes), following the examples of Belgium, Germany and the Netherlands, b) addition of a special chapter to the Criminal Code (following the example of Spain), c) additions to Chapter IA of the Military Criminal Code, but also to the Code of Criminal Procedure

The first option was finally selected, which covers special offences as well as issues regarding accountability, penalties, statute of limitation, international cooperation etc.

II. The Provisions of the Bill

The transposition of international treaty provisions (provisions and terms of International Humanitarian Law) in national legislation, poses from the outset multiple problems for their perspective implementation. Many of those terms require a difficult interpretation at the implementation level. It is expected that the judge who is not familiar with international law will face difficulties in understanding and applying international law. We consider necessary the dissemination of IHL, the familiarization of the Greek judges with the terminology of IHL and their access to the relevant case law and bibliography.

A) Provisions of Substantial Law

a) General part

Article 1: Provides for the application of the Criminal Code for the crimes listed in the bill. There is no reference to the Military Criminal Code, which is required. Consequently, the wording of the provision should be: «... the provisions of the Criminal Code and the Military Criminal Code are applied ».

Article 2: The provision defines the field of application of the legislation rationae personae, materiae και loci, but in an uncomplete way. This provision should define the scope of the legislative text, affirm the principle of universal jurisdiction for the aforementioned crimes and determine issues regarding personal jurisdiction. Regarding personal jurisdiction, it could go beyond the ICC Statute and cover also minors or corporations or other legal persons, like Canada did.

Its phrasing, however, is not clear enough. This is because there are no references as to whether crimes which are committed outside Greece should be related to Greece or not (the victim or the perpetrator must be Greek citizens), so that restrictive universal jurisdiction will come into play; or if it introduces absolute universal jurisdiction, where prosecution is allowed irrespective of where the crime was committed or the victim's or perpetrator's citizenship.

It needs to be noted that States wishing to be able to prosecute all persons that could be subject

to the ICC's jurisdiction, need to introduce in their national legislation provisions regarding the exercise of universal jurisdiction, given that there are more than one types of universal jurisdiction.

The first one is a relatively «prudent» universal jurisdiction, that States such as Argentina and Belgium have adopted -following their last legislative reform in compliance with the ICJ's decision in the Arrest Warrant case- according to which national courts have the right to prosecute a crime wherever or whenever that might take place, if this derives from a binding international treaty (Geneva Conventions of 1949 and the Protocols of 1977 for serious breaches).

There are States that have adopted the absolute universal jurisdiction and do not even require the presence of the perpetrator in their territory (New Zealand, Costa Rica, Cyprus, Spain).

The example of the Canadian legislation, which has already been applied with particular success to cases of persons accused of genocide in Rwanda, is interesting. The relevant provision of the Canadian Crimes against Humanity and War Crimes Act provides that a person alleged to have committed genocide, crimes against humanity, war crimes outside Canada may be prosecuted if:

i) when the offence was committed

- He/she was a Canadian citizen or was employed in Canada in a civil or military capacity.

- He/she was the citizen of a State that is involved in an armed conflict against Canada or was employed in such a State under a civil or military capacity.

The victim of the offence was a Canadian citizen or citizen of an ally State of Canada in an armed conflict

(ii) After the perpetration of the offence it is sufficient that the alleged perpetrator is present in Canada.

The German legislation adopts a different approach by adding provisions titled "Amendments to art. 153 (f) of the Code of Criminal Procedure" and choosing the relative universal jurisdiction: it is provided that the prosecutor will not initiate a prosecution if the crimes have been committed outside the German territory by an alien who does not reside nor is expected to reside in Germany, while, furthermore, it provides for the priority of international courts. In other words, the prosecutor does not proceed to prosecute persons if they are going to be prosecuted by an international tribunal or if a court of the State where the crime was committed has requested their extradition. A relative priority is established. The same approach could be followed by Greece.

Article 3 introduces an important international law provision, regarding the non-prescription of crimes falling under the jurisdiction of the ICC (art. 29 ICC Statute). It is recommended to provide also for the non-prescription of the execution of the penalty, preferably in article 31 of the bill, like other countries have done, such as New Zealand.

Article 4 lists the persons protected by IHL. However, there is no reference to military occupation, but solely to international conflicts (under the 4th Geneva Convention of 1949 persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals). It is useful to add to line (a) of par.1 the phrase "and in the cases of military occupation".

The enumeration of protected persons does not include the medical/religious personnel, journalists and children. It would be useful to mention expressly also those categories of protected persons.

Important definitions –particularly of international humanitarian law- which are essential for the interpretation of the content of the crimes are not included. Furthermore, there is no reference to important texts adopted by the Assembly of the States Parties to the ICC Statute with the purpose of assisting both international judges and domestic authorities. The most important one is the "Elements of Crimes". It is recommended that the bill includes the "Elements of the Crimes" in an Annex.

b) Special part

It is to be noted that the bill covers all war crimes included in the ICC Statute (article 8)

committed during an armed conflict, either of an international or non-international character. However, provisions which penalize certain acts included in other international conventions ratified by Greece (e.g. in the Additional Protocol of the Geneva Conventions of 1977), and which are absent from the ICC Statute could also be added in the Bill.

Moreover, the definitions of the crimes follow the general and descriptive definitions of the Statute, although they could borrow elements from definitions found in other international treaties (e.g. regarding hostages or torture etc) or in relevant national criminal legislations, or even the "Elements of Crimes" which exist in order to guide the international judge in the interpretation of terms or definitions that have been the product of compromises and for this reason are not further elaborated in the Statute. It is of course true that the definition of torture in the ICC Statute is broader than the one of the UN Convention against Torture, since it does not require the "purposes as obtaining from him or a third person information or a confession" nor does it require the perpetrator acting in an official capacity. There are States that have chosen not to be limited to the ICC Statute, but to enlarge the scope of the crimes. For instance, Canada and Equador have expanded the character of the groups that may be the victims of genocide; or they choose definitions that do not perceive the crimes as static concepts but rather allow for modifications. The legislation of Canada contains a provision which automatically incorporates future developments in conventional and customary international law.

It is clear that the second approach would signify a real effort to incorporate in the Greek Criminal Code the crimes that are included in the ICC Statute. However, the approach chosen leaves this task to the Greek judge. In this way an opportunity to profit from definitions found in important and binding international treaties, as well as from the relevant case law of international tribunals so as to update the Penal Code is missed.

Article 7 incorporates article 6 of the ICC Statute on genocide. For the first time genocide is penalized in the Greek legal order as a crime, the definition of which we find in the Convention for the Prevention and the Punishment of the Crime of Genocide of 1948 (LD 3091/1954, OG Aæ 250). However, the phrasing of the provision may be improved. For example, the term "as such" needs to be added.

As far as war crimes are concerned (article 9), the incorporation is complete. The bill divides them in different categories and follows a different methodology than the ICC Statute in the description of war crimes, based on the example of the legislations of Spain and Germany. There is not a systematic classification of acts constituting war crimes, but a distinction based on the object of protection (protected persons, objects, means and methods of combat etc). This approach defines better the acts, facilitates the interpretation and to a certain extent promotes the security of law, which is essential for criminal law.

Following the relevant German legislation- it would be preferable not to uphold the distinction between crimes committed during armed conflicts of an international and of non-international character. The non-distinction complies with the tendency deriving from the ICC Statute itself, the case law of the ICTY and the ICTR, and with the study of the ICRC on customary law that attribute the exact same content –regarding prisoners of war – either when the act was committed during (or in connection with) a conflict of an international character or not. However, this option was not preferred.

Furthermore, there is no reference to attenuating or aggravating circumstances, like in the case of the German relevant law (see German Code article 8(1) last paragraph where penalties are described), which would be advisable.

B) Provisions of judicial cooperation with the ICC

Article 27 provides for the possibility of transferring an individual surrendered by a third state via Greek territory, under the conditions of article 89, para. 3 of the ICC Statute. These conditions are, however, not specified in the phrasing.

Article 32: "Fundamental rights, principles and values" are not contained only in the Constitution and the ECHR, but also in the ICCPR; the relevant

provisions have been recognised as jus cogens, including in international humanitarian law that maintains characteristics of jus cogens, whereas it also comes into play in the case of cumulative application with human rights law as lex specialis.

If article 32 is drafted in order to remind that the procedural elements of the whole legislative intervention are subject to the threshold of human rights protection, as incorporated in international human rights law (ICCPR and ECHR), it needs to be rephrases so as to be clearer.

III. Concluding Remarks

This bill constitutes an important step for the Greek legal order and the punishment of international crimes in Greece, in the light of developments in international law and the ICC Statute. It is a positive development, since the national criminal legislation is harmonized with international law and the State's international obligations.

The bill covers many issues. However, it omits to address questions such as immunities, amnesties, the function of the principle of complementarity etc.

9. Comments on the Bill of the Ministry of Justice titled "Acceleration of proceedings in administrative courts and other provisions"

I. Introduction

The NCHR considers the bill in question as an important step to address the long duration of trials before administrative courts, which often may result in denial of justice. The bill introduces bold procedural changes which may alleviate the overburden of courts. The NCHR has repeatedly stressed the need to tackle the said problem. In 2005, it presented recommendations for improving the implementation of the ECHR in the domestic legal order, several of which concerned the Code of Administrative Procedure.

Since then the problem has become even greater. Furthermore, the continuous lack of an effective remedy for the violation of the right to a trial within reasonable time has resulted, after the Konti-Arvaniti judgment, in numerous convictions of Greece for violation of article 13 ECHR, apart from the convictions for violation of article 6 due to the unreasonable time of trials.

The main causes for the accumulation of cases and the unreasonable time of trials are maladministration in conjunction with the overwhelming existence of laws and the inconsiderate use of judicial remedies by the State and public legal entities which account for a very large percentage of cases pending before the Conseil d' Etat. Thus, any procedural reform will not succeed while the function and the mentality of the Administration remain steady. Under the present circumstances the considerable drop of the court's backlog may be achieved only via the radical decrease of judicial remedies exercised by the State.

Moreover, the intermediate administrative complaint which was established in order to prevent the totality of cases reaching the courts has developed into a simple formality, as it was not equipped with the competent administrative organs examining substantially the cases before them. That is why the members of the administrative organs competent for examining the intermediate complaints should not belong to the services issuing the administrative act under examination and should receive proper training.

II. Comments on the Bill

A) The aim of the Bill

According to the Explanatory Report the main aim of the Bill is "addressing the delays in the administration of justice before both the Council of State and the administrative courts of first and second instance which undermine the rule of law and weaken in practice series of constitutional rights, as well as discouraging the exercise of judicial remedies for the sole purpose of postponing the fulfillment of legal obligations, particularly those relating to payment of taxes".

The Explanatory Report notes that the measures designed take the following directions: a) introduction of new procedures aimed at reducing the large number of trials for the same legal issue, b) simplification of procedures before administrative courts c) enhancement of the procedure of pilot trial, d) measures to prevent the problem of the non conveyance of the file by the Administration – which is a root cause of postponements.

It is further noted that while the Bill introduces measures to prevent the long duration of trials, it does not introduce any measure for restituting the damages generated by the long duration.

B) First Chapter: General Provisions

Article 1: Pilot trial

This article concerns the institution of the pilot trial. The Council of State is to examine any judicial remedy exercised before any administrative court, if it poses "a question of general interest which affects a wider circle of persons". The case is introduced to the Council of State, at the request of a party or at the request of the competent administrative court by a decision of a three-member committee of the Council of State published in two daily Athenian newspapers and the examination of the relevant case by the administrative court is "postponed".

The three-member Committee of the

Council of State will have to consider: a) whether a relevant request has been submitted, and b) whether the judicial remedy poses "a question of general interest which affects a wider circle of persons". The first condition is a formality, whereas the second one is substantive. The three-member Committee will adopt a formative or negative decision. In any case, its decision needs to be fully reasoned. This needs to be provided for in the Bill.

The decision of the three-member Committee does not constitute a judicial decision. It is, however (if positive) a preparatory act of the proceedings before the Council of State which affects the legitimate interests of the parties, in view of the binding nature of the Council of State's judgment in the pilot trial. The same legal interests are affected also by a negative decision. Therefore, pursuant to article 20, par. 1 of the Constitution and 6 par. 1 of the ECHR the parties should be given the opportunity to express their views to the committee before it reaches its decision. Failure to provide such a possibility may be considered incompatible with the constitutional rule of natural judge (article 8, par. 1 of the Consitution).

It needs to be noted, however, that the provisions of this article, in combination with article 12 of the Bill might lead to the "freezing" of the jurisprudence.

Article 2: Appeal/cassation against a judgment finding a law in violation of the Constitution or an international convention

The article provides for the possibility of appeal or cassation against an administrative court's judgment which finds the provision of a law unconstitutional or in violation of an international convention, even if according to standard procedural rules there are no judicial remedies left. The aim of this provision is the unity of jurisprudence. This provision may not hinder any administrative tribunal from referring a question to the EU Court of Justice (formerly ECJ).

Article 3: Applications for cassation on the part of the State or Public Legal Entities

The State and the Public Legal Entities are represented before courts by the Council of State or its members. The said article requires, prior to the lodging of an application for cassation before the Conseil d' Etat by the State or the Public Legal Entities, to lodge an advisory opinion by the Council of State considering at least one of the reasons of cassation admissible. According to the Explanatory Report the procedure will result in the "screening" of applications for cassation on the part of the State.

Chapter Two: Amendments to the legislation of the Conseil d' Etat

Άρθρο 6: Report of the Rapporteur Judge

This article significantly weakens the institution of the Rapporteur, a key element of the functioning of the Council of State which contributes substantially to the proper administration of justice, and therefore to the effective judicial protection of individuals. In particular:

According to par. 1 of article 22 PD 18/1989 in force, the Rapporteur prepare a summary report that includes the facts, the data certified by documents, the questions raised and his/her reasoned opinion on these questions. The Bill under consideration abolishes the reasoned opinion of the Rapporteur. According to the Explanatory Report the reasoned opinion constitutes an important cause for delays.

First, we note that the aforementioned justification for abolishing the opinion of the Rapporteur is quite odd given that he/she will have to submit it at the deliberations. The Rapporteur will most probably have shaped his/her opinion before the hearing Chances when studying the case file. Thus, its abolishment will not contribute to the acceleration of the proceedings. Furthermore, given that in the case of a negative opinion applicants withdraw their case, the abolishment might have the opposite results.

We note that under article 6 of the Bill the Rapporteur's report will not include a reasoned

opinion, but simply "the questions raised." Thus, it will pose the legal questions on which the court must adjudicate. Article 6, par. 1 ECHR, however, requires that the party to the case has knowledge of any document concerning the facts of the case and their legal classification. It is therefore necessary for the report to be communicated to the parties.

Article 7: Rejection of manifestly inadmissible or unfounded judicial remedies

This article amends par. 1 of article 34A PD 18/1989, concerning the admissibility of judicial remedies before the CoE. The rejection of judicial remedies which are manifestly inadmissible or unfounded, will be decided by a chamber of three judges of Council of State (instead of five) upon the Rapporteur's recommendation. The party will be notified for the referral of his case to the three judges' chamber.

We note that the parties should be given the opportunity to present their views in writing before a decision is reached by the chamber the formation, at least for those remedies which are submitted directly to the Council of State. Otherwise, the rejection will result in precluding access to justice without a prior hearing, which would be incompatible with article 20, par. 1 of the Constitution and article 6, par. 1 of the ECHR.

Article 12: Admissibility conditions for applications of cassation or appeals

According to par. 3, application for cassation or appeal is allowed only when it is argued in the memorandum submitted that there is no relevant jurisprudence by the State Council, or that the contested judgment is contrary to the jurisprudence of the Council of State or of another Supreme Court or to an irrevocable decision of an administrative court. Thus, an institution similar to the Anglo-Saxon precedent is introduced into the Greek legal order.

We note that these provisions preclude the alteration of jurisprudence and the interpretive development of law by adapting to changing social conditions and/or supranational law. It should be added as a permissible ground for cassation or appeal, the opposition of the contested decision to the jurisprudence of the EU Court or an international tribunal (ex. ECtHR).

Chapter Three: Amendments to the Code of Administrative Courts Procedure

Article 22: Payment of 50% of the owed tax or customs' duties as admissibility condition

This article sets as a condition of admissibility of the appeal in tax and customs disputes the payment of 50% of the amount adjudicated by the court of first instance. However, the Council of State has held that the payment of high amount as a condition of admissibility of the appeal is contrary to article 20, par. 1 of the Constitution because it renders extremely difficult the use of the judicial remedy.

Besides, according to the jurisprudence of the ECtHR although article 6 does not require the existence of courts of further instance, when such courts do exist they need to provide for the guarantees of a fair trial, such as access to court.

Article 23: Repetition of the trial in case of conviction by the ECtHR

It adds a new article to the Code of Administrative Courts Procedure which provides for the reopening of the case where the ECtHR has held that a judicial decision was in breach of the right to a fair trial or another right provided for by the ECHR.

This provision should be extended, *mutatis mutandis,* in cases where the Court of Justice of the EU has held that a court decision is in breach of EU law.

Άρθρο 34: Stay of execution of an individual administrative act

The new provision limits significantly interim protection. In particular: a) Interim protection is granted "if the applicant argues and proves that the immediate execution of the act contested would cause irreparable harm or if the court considers that the remedy is manifestly founded." Consequently, interim protection is precluded

when the reparation of the harm is "particularly difficult", as was the case.

Chapter Four: Transfer of competencies

Article 49: Competence for cases regarding aliens and the acquisition or loss of Greek nationality

The NCHR strongly supports UNHCR's request to be granted the capacity to intervene as a third party in cases concerning granting refugee status or subsidiary protection.

As far as the transfer of competence for cases of Greek nationality from the Conseil d' Etat to administrative courts of appeal is concerned the NCHR would like to express its concerns. In view of the implementation of new Law 3838/2010 which amended significantly the Greek Code of Nationality -in particular article 6 which provides for the reasoning of decision accepting or rejecting a naturalization application-, it would be advisable for the time being for the Conseil d' Etat to preserve that competence in order for a coherent jurisprudence to be generated.

Chapter Five: Special Procedures before administrative courts

Article 55: Legality of detention of an alien under deportation

Article 55 adds a new paragraph to article 76 of Law 3386/2005, according to which the judge will review also the legality of the detention of an alien under deportation. This amendment comes in the light of the two recent judgments of the ECtHR (*S.D. v. Greece, and Tabesh v. Greece*). This new provision, however, does not resolve all questions of interpretation as they have emerged in practice.

Even under Law 2910/2001 article 44 of which provided expressly for the review of detention's legality the courts were consistently upholding that the review of detention's legality did not extend to deportation's legality which included the order for detention.

Therefore, in order for the provision to be in full compliance with article 5 par. 4 ECHR it needs to be provided for that the judicial review of the detention encompasses also the review for the legality of the deportation order on which the detention order is premised.

Furthermore, according to the ECtHR' case law in order for detention to fall under the exception of article 5, par. 1 (e) ECHR and to be legal it needs to take place in facilities and under conditions which comply with the requirements of article 3 ECHR so as not to result in inhuman or degrading treatment of the detainee (*Saadi v. United Kingdom*, 29.01.2008, par. 74, A.A. v. Greece, 22.07.2010, par. 89, Tabesh v. Greece, 26.11.2009, par. 34-44). Thus, inappropriate detention conditions should be provided for as a ground for opposing detention.

Chapter Six: Amendment to the legislation regarding the compliance of the Administration with domestic judgments of administrative courts

Article 56

Article 56 amends Law 3068/2002 regarding concerning the Administration's compliance with domestic judicial decisions. According to par. 2 the review of the Administration's compliance with the judgments of administrative courts is assigned to three-member councils established in every administrative court, and not to the three-member council of the Conseil d' Etat. The NCHR in its report of 2009 on the "Compliance of the Administration with domestic judgments" had recommended the decentralization of the procedure by the establishment of three-member councils at every Court of Appeal in order to supervise the Administration's compliance with the judicial decisions delivered by courts of its region. Par. 2 attempts to do that. However, the desired decentralization should be done at the level of appeals courts which have more experienced judges.

Furthermore, we need to note that the present Bill is an opportunity to amend broadly and radically Law N. 3068/2002, in the light of another ECtHR's judgment in the case of "Union of Private Clinics of Greece & others v. Greece", and the judgment 2347/2009 of Areios Pagos, on the basis of the NCHR's recommendations.

10. Observations of the NCHR on the draft law "Implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation – Harmonisation with the Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 (recast) and relevant provisions"

The NCHR addressed a letter to the Ministry of Labour and Social Security with regard to its observations on the draft law "Implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation – Harmonisation with the Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 (recast) and relevant provisions".

Article 1 - Purpose

Article 1 should refer only to the term "vocational training" whereas the definition of this term according to the ECCJ case law should be added in Article 2: 'Any form of education which prepares for a qualification for a particular profession, trade or employment or which provides the necessary skills for such a profession, trade or employment is vocational training, whatever the age and the level of training of the pupils or students, even if the training programme includes an element of general education. The term 'vocational training' therefore includes courses in strip cartoon art provided by an institution of higher art education'.

Article 3 par. 4 – Protection of maternity

The NCHR proposes the following wording: any less favourable treatment of a woman related directly or indirectly to pregnancy or maternity.

Article 14 – Termination of employment relationships

The NCHR proposed that the protection against reprisals (victimisation) should be provided also in the context of vocational training.

Article 18 – Discrimination with regard to parental leave and adoption

The NCHR proposed that this should be harmonised with the formulation of Article 3 (see supra): '... any less favourable treatment of a parent related directly or indirectly to the parental duties, the parental leave, the adoption or foster care or any other arrangements for the harmonisation of family and professional life'.

Article 19 – Positive measures

The NCHR strongly suggests the use of the broader term 'inequalities' according to the Greek Constitution.

Article 22 – Defence of rights (legal protection)

The law sets the requirement that the associations, organisations or other legal entities may engage either on behalf or in support of the complainant, with his/her 'consent', in any judicial and/or administrative procedure provided for the enforcement of obligations under this law. The NCHR proposes that the term 'consent' should replaced by 'approval' in accordance with Article 17 par. 2 of the Directive 2006/54. The requirement of "consent" of the complainant in order for the legal entities and associations to pursue his/her legal protection is not in accordance with the text of the Directive (article 17, para 2) which speaks of "approval" that can also be given at a later stage. The requirement of "consent" may result in exceeding the set time limits and thus, in depriving the complainant of the provided legal protection. Furthermore, the NCHR suggests that the associations should be able to have the locus standi as third party (in their own name).

Article 29 of the Directive – Gender mainstreaming

The NCHR strongly insists to incorporate the obligation with regard to gender mainstreaming with the same formulation as in Article 29 of the directive: 'Member States shall actively take into account the objective of equality between men and women when formulating and implementing laws, regulations, administrative provisions, policies and activities in the areas referred to in this Directive'.

Strengthening the Labour Inspection Body (SEPE)

The NCHR has already in the past stressed that SEPE cannot efficiently perform its duties,

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

Measures for the harmonization of family and professional life

The NCHR stressed anew the need for effective measures for the harmonization of family.

Articles 5 to 10 - Equal treatment in occupational social security schemes

The NCHR submitted detailed observations on the legal provisions incorporating the provisions of the directive. As a general conclusion, it should be stressed that the national legislation does not assure the clarity that the implementation of any law requires. Moreover, retroactive application of the principle of equal treatment in occupational social security schemes with regard to self-employed and workers will produce significant problems.

11. Observations on the 7th Greek Report (2005-2008) to the Committee on the Elimination of the Discrimination Against Women (CEDAW)

I. General observations

The NCHR welcomes the report containing important data and information. The Commission studied the report and, according to article 1 paar. 6 e) of law 2667/1998, addresses its observations to the competent authority for the collection and the drafting of the report, the General Secretariat for Gender Equality. It should be noted that the following version is a summary of the observations in Greek.

The NCHR wishes to note that the report does not cover the period concerned. In its reporting guidelines the CEDAW requests explicitly the each periodic report, should focus on the period between the consideration of the State party's previous report and the presentation of the current report. In addition, there should be at least three starting points for such subsequent Convention-specific documents: (a) Information on the implementation of concluding observations to the previous report and explanations for the non-implementation or difficulties encountered; (b) An analytical and result-oriented examination by the State party of additional legal and other appropriate steps and measures undertaken towards the implementation of the Convention; (c) Information on any remaining or emerging obstacles to the exercise and enjoyment by women of their human rights and fundamental freedoms in the civil, political, economic, social, cultural or any other field on the basis of equality with men, as well as information on measures envisaged to overcome these obstacles.

Consequently, the report should have covered the whole period 2008-2010. Furthermore, the impact of the economic crisis on the situation of women, the measures taken and the results that are expected should also be reported. In any case, the report should contain an impact assessment referring to the relevant case-law as well.

II. Observations per article (and cluster)

PART I

Article 1 – Elimination of discrimination

The GNCHR insists on the use of the broader term "inequalities" incorporated into the Constitution. Other definitions, such as direct and indirect discrimination, harassment and sexual harassment should also be mentioned. Further reference should be made to the scope of special laws and bills as well as their impact assessment.

Article 2 – Legislative and judicial protection

The NCHR has emphasized on many occasions that women are reluctant to file a complaint. In order to facilitate the access to justice for women the NCHR has repeatedly asked the insertion of procedural provisions into the codified legislation (related to the recognition of the right to file a complaint to associations on their own behalf and the onus of proof).

Article 4 – Special measures

The NCHR explains that the report should present more information on all measures taken and it should specify their aim and their results.

Article 5 – Social and cultural patterns

The report mentions the relevant studies undertaken with regard to stereotypes and the mass media without presenting whether and how these studies have been used in practice.

Article 6 – Violence against women

Domestic Violence

The NCHR commenting on the relevant Bill had clarified that: (1) the Bill does not deal with the essence of the problem, i.e. the violence against women, nor with its root cause, the persisting roles of "man-master" and "woman-servant"; (2) the acts it claims to punish are those already covered under the Penal Code, except for the case of rape within marriage; moreover, confusion will be created as to which acts will continue to be regulated by the Penal Code and/or by pre-existing law; (3) the relevant legislation is neutral from the point of view of gender, covering perpetrators and victims of both genders; but why is the perpetrator left

unpunished when the victim is the wife and the perpetrator her husband or companion? (4) the establishment of ad hoc institutions to deal with the issue is not provided for; (5) the institution for mediation on criminal issues, as provided for in the Bill, raises doubts from the perspective of both constitutionality and efficiency; (6) the police and the Prosecutor remain the main arbiters in the pro-judicial phase, although already proven to be unsuitable for the task, while the establishment of an ad hoc institution to deal with the problem, such as a special body of family social workers, is not provided for, (7) the recommendation (23.06.2005) addressed to the General Secretariat for Equality by the Greek League for Women's Rights, has obviously not received the necessary attention. To the GNCHR's view, a Bill addressing an issue of concern to a considerable number of families should be the product of a participatory process, both from the penal and the social points of view.

Human Trafficking

It should be noted that Greece has ratified the United Nations Convention against Transnational Organized Crime and its Protocols, as these instruments introduce positive measures in the Greek legal order. Nonetheless, the NCHR stressed that the provisions should be effectively implemented.

Article 7 – Participation of women to decision making organs

The NCHR suggests that relevant information should be updated in order to include the recent legislation on local administration (Law 3852/2010). A clear regression has to be noted as according to the recent legislation, quota of 1/3 is calculated on the basis of the members of councils and not on the basis of all candidates included in the ballot.

Article 9 – Equal rights, nationality

It should be clarified whether issues and impediments related to the dependence of women from their husband's status have been addressed.

Article 11 – Employment and social security

The NCHR presents analytical observations in the light of the deregulation of labour relations that have deteriorated women's condition in the labour market. In previous report, the NCHR has highlighted the increase of multiple discriminations and has suggested the adoption of specific provisions in order to cover the legislative gap. Among other issues, the NCHR stresses that parental leave should be accorder autonomously to both parents.

Article 12 – Health and family planning

Further information should be submitted regarding Health Education Programmes as well as the inspections realised by Labour Inspectorate Body with regard to caesarean births.

The NCHR has expressed its satisfaction for the socio-medical centres in Roma settlements and suggests that further competences should be accorded to them.

Article 15 – Equality before the law

Minorities

The NCHR has proposed the abolition of all jurisdictional and administrative competences of Mufti.

Article 16 - Discrimination against women in all matters relating to marriage and family relations

Surname

According to article 1388 of the Civil Code, the wife may take her husband's surname if they both agree to that. The Explanatory Report states that this provision allows spouses to hold the same surname if they so wish so that they are able to prove their relation status easier, especially when involving in any transactions abroad, and given that the surname of the spouse is not included in passports or identity cards. The NCHR considers this provision not to comply with the safeguard of substantive equality of two sexes and with the continuity of women's personality. Furthermore, this provision may endanger safety of transactions since it does not ensure the continuity of women's identity through potential successive surname changes. Moreover, this provision is not compatible with the principle of equality of sexes as provided for by the

Constitution and CEDAW.

Children born outside of marriage

Regarding the custody of children born outside of marriage the article in question provides that the father who has recognized his child may be assigned the custody in whole or in part after he applies to court, if that is in the best interest of the child. The NCHR took the view that the consent of the mother should be required for the assignment of parental custody, in whole or in part, to the father, in order for abusive practices to be avoided.

Marriage validity

The NCHR considers that: (a) The minimum age for the conclusion of a marriage should be the age of 18 years old for all citizens. An exception should be authorized by a court for important reasons and the minimum age should be at 16 years old. 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.

Other issues

The NHCR invites the State to accept the amendment to article 20, paragraph 1, of the Convention concerning the meeting time of the CEDAW.

The NCHR notes that the CEDAW requests the State information on the implementation of the Beijing Declaration and the Platform for Action.

Similarly to the CEDAW, the NCHR has encouraged the State to ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

The NCHR also shares the CEDAW's call to disseminate widely, in particular to women's and human rights organizations, the Convention and its Optional Protocol.

12. Comments on the bill of the Ministry of Justice titled: "Improvement of the criminal justice system"

I. Introduction

The Bill of the Ministry of Justice, Transparency and Human Rights, titled "Improvement of the criminal justice system" is part of the Ministry's initiatives for the acceleration of the Greek judicial system. Furthermore, it induces amendments to the Penal Code, the Code of Penal Procedure and special penal laws that aim to the decongestion of the correctional facilities.

We note that the National Commission for Human Rights (hereafter NCHR) has repeatedly addressed both issues –the non-reasonable duration of criminal trials and the overpopulation of correctional facilities that directly result in inadequate detention conditions - and has presented relevant recommendations. These issues have been the object of several judgments of the European Court of Human Rights against Greece (hereafter ECtHR). We underline that until today the ECtHR has condemned Greece 73 times for breaches of article 6 par. 1 of the ECHR -due to the non-reasonable duration of criminal trials- and only 2 times for breaches of article 3 of the ECHR due to the bad detention conditions in correctional facilities, while these conditions have been heavily criticized by various international monitoring bodies, in particular the CPT.

The Ministry of Justice realizes both the gravity and the urgency of those two matters and this Bill introduces measures for addressing them. The NCHR expresses its satisfaction for this important initiative and takes the view that, in principle, it is in the right direction. However, it needs to underline that in order to combat the root causes of the aforementioned problems, a comprehensive review of the institution of criminal justice is required as well as a new stance vis-a-vis correctional policy.

II. Measures regarding suspension and service of sentences, conversion into monetary sanction and community service

The NCHR with its 2008 "Decision regarding detainees' rights and detention conditions in Greek prisons" had proposed a series of measures, inter alia, for combating overpopulation in correctional facilities. The Ministry of Justice at the time proceeded in the drafting of two Laws - Law 3727/2008 and Law 3772/2009- that were voted by the Parliament and adopted certain recommendations of the NCHR. Law 3727/2008 included certain positive measures, such as the conversion of sentences for certain categories of offences into monetary sanctions or into community service, without attempting, though, a more holistic approach of the problem. Moreover, when the NCHR was invited to present to the competent parliamentary committee its views regarding the said Bill, it underlined that the ad hoc application of conditional release of detainees serving sentences for misdemeanors, would contribute to the temporary decongestion of the correctional facilities, but under no circumstances would it be able to address overpopulation in a sustainable way. The fact that contrary to the initial estimations –according to which until mid 2009 3.500 inmates would have been released- no more than 1.000 inmates had been released on the basis of Law 3727/2008 up to April of 2009 seems to be one of the reasons for the voting of Law 3772/2009, and for the present Bill, both attempting to provide a lasting solution to the problem of overcrowding.

Besides, the European Committee for the Prevention of Torture in its recent report on Greece recognizes that: "that investing in new prisons may be necessary both to increase capacity as well as to replace prisons which do not serve the stated purpose of holding inmates in a secure and safe environment. However, the building of additional accommodation is unlikely, in itself, to provide a lasting solution to the problem of overcrowding. […]By contrast, the promotion of policies to limit and/or modulate the number of persons being sent to prison has tended to be an important element in maintaining the prison population at a manageable level. […] There is

also scope for an increased use of alternatives to imprisonment, particularly for short sentences, through enhancing greater public (and judicial) confidence in such measures".

The present Bill seems to acknowledge the need of a comprehensive approach of the issue via the modernization of the penalty system, as it has already been recommended by the NCHR. The Explanatory Report explicitly refers to the NCHR's recommendations regarding the reduction of the use of custodial sentences, a new approach of the existing penalties at least in relation to certain categories of offences and the implementation of the existing legislation regarding alternative sentences that would contribute to the reduction of the detained population. The aforementioned constitute the basis of the amendments introduced by the Bill.

Article 1 of the Bill amends article 82 of the Penal Code (hereafter PC) regarding the conversion of custodial sentences. The payment in installments of the monetary sanction within a time limit of 2 to 3 years is being simplified. Moreover, the institution of community service is being reformed by reducing the imposing hours and by providing for a series of measures in case the convict does not perform his duties properly in order for the custodial sentence to be the final resort. Both changes are positive, especially the reduction of the hours, given that the convicted person should also have the possibility to work in order to earn his living.

Par. 5: This provision sets the consent or request of the convicted person as a condition for the further conversion into community service of a custodial sentence already conversed into monetary sanction. It is obvious that in order for the institution of community service to have any results in practice, the cooperation of the convicted person is necessary, hence his/her consent. However, given that: a) one of the goals of the present Bill is the reduction of the prisons' overpopulation, b) the court has already held that in the particular case the imprisonment of the convicted person is not necessary, and c) there is a number of measures to be taken in case the convict does not perform his/her community service, the consent requirement could be revised.

We note that the omission of the consent requirement does not raise any issue of forced labour, prohibited by the Greek Constitution (article 22 par. 4), the ECHR (article 4), the ICCPR (article 8) and the ILO Convention (no. 29) concerning Forced or Compulsory Labour. The international conventions that bind Greece exclude from the prohibition of forced labour any work required to be done during conditional release of a person. According to the ILO "community work is regarded first and foremost as an alternative to imprisonment. […] When the two conditions of the Convention's provision are met, a sentence of community work comes under the terms of the exception provided for by the Convention and does not call for any comment by the Committee". The ILO requires the consent of the convicted person only in cases of work in the non-public sector. Accordingly, the State could choose to omit the consent requirement under the condition that the community service will be provided only in the public sector or maintain it only for the case of the private sector.

Par. 10: According to this provision, the conversion of the sentence penalty is precluded in cases of felonies regarding drug trafficking or felonies provided for by the Military Penal Code. This exception is rather unfortunate. Sentences under three years for drug trafficking are imposed only in minor cases of drug trafficking - not cases with aggravated circumstances, such as large quantities, organized crime etc- where the court has accepted the addiction allegation of the accused and accordingly, it may impose a sentence of 2 to 12 years, If the court takes the view that it needs to impose three years imprisonment, -i.e the minimum of the penalty provided for-, it is difficult to understand the rationale of this adverse distinction at the expense of the largest category of convicts in Greek prisons.

Article 4 of the Bill amends article 105 PC "release of convicts" so as to render partial serving of sentences operative and to allow conditional release earlier under the term of the simultaneous conversion of the remaining penalty. Moreover, it introduces a favourable calculation of the sentence days for certain categories of prisoners (persons suffering of serious illnesses and mothers with young children) who are not able to work and by consequence be released

earlier.

Article 5 of the Bill extends the in house service of sentence (article 56 PC) to all individuals over 75 years of age.

III. Factual repentance and penal conciliation for financial crimes

Article 6 of the Bill: Increasing the number of judges is usually recommended so as to tackle the delays of the judicial system. However, it has become clear that the solution requires the introduction of "alternative processes", as it has been recommended by the CoE's Committee of Ministers to the member states. This provision fully amends article 384 PC and inserts a new article, 406A PC, both with the title "victim's satisfaction". According to the Explanatory Report, article 6 renders more systematic the institution of penal conciliation and extends the features of restorative justice to crimes against property rights.

Article 6 of the Bill makes the following changes: a) it extends the institution of penal conciliation to other offences, b) it defines uniformly for all cases of offences the time limits within which the penal conciliation may take place, and c) it extends the possibility of penal conciliation to felonies in the event the offender fully satisfies the victim before the exercise of the prosecution.

With article 6, what is mainly sought is the decongestion of criminal courts, as fewer cases will be adjudicated, and by extension the potential limitation of the number of inmates. However, the means that are used should be proportionate in relation to the legitimate goal of reducing the workload of the courts. The NCHR is greatly concerned regarding certain features of the institution of penal conciliation, in particular the inclusion of felonies.

The Explanatory Report rightly mentions that the institution of penal conciliation "restores social balance, mitigates society's concern generated by the perpetrator's conduct, enforces the sense of security, given that society or even the victim itself in many cases of offences of minor or medium gravity do not require the imposition of a penalty."

However, the inclusion of felonies (such as aggravated theft or fraud) into the institution of penal conciliation exceeds the aforementioned as not all these offences are of minor or medium gravity. It is true that in the case of crimes against property rights, the full satisfaction of the victim renders the prosecution, up to a certain extent, not necessary; but it should not completely abolish the prosecutorial claim of the State or society.

Additionally, the provision in question also poses issues of equality – not in law but in practice. For instance, K commits fraud against B. Due to his precarious financial status K may not fully satisfy B. As a result, he is convicted in two years of imprisonment. He is not able either to pay the conversed monetary sanction and as a consequence he performs community service. M, who has assets, commits aggravated fraud against B. After he is called for a preliminary examination he decides to fully satisfy B. As a result no criminal proceedings are initiated against him and the case is closed. This example demonstrates the paradox which the implementation of the provision in question might generate, thus not contributing to social peace and affronting the sense of justice.

We also note that according to article 574 par. 2 of the Code of Penal Procedure on criminal record, it appears that only in the case of article 384, par. 3 (i.e. victim's satisfaction after the prosecution but before the end of the hearing at the court of first instance) there will be reference in the criminal record of the culpable. Therefore, the impact of the said provisions in the context of crime prevention policy is cast in doubt, given that the belief is generated in some people that due to their financial robustness, they can evade all negative consequences of criminal justice.

We note that both articles 6 and 17 of the Bill are quite bold compared to the respective provisions of other jurisdictions, such as Germany and France. We stress that NCHR's concerns are premised on the absence of any consequences for the perpetrator of felonies – on the basis of article 6 of the Bill – and do not relate to the possibility of "genuine" penal conciliation for felonies after the prosecution has been initiated – on the basis of article 17 of the Bill – which result in the imposition of reduced penalty.

IV. Provisions regarding the acceleration of the preliminary penal proceedings and criminal courts' *ratione materiae*

As it is noted in the Explanatory Report, several provisions endeavor the acceleration of criminal justice. However, certain provisions raise doubts as to their effectiveness and coherence. The NCHR expressed its concerns regarding the reduction of time limits for certain preliminary stages, the abrogation of certain intermediary stages of the penal procedure, and the changes concerning the competence of the various formations of criminal courts in the first instance.

V. Concluding Observations

The NCHR would like to point out that the solution to the problem of the criminal courts' caseload and –by extension- the significant delays in criminal justice may not be achieved without a comprehensive reform of the penal law. This reform needs to be based on two pillars. The first pillar should be decriminalization of minor offences. The second pillar should be the mitigation of penalties and the limitation of the number of felonies, particularly regarding drug offences, which generate a high percentage of cases in the courts and prison inmates. The Ministry of Justice has already instituted a drafting law committee for the reform of the legislation re drugs.

In relation to procedural issues, it needs to be noted that there is room for substantial changes, especially in preliminary proceedings, so as to improve the protection of individuals' rights and the crime prevention policy.

13. Comments on the Bill by the Ministry for Citizen Protection: "Establishment of Asylum Service and First Reception Service, adjustment of Greek legislation to the provisions of Directive 2008/115/EC 'on common standards and procedures in Member States for returning illegally staying third-country nationals' and other provisions"

I. Introduction

The National Commission for Human Rights (NCHR) welcomes the current legislative initiative by the Ministry of Citizen Protection which demonstrates the State's political will to confront in a responsible, organized and comprehensive manner the issues arising from the massive influx of third-country nationals.

The bill includes three main chapters: a) the establishment of the Asylum Service, b) the establishment of the First Reception Service and c) the adaptation of the Greek legislation to the provisions of the Directive 2008/115/EC "on common standards and procedures in Member States for returning illegally residing third-country nationals." The fourth chapter amends some provisions of Law 3386/2005 "Entry and residence of third country nationals on Greek territory". The NCHR notes that the first two chapters constitute the outcome of the work of the Committees of Experts, which was established by the Ministry in November 2009, and in which the NCHR was actively involved. The NCHR also participated in the drafting law committee for asylum issues.

The NCHR has made recommendations to the State several times regarding the issues the current bill addresses and has severely criticized the relevant practices. With the current bill the State is taking measures so as to ensure that third-country nationals, who enter the country in an irregular manner, are treated with respect of their rights –in the framework of the relevant procedures- as required by European and international law. NCHR needs to underline, however, that it is very difficult for Greece to fully correspond to its obligations due to the large influx of aliens, as long as the EU does not adopt a policy of burden sharing and does not actually realize that this is a European and not exclusively Greek issue. Consequently, the full reform of the Dublin Regulation II and the development of a new European immigration policy are sine qua non conditions for the effectiveness of Greece's efforts, without this implying that the latter is relieved from its obligations.

The NCHR needs to express its dissatisfaction for the difficulties in accessing the newest version of the bill, -after the public consultation- despite the fact that the Plenary convened urgently in order to comment upon the bill. The NCHR would like to note that the positive process of the public consultation does not relieve the State from its obligation to facilitate the work of the Commission by providing it with every information or documents necessary for the fulfillment of its mission, according to article 6 of Law 2267/1998.

As regards the provisions of the bill, the NCHR has made the following comments:

II. First Chapter: Establishment of Asylum Service
Article 1: Establishment-Mission

Par. 1: Article 1 of the bill establishes an autonomous Asylum Service staffed with civilian personnel (see also article 2 of the bill), a standing demand of many actors, including the NCHR. The NCHR has emphasized repeatedly that the Police Force should not be responsible for both the interception of irregular migrants and the examination of asylum applications, given that in practice the two categories -that of 'migrants' and 'refugees'- are interwoven. Therefore, it would be appropriate for the Asylum Service to come under a Ministry different from the one that deals with issues of security and public order. It should come under the Ministry of Interior which has services dealing with migrants' issues.

Par. 3: This provision regulates the establishment of Regional Asylum Offices. The possibility of setting up units operating in the premises of First Reception Centers (hereafter FRC) or participating in mobile or temporary First Reception Units is a positive measure, which should not undermine, though, the staffing of the Regional Asylum Offices, given that the latter will have the onus of the asylum procedure. Also, it

should be made clear that these units belong to the Asylum Service and not the First Reception Service. Although both services may be interlocked to some extent, for example when an asylum seeker is interviewed inside a FRC, their roles and competences are distinct. Moreover, given that the Regional Asylum Offices are set up in areas where a large number of incoming third country nationals is observed and where the FRCs will in all probability also be established, it would be better if the setting up of units is decided by the Director of Asylum Service -who will be cognizant of the arising needs- and not by the Minister. That way, the process of their establishment will be speedier.

Par. 4: This provision regulates the structure of the Headquarters of the Asylum Service and differs from the proposal of the draft committee. The most essential change is that it places the interpreters under the Department of Coordination. The NCHR takes the view that the interpreters and all related issues should come under the Human Resources and Quality of Services Department. Interpretation is inextricably linked to the quality of the asylum granting procedure.

Article 2: Staff

Par. 4: The provision stating that 60 out of the 90 positions of specialized scientific personnel are filled by persons recruited on a renewable fixed contract for three years has been omitted. The NCHR realises that due to the financial crisis, there are limits to the recruitment of new staff. Nevertheless, the asylum procedure may not be assigned to officers that do not have the necessary special qualifications. The drafting committee took the view that the recruitment of specialized personnel constitutes a safeguard for the quality of the asylum procedure. The reform of the asylum procedure in Greece may not be achieved without the employment of proper staff. Therefore, it is necessary for the provision to be amended accordingly.

Par. 9: According to this provision functions of the Regional Asylum Offices may be assigned to civil society actors, who fulfil certain quality and security standards defined by ministerial decision. The NCHR is concerned regarding this provision. Civil society actors have an important role to play in assisting asylum seekers, which should be distinct from the one of the State. Therefore, the following issues arise: a) the selection process of civil society actors, b) the dependence of the assignment possibility on the lack of sufficient and appropriate staff or the excessive number of submitted applications, and not on any emergent circumstances. Given the economic crisis and the large number of asylum applications that the new Asylum Service will be required to handle, the need to resort to this possibility is very likely. Nevertheless, the asylum procedure remains a State function to which it has to respond adequately and responsibly. Thus, it needs to be clear that the assignment of functions may not include the interview of the applicant which is part of the hard core of the asylum procedure.

III. Second Chapter: Establishment of the First Reception Service

Article 6: Establishment and Mission

According to this provision, a specialised autonomous First Reception Service is established in the Ministry of Citizen Protection. The phrasing of the provision does not fully correspond to the mission of the new Service, as it refers only to the 'effective handling of the illegal influx of third-country nationals into the country.' No reference is made to the identification of persons who need international protection or belong to vulnerable groups, which is a key component of the FRCs' function. The Explanatory Report itself states that 'the main problems created by the existing legal framework are: a) the lack of procedures [...] for the detection of people in real need of international protection'. Therefore, the provision needs to be redrafted so as to include expressly the identification of those who are in need of international protection or belong to vulnerable groups.

Article 7: Procedures of First Reception

This provision regulates the procedures of first reception. The identification of minors which

had been proposed by the Committee of Experts and is crucial for the legal procedures to be followed next -i.e. appointment of temporary guardian- has been omitted. It needs to be included. Element (d) should also include explicitly legal aid.

Element (e) should expressly refer to the identification of those who are in need of international protection or seek international protection and those who belong to vulnerable groups. The fact that the aforementioned is omitted is a major oversight that nullifies the very essence of the so-called screening process.

Article 8: Organization-function

Par. 4: The ministerial decision establishing the FRCs should be issued jointly with the Minister of Health & Social Solidarity given that one of the key processes of first reception is the medical screening and the provision of necessary medical care and psychosocial support, which fall under the competence of the Ministry of Health & Social Solidarity and not that of the Ministry of Citizen Protection.

Par. 5: The idea of emergent or mobile units of First Reception is positive, as the rationale behind this is the satisfaction of emergency needs. However, this requires speed and flexibility. The establishment of an emergent or mobile First Reception Unit by ministerial decision will, by definition, be time consuming. The establishment of emergent or mobile First Reception Unit, as well as the settlement of all operational issues should be decided by the Director of the Central Service, who will be fully supervising the operation and needs of FRCs.

Par. 12: The NCHR would like to stress that it is necessary for the regulatory acts to be issued on the basis of this bill to adopt the proposals of the Committee of Experts regarding the modus operandi of the FRCs and the procedures of first reception. The report of the Committee of Experts convened by the Ministry itself was the outcome of the work and cooperation of state bodies (ministries, Ombudsman, NCHR), the UNHCR, and civil society actors with a deep knowledge of the issues, needs and best practices in other countries.

Article 9: Staffing

Par. 3: The First Reception Service and especially the FRCs need to be adequately staffed with qualified personnel in order to be effective. Therefore, the provision should be redrafted as follows: 'The First Reception Service is staffed with qualified personnel commensurate with the tasks to be performed within the frame of the Central Service and the First Reception Centers [...]'.

Par. 5: This provision provides for the assignment of first reception procedures to civil society actors who meet the appropriate quality and safety standards established by Joint Ministerial Decision. The NCHR believes that civil society actors may play an important and supportive role within the framework of reception procedures. It reiterates, however, that their role is distinct from that of the state and that their actions should complement and not substitute those by the state and it expresses its aforementioned concerns.

Article 10: Administration and structure of the Regional First Reception Centres

Par. 2: It is not clear what the 'functionally istinct units' are going to be. The bill needs to define the various units, their general competences and the experts who must staff them. Once more the absence of reference to the screening of those in international of protection or vulnerable groups constitutes a significant omission. The existence of a relevant unit (a screening committee) is necessary. According to the Committee of Experts the screening unit should consists of a social worker, a lawyer, a psychologist, a doctor, and a specialist for children (if there are minors), while the decision of the unit should be binding for the Director as to the categorisation of the person concerned and his/her further treatment.

Article 11: Screening and Referral

Par. 2: The identification of persons belonging to vulnerable groups should be made by the screening unit, which must have adequate and

qualified personnel and this is why we insist on the endorsement of the proposal by the Committee of Experts. Also, in the category of vulnerable groups minors -and not only unaccompanied minors- should be added and/or families-not only single parents-with minor children.

Par. 3: The reference to third country nationals' stay in the FRCs until they are returned without further clarification raises concerns. An explicit reference should be made to Law 3030/2002 (OG A' 163) which regulates the readmission procedure under the Protocol signed with Turkey. It should also be stated that aliens who qualify for the readmission process and those under deportation will be transferred to other facilities.

Article 13: Detention in First Reception Centres

Par. 2: This provision provides that those ho are subject to the procedure of first reception are under restriction of their liberty, meaning that they are in fact detained, as they are obliged to remain in the premises in which they are kept for 15 to 25 days. Although their personal freedom is restricted no remedy against the relevant administrative decision is provided for. As it had been pointed out by the Committee of Experts, 'the administrative decision on the restriction should be reviewed for its legality by a Court (in pursuance of the relevant jurisprudence of the ECtHR), as any decision restricting personal liberty. In order for this provision to be in compliance with the Constitution and article 5 of ECHR a remedy should be provided for.

Par. 3: It should also be provided that a) the information provided to aliens is made in a language they comprehend, b) that they have the right to legal representation (and not just to legal advice), and c) that they have the right to communicate with the UNHCR and other agencies and organizations.

Article 14: Facilities

Par. 1: The possibility of assigning the external guarding of FRCs to specialized private companies providing security services raises serious concerns. The NCHR is not aware of any private company in Greece specializing in guarding detention facilities. Moreover, there is an essential qualitative difference between the guard of a bank, for example, and a detention facility. Various issues are raised, such as whether the employees of the private company will have to follow the orders of the police for custody issues, what weaponry they are going to have, if they are subject to any Code of Conduct etc. Given that for police officers there is a Code of Conduct and applicable disciplinary law, whereas in the case of private guards there is a lacuna, the assignment of the external guarding of FRCs to them is not considered to be appropriate.

Article 15: Transitional Provisions

Par. 2: It is clear that the existing facilities for aliens' detention do not meet the international standards. The simple change of use of the existing facilities from detention facilities of aliens to FRCs does not solve any problems as to the appropriateness of the facilities. If the Ministry chooses to maintain this provision, it has at least to be reworded as following: 'either as First Reception Centers after appropriate adjustment'.

At this point, the NCHR would like to note that the legal framework for the operation of the so-called 'Special Holding Facilities for Migrants' (hereafter SHFI) is almost inexistent. According to article 81 par. 1 of Law 3386/2005 an alien under deportation remains in special premises until the completion of the deportation procedure, which are established by a joint decision by the Ministers of Interior, Public Administration and Decentralization, of Economy and Finance, of Health and Social Solidarity and of Citizen Protection. Also, according to Circular no. 38 (23 December 2005) of the Ministry of Interior titled "Implementation of the provisions of the Law 3386/2005 (OG A΄ 212)" it is noted that 'the detention of migrants is made in accordance with the plans Posidonio and Balkanio in special holding facilities for illegal migrants, the responsibility for the operation of which have the Prefectures".

It is noted that the ministerial decision for the establishment of SHFI has not been adopted until now. The fact that there is no decision for their establishment and regulation of their function,

which is problematic in itself, has been pointed out repeatedly by CPT. Furthermore, the fragmentation of various responsibilities regarding the operation of SHFI between the Police and the Prefectures (now Regions) creates serious problems. Hence, the issuing of the relevant Ministerial Decision is urgent.

III. Third Chapter: Adaptation of Greek legislation to the provisions of Directive 2008/115/EC

Introductory Remarks

The Directive 2008/115/EC on common rules and procedures in member states for returning illegally staying third-country nationals, which Chapter C aims to incorporate into national legislation, has met strong reactions during its adoption, especially within the civil society. The safeguards have been criticized as being weak while certain measures, such as the possibility of entry ban for up to 5 years, have been considered as highly restrictive. Reactions have also been arisen with regard to the possibility of detention of third-country nationals, who are under removal, for up to 18 months especially concerning the duration and the consequent impact on conditions of detention for a large number of people.

It should be noted that on the other hand the Directive 2008/115/EC explicitly stipulates the respect for the principle of proportionality and includes procedural safeguards regarding the form of the return decision and the conditions of detention. The full and effective compliance with these safeguards reinforces the respect for the rights of a third-country national within the frame of the inherently bad procedure of removal.

For these reasons, the NCHR strongly denounced the absence of these safeguards in the adoption of Law 3772/2009 (OG A΄ 112), which elevated the possibility of criminal prosecution of the foreigner to a presumption of dangerousness for public order and safety, leading to his/her deportation and lengthening the detention period of foreigners, who are under deportation, suspected of absconding or conceived as dangerous for public order and safety, from the maximum of three months, as it had been developed by Law 2910/2001, to six months in principle, extendable up to twelve additional months (article 76 par. 1 (c) and par. 3 Law 3386/2005).

The NCHR notes that these safeguards are lied under the condition of a just and effective asylum system, which fully respects the principle of non-refoulement in practice (§8 of the Preamble of Directive 2008/115/EC). In addition, the safeguards incorporated by this bill will be effectively implemented only in the light of specific provisions for the protection of human rights, the jurisprudence of the competent supranational courts and recommendations of international and European institutions in the field of personal freedom, detention conditions and non-refoulement. Finally, the NCHR notes that the incorporation and implementation of the Directive 2008/115/EC should be linked with the national legislation and practice, so as a fairer and more transparent procedure for removal and treatment of illegally staying third-country nationals can be ensured.

Article 17: Scope

Article 17 par. 2 (a) exempts from the scope third-country nationals who are apprehended or intercepted by the competent authorities in connection with the irregular crossing of the external borders by land, sea or air. The report states that '[...] within its scope fall only the illegally staying within the member states third-country nationals who had the right or title of legal residence.'

Accordingly, thousands of asylum seekers whose claim is rejected or who did not manage to renew their residence permits come under the scope. However, the legitimacy of the return is subject to the application of a fair and efficient asylum system which will fully respect the non-refoulement principle (par. 8 of the Preamble of Directive 2008/115/EC). Serious questions of legality are therefore raised regarding the return of the until now 'rejected' asylum seekers because of the universally acknowledged inefficiency of the Greek asylum system. Besides, the NCHR notes that the effectiveness of the developing system should be seen in practice.

Article 18: Definitions

Par. 1 (g): Indicative criteria for the risk of absconding, which are not mentioned in the text of the directive, are possibly aimed at the clarification of the concept. However, they leave a great discretion to the competent authorities. The obligation of the competent authority to justify specifically and in detail the risk of absconding and to implement strictly the principle of proportionality to a case-by-case basis should be pointed out for a greater safety.

The bill indicates that the reasonable assumption of the risk of absconding is based on a concurrence of objective criteria. Thus, while the satisfaction of one of the above mentioned criteria is not sufficient, the conjunction of the two of them may be considered to be enough. The NCHR notes the concern of the Greek Council for Refugees that most asylum seekers will be suspected of absconding and that they will be under detention, as they are devoid of travel or other declaratory documents and in some cases they cannot comply with the existing ban entry because of the situation in the country of origin. Similarly, the UNHCR proposes the deletion of the criterion for the same reason and further indicates the lack of logical connection with the 'risk of absconding'. Besides that, the NCHR shares its reservations with the UNHCR and proposes to remove the criteria of non compliance with the requirement for voluntary departure and the one related to false information, as they are not clear enough to allow a safe reference to them.

Article 19: More favourable provisions

Par. 2: The possibility of favorable provisions refers to the set of rules applicable to Greek law as interpreted by the relevant courts and bodies (including ECtHR and EUCJ).

Par. 3: The NCHR recommends that free legal assistance and protective provisions for minors (articles 25 and 32 with the proposed amendments) should be added to these guarantees.

Article 20: Non-refoulement, best interest of the child, family life and state of health.

Par. 1: According to article 3 par. 1 of the Convention on the Rights of the Child, the authorities must take into account primarily the best interests of the child. The replacement of the term 'properly' by the term 'primarily' is recommended.

Article 21: Return decision

Par.3: The possibility of not issuing a return decision for a third-country national, who is taken back under bilateral agreements or arrangements by another member state responsible for the issuing and implementation of the return decision, needs further clarification. It is unclear whether a third-country national returns via another member state. It seems, however, that Greek authorities are not obliged to monitor the compliance with the non-refoulement principle if another member state is involved.

Article 22: Voluntary departure

Par.4: The NCHR welcomes that the process and deposit of financial guarantee is provided after by Joint Ministerial Decision (by the Ministers of Finance and Citizen Protection) after public consultation in the newer version of the bill, but it highlights the need for its rapid adoption in order to be judged on the merits and in relation to the intended purpose.

Par. 7: The confirmation of voluntary departure is linked to the implementation of other 'unfavourable' provisions (article 23 par. 1 (b))- removal and ban entry (article 26) - and it should not be left abstract to anyone who can provide relevant information. Moreover, a practical impossibility of voluntary departure should be taken under consideration.

Article 23: Removal

Par. 3: It should be clear from the text of the law the exact competent authority to declare a breach of obligations resulting from the return; is it the authority which issued the return decision

or even the competent police authorities?

Article 14: Postponement of removal

Par. 3: The possibility of understanding and perceiving the conditions of postponement of removal by people with problems of mental retardation and mental health should be taken under consideration. Imposing burdensome caveats would be disproportionate and punitive while these people deserve special protection.

Article 25: Return and removal of unaccompanied minors

Par. 2: The NCHR stresses that the verification that the minor will be returned to a member of his/her family is not sufficient; it must be further ensured that his/her family is not involved in his/her transportation. Each case should be investigated individually and each child should not be returned unless his/her delivery to a nominated guardian and to a safe family environment has been ensured. Moreover, the NCHR considers that the reference to 'adequate reception facilities for minors in the state of return' is not sufficient. The criteria for the suitability of these facilities should be specified.

Article 26: Entry ban

Par. 1: An entry ban is required in cases where a period of voluntary departure is not granted (due to risk of absconding, see article 22 par. 5). Therefore, given the above mentioned criteria for the risk of absconding {see article 18 par. 1 (g)}, most third-country nationals will be subject to this entry ban regardless of their real need of protection.

Article 27: Press

Par. 2: The NCHR recommends the omission of the phrase 'it is supposed that (s)he understands'. It must be ensured that the third-country national actually understands, while at the same time it is particularly unclear who and in what criteria may assume that a third-country national has actually understood information of such gravity.

Article 28: Safeguards pending return

The NCHR has proposed a wider access to health services, so as care can be provided in cases of emergency not only until the stabilization of immigrants' health, but also until the restoration of it. In the face of the return it must be checked if the third-country national is able to travel and that there is no risk to public health during the process of his/her return.

Article 30: Detention

Par. 1: The NCHR recommends the replacement of the first paragraph of the bill ('Nationals ....of national security') with the corresponding par. 1 of article 15 of Directive 2008/115/EC, as from the last it is clear that the seeking of less coercive measures is of prime importance comparatively to the measure of detention, whereas the wording of the bill designates that of detention.

Par. 2: The NCHR stresses the need to provide strictly for the possibility of checking the return decision, on which the decision for detention is based, so as the requirements of article 5 par. 4 ECHR for complete control are met.

Par. 3: A third-country national should be aware of the review of detention and should have the right to submit proposals.

Par. 4: For the interpretation of the term 'reasonable prospect of removal', on which non detention and release of a detainee depend, the interpretation of the ECJ (Case C-357/09 PPU, Request for issuing a preliminary decision: Administrativen sad Sofia-grad - Bulgaria decision. 30.9.2009, par. 67) should be taken into account.

Par. 5 and 6: The importance of the provision requires a further clarification of the phrasing. It is not clear if the entire duration of detention is not exceeding 12 months in total or if the extension of it reaches the maximum of 12 months (meaning 18 months in total).

The NCHR has already expressed the view that the prolongation of detention of third-country nationals by national legislation to the

maximum limit as provisioned by the directive raises serious concerns in respect of the compatibility with the provisions of the Constitution, because it equates the illegally staying third-country nationals with those who are on remand for serious crimes and it raises issues of fairness and proportionality. Also, especially problematic are the reasons that justify this extension in accordance with the bill, as it is not guaranteed by the system as a whole that a third-country national bears no liability for the refusal to cooperate with the authorities. Besides, it is also clear that in most cases, while a third-country national is not responsible for the delay of his/her documents, (s)he will be sanctioned through the prolongation of detention.

The NCHR reiterates that the special circumstances, under which the current bill will be applied, should be taken under consideration and in particular: a) the large number of people falling within the scope of this provision, b) the inadequacy of existing structures, c) the link between the legitimacy of the whole system of returns and the effectiveness of the asylum system, d) the recommendations made by all the relevant institutions, which have criticized the conditions of detention in Greece, and the relevant sentences from ECtHR. The reduction of the length of detention of par. 5 is recommended, so as a maximum period of 3 months can be provisioned.

As for the duration of detention of asylum seekers it should be noted that according to EUCJ, if the applicant is kept for the purpose of removal and while processes of asylum requests are progressed, the time of his/her detention should be considered for the calculation of the time spent in detention pending removal.

Article 31: Conditions of detention

Par. 1: Following the above considerations (article 30) it should be clarified in what exactly facilities third-country nationals will be kept 'separately from the common-law prisoners'. Also, the NCHR notes that women should be separated from men, except in cases where there are close family ties.

Article 32: Detention of minors and families

The NCHR has expressed its skepticism about any kind of institutional treatment of children whose deprivation of liberty must not be allowed. With regard to unaccompanied minors the NCHR reiterates its reservations on the suitability of accommodation structures as well as on the sufficient number of specialized staff. The NCHR suggests the explicit omission of the measure of detention for pregnant women and people with disabilities.

IV. Chapter D: Other provisions

Article 36: Protection from return

Par. 1: The prohibition of return of a minor is recommended to be added explicitly, as long as the application process of legal residence or consideration for asylum for parents or persons being in charge of him is pending.

Article 37: Amendments of Law 3386/2005

Par. 1: The NCHR is satisfied by the widening of the categories of third-country nationals, for which the granting of residence permit is provided on humanitarian grounds (article 44 par. 1-3 Law 3386/2005). Similarly, the addition of the category of those third-country nationals undergoing programs of detoxification has been proposed, so as they can be able to complete them.

Par. 2: A third-country national, who applies for a residence permit for exceptional reasons, is exempted from the submission of visa or residence permit (even if they have expired) exceptionally, if (s)he proves with firm chronological documents the actual fact of his residence in the country for at least twelve consecutive years. The NCHR considers the period of twelve years as being too long and proposes its significant reduction.

Article 76 par. 1 (c) Law 3386/2005

The NCHR reminds the commitment of the state to abrogate the amendment of article 76 par. 1 (c) of Law 3386/2005 by article 48 par. 1 of Law

3772/2009, whereby 'a foreigner is considered to be dangerous to public order or safety if (s)he has been prosecuted for an offense punishable by imprisonment of at least three (3) months'. The NCHR recommends the addition of a clear provision to the bill which will set aside that provision (see the above comments on paragraphs 5 and 6 of article 30). The addition of the proposed provision in the under examination bill would be reasonable on the merits and in terms of legal correctness.

14. Comments on the bill by the Ministry of Citizen Protection "Bureau for Addressing Incidents of Arbitrariness and other provisions"

I. Introduction

The Ministry of Citizen Protection has drafted a Bill titled "Bureau for Addressing Incidents of Arbitrariness and other provisions". The NCHR would like to express its discontent for the fact that once more the Ministry did not request the Commission's comments, as stipulated in the latter's Law 2667/1998.

II. Police arbitrariness and brutality

The European Court for Human Rights (hereafter ECtHR) has convicted Greece four times for having violated article 2 of ECHR (Makaratzis, Karagiannopoulos, Celiknku and Leonidis), and four times for having violated article 3 of ECHR because of ill-treatment of the complainants by the Police (Bekos and Koutropoulos, Zelilof, Galotskin and Stefanou).

It needs also to be noted that the European Committee for the Prevention of Torture (hereafter CPT) refers extensively to the issue of police ill-treatment and abuse in its reports. In its 2010 report the CPT stressed that: "Regrettably, despite overwhelming indications to the contrary, the Greek authorities have, to date, consistently refused to consider that ill-treatment is a serious problem in Greece and have not taken the required action. For instance, there is still no [...] credible, independent and effective police complaints mechanism, which will lead to allegations of ill-treatment by law enforcement officials being investigated thoroughly".

Irrespective of the extent of police ill-treatment and whether the complaints filed constitute isolated or not incidents, the ECtHR's judgments, the CPT's and Greek Ombudsman's reports have underlined the question of inadequate or ineffective investigation of relevant complaints in the context of disciplinary or even judicial proceedings.

International monitoring bodies, such as CPT, the UN CAT and the ECRI, have recommended several times the establishment of an independent and effective police complaints mechanism.

The Bill in question seems to acknowledge the problem and attempts to address the recommendations and concerns of several bodies.

III. Article 1 of the Bill: establishment of the Bureau

According to par. 1: "The Bureau's mission is the collection, registration, evaluation and further communication of complaints regarding police officials [...] to the competent Services or Authorities in order to be investigated" concerning serious human rights violations. The terms "further communication of complaints" means that the Bureau will not investigate itself the complaint. This interpretation is corroborated by par. 3 according to which: "[...] The Committee will evaluate every complaint for its credibility and as to whether it falls under the competence of the Bureau and will either communicate it to the competent Services or Authorities to be investigated or reject it as inadmissible". The NCHR notes that there was a previous version of this clause which provided for the investigation of the complaints by the Bureau itself, for the conduct of disciplinary investigation by the staff of the Bureau and for the mutatis mutandis implementation of the provisions of the Code of Criminal procedure regarding evidence, witnesses, etc. Furthermore, the previous version provided that the outcome of the investigation will be filed to the Chief of the Police for the conduct of disciplinary control without any other investigation. A similar provision lacks from the present Bill.

From all the above it is inferred that the role of the Committee will be limited solely to the question of admissibility which does not address the need for an effective investigative police complaints mechanism.

Furthermore, the relationship of the Bureau with the bodies of disciplinary control of Police is not clear. The following questions come up: a) if the Committee rejects a complaint as inadmissible may the complainant file it to the Police? b) the complaints which are filed to the Police and prima facie fall under the competence of the Bureau need to be transmitted first to the Bureau or they

may be investigated by the Police?

Par. 3: The three-member Committee that will evaluate the complaints consists of an honorary judge of the Areios Pagos as President, the Legal Counsel of State who serves at the Ministry for Citizen Protection, and an honorary Prosecutor of Areios Pagos or Appeals Court. The high level of the Committee's members indicates the importance the Ministry attributes to its role. However, given that the Bill does not provide for case-handlers, as was the case with the previous version, and that Legal Counsel's workload is quite heavy doubts are raised regarding the fulfillment of the Committee's duties.

Par. 4: According to this provision in the case of an ECtHR's judgment which finds omissions in the disciplinary proceedings, or in case of new evidence which were not evaluated during the disciplinary or judicial proceedings, the three-members' Committee might decide opening a new investigation, which is not conducted though by itself.

Par. 12: The staffing of the Bureau is also problematic. The Bill does not provide for scientific personnel, not even exclusively civil personnel, which would provide some kind of guarantee for the independence of its function.

IV. Concluding Remarks

The NCHR considers –in principle- the establishment of the Bureau as an important initiative. However, the provisions regulating its modus operandi do not correspond to the needs and the purposes which the Bureau needs to serve. The NCHR calls upon the Ministry to amend article of the Bill taking into account the recommendations of international monitoring bodies, the Opinion concerning Independent and Effective Determination of Complaints against the Police by the CoE Commissioner for Human Rights which is based on the jurisprudence of the ECtHR, as well as the previous version of the Bill.

The NCHR would like to stress that despite any measures for the suppression of police ill-treatment, in order for the phenomenon to be effectively combated proper –initial and periodic- training of police officials is required. At this point, the NCHR would like to note that on its own initiative it had previously (in July 2008) proposed to the Ministry the drafting and materialization of a human rights education program for police officials. This proposal was in principle accepted by the Minister at the time, a multidisciplinary working group was formed and several meetings were held.

After the election of the new government in 2009, the Ministry for Citizen Protection set up a new working group –solely with Police officials– for training issues. Despite NCHR's request to the Deputy Minister, the Commission was not included in the working group, which after some months ceased to exist without producing any results. Furthermore, the absence of a systematic approach regarding human rights training of police officials raises doubts about the willingness of the State to bring substantive changes in this area. However, the NCHR expresses once more its readiness to cooperate with the Ministry in this field.

NCHR's Activities at the Domestic, European and International Level

A. Domestic Level

1. Contribution to administrative procedures

During the past year the NCHR has been solicited to participate and contribute to new administrative procedures related to human rights. The NCHR's involvement is a positive step as it guarantees – besides the expertise on specific human rights issues – the familiarization of the administration with an "external" and human rights oriented point of view. Moreover, the direct involvement allows the NCHR to follow closely the implementation of human rights obligations and respond accordingly.

In sum, the NCHR has been involved in the following procedures:

a) The committees examining the *substantive requirements for citizenship, by appointing one member.*

b) The commission evaluating the proposals for the implementation of the EU *measures on integration of third-country nationals* (established by the General Secretariat of Population and Social Cohesion).

c) The committees examining the asylum requests *(the third member of the committees is appointed by the Minister for Citizen Protection from a list with candidates drafted by the NCHR).*

2. Meetings with international and European officials

During the past year, the NCHR's Bureau and/or staff had the following meetings (presented chronologically):

a) With the Vice-Chair of the Commission for Legal Affairs of the Parliamentary Assembly of the Council of Europe, Mr. C. Pourgourides, b) with the UN High Commissioner for Refugees, Mr. A. Guterres, c) with the Executive Secretary of the European Committee of Social Rights, Mr. Régis Brillat, c) with the Commissioner for Human Rights of the Council of Europe, Mr. T. Hammarberg, d) with a delegation of Turkish police officers, e) with representatives of the FIDH, f) with the EU Commissioner Mrs. Cecilia Malmström, f) with the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mr. M. Nowak, g) with the member of the German Parliament, Mr. Tom Koenigs about migration and asylum issues, h) with a delegation of LIBE regarding the review of Dublin II.

3. Meetings with national authorities

a) The NCHR handed its Annual Report to the Prime Minster as well as to the President of the Hellenic Republic.

b) The NCHR's Bureau and/or staff had a working meeting with the Minister of Justice, Transparency and Human Rights, Mr. C. Kastanides.

During the past year, the NCHR's Bureau and/or staff had the following meetings upon request:

a) With the Standing Committee on Public Administration, Public Order and Justice of the Parliament with regard to the amendment of the naturalization procedure, b) the NCHR participated in the working group regarding the screening centres and the reform of the asylum procedure (Ministry for Citizen Protection), c) with the drafting committee for the reform of the Penitentiary Code, d) with the UNHCR in Athens, e) with EU experts at the Ministry for the Protection of Citizens concerning migration flows and asylum.

4. Conferences and seminars

Members and/or staff of the NCHR also took part as panelists in the following conferences/seminars: a) 2nd International Conference for Roma Women, b) Workshop of the political party SYRIZA on the amendment of the naturalization procedure, c) Workshop of the Hellenic League for Human Rights on the new procedure of naturalization, d) Workshop of the Initiative for the Rights of Detainees on detention conditions of minors, e) Workshop on the elimination of discriminations (roundtables on on LGBT rights, minority and migrants' rights), f) Workshop of the UNCHR (Office of Athens), the Council of Europe and the Greek Ombudsman on the asylum system, g) Workshop of the Hellenic Society of Magistrates for the Democracy and the

Freedoms on "Migration and Citizenship", h) Workshop of the National Centre of Social Solidarity on "Women migrants and occupation in Greece: perspectives to a cohesive society", i) 21st Pan-Hellenic Conference on AIDS, k) several Workshops on human rights education and bullying in schools, l) Workshop of the Association "Positive Voice" on "Labour and People with HIV", m) Anniversary event of the League for Women's Rights.

B. European and International Level

In the framework of the United Nations the NCHR participated in the 23rd Meeting of the International Co-ordinating Committee of the NHRIs (Geneva, 22-25 March 2010).

In the framework of the Council of Europe the NCHR participated in the: a) Workshop for specialised staff of national human rights structures on the theme "The role of National Human Rights Structures in protecting and promoting the rights of persons with mental health problems (Bilbao, 17-18 November 2010) co-organised by the Directorate General of Human Rights and Legal Affairs of the Council of Europe and the Office of the Ombudsman of Spain.

In the framework of the European Union the NCHR took part in the: a) 3rd meeting of the Fundamental Rights Agency with National Human Rights Institutions (Vienna, 6 May 2010) and the Symposium of the Fundamental Rights Agency on "Strengthening the fundamental rights architecture in the EU: Making Rights a Reality for All" (Vienna, 7 May 2010).

In the framework of the cooperation with other national human rights institutions, the NCHR participated in the: a) 5th Arab-European Dialogue on Human Rights for National Human Rights Institutions (Qatar, 8-10 March 2010) on Women's Rights and Gender Equality, b) Meeting of the Working Groups on "Migration and Human Rights" within the framework of the Arab-European Dialogue on Human Rights for National Human Rights Institutions (Jordan, 24-26 November 2010).