



HELLENIC REPUBLIC

GREEK NATIONAL COMMISSION FOR HUMAN RIGHTS

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

Observations on the Draft of the Second Periodic Report of the Hellenic Republic for the International Covenant on Civil and Political Rights (ICCPR)

Table of Contents

Table of Contents	2
I. Introduction	4
II. General Observations on the draft Report	4
III. Specific Observations on the draft Report	5
Articles 2 and 26	5
Protection of Roma rights (par. 18 of the HRC Concluding Observations)	5
The Integrated Action Plan for the Social Inclusion of the Greek Roma	5
The issue of pending population registering	6
The rights of Roma women	6
The rights of Roma children	6
The behaviour of State organs	7
Other observations	7
Discrimination on grounds of sexual orientation (par. 19 of the HRC Concluding Observations)	7
Civil Marriage	7
Instances of Racist Violence	8
Legislation on Equality and non-discrimination	8
Education and non-discrimination	9
Foreign citizens	10
National Institutions for Human Rights (NHRIs)	10
Education on Human Rights	11
Articles 3 and 23	11
Domestic violence against women (par. 7 of the HRC Concluding Observations)	11
Application of Sharia law in Family and Inheritance law for members of the Thrace Muslim Minority (par. 8 of the HRC Concluding Observations)	12
On gender equality in general	13
Law 3896/2010	13
Work and gender equality	14
Participation of women in political and public life	15
Family Law issues	15
Gender Mainstreaming	16
Responsibility of Police Officers (par. 9 of the HRC Concluding Observations)	16
Mechanism for the investigation of complaints of police maltreatment	17
Human rights education for police officers	18
Article 8	18

Combating human trafficking (par. 10 of the HRC Concluding Observations)	18
Article 9 and 10	19
Detention conditions for irregular immigrants (par. 11 of the HRC Concluding Observations)	20
Changes in the Asylum System	21
Operation “Xenios Zeus”	22
Accommodation centres	22
Detention conditions in penitentiary institutions (par. 12 of the HRC Concluding Observations)	22
Article 11 (par. 3 of the HRC Concluding Observations)	23
Article 14	23
Legislative developments guaranteeing the right to a fair trial	23
Rapid rise in court fees for exercising a legal remedy	23
Acceleration of judicial proceedings	24
Article 17	25
Article 18	25
Religion and religious education	25
Conscientious objectors	25
Religious oath	25
Article 19	26
Racist Violence and hate speech - Antiracist Legal framework	26
Combating Racist Violence	27
Racist Violence Recording Network	28
Article 24	28
Protecting Children from Violence (par. 16 of the HRC Concluding Observations)	28
Unaccompanied minors (par. 17 of the HRC Concluding Observations)	29
Article 27 (par. 20 of the HRC Concluding Observations)	30
Specific topics of the Draft Report	30
Freedom of assembly	30
Muslim Minority of Thrace	30
Competences and selection procedure of Muftis	30

Observations on the Draft of the Second Periodic Report of the Hellenic Republic for the International Covenant on Civil and Political Rights (ICCPR)

I. Introduction

The Ministry of Foreign Affairs has forwarded a Draft of the Second Periodic Report of the Hellenic Republic to the National Commission for Human Rights regarding the application of the International Covenant on Civil and Political Rights. Under its founding law (2667/1997), the Greek National Commission for Human Rights (hereinafter GNCHR) delivers an opinion on this issue. After examining the content of the Draft Report (hereinafter Report), the GNCHR submits the following observations which may contribute to its enrichment, since they correspond to the need to formulate a timely and complete image of the environment and the conditions under which the Covenant is applied in Greece.

II. General Observations on the draft Report

The Report contains an extensive -43 pages- presentation and evaluation of the application of civil and political rights in Greece, without limiting itself to a simple indication of the legislation and the relevant structures established for the protection of every right. The GNCHR considers that it should, at this point, recall the need to clearly describe the issues that arise during the application of any legislation in practice as closely as possible to reality and to find solutions to the shortcomings either of the protection framework or of the stakeholders and structures created.

Greece should have submitted its Final Report to the Human Rights Council (hereinafter HRC) before April 1st, 2009, a delay which was also documented in its previous submission. Due to this delay, the Report should contain information from 2004 (last submission to the HRC) onwards, something that is to a certain degree achieved here.

The draft Report is quite extensive and a certain amount of effort was put into drafting it in accordance to the HRC Guidelines. It also addresses all the issues pointed out by the HRC in its Concluding Observations. In some parts however, there is either too much redundant information, or in some parts no information at all. A description of the process under which the Report was put together is a positive element which displays the contribution of 31 various bodies during its drafting.

The submission of the Report on the application of the Covenant comes at a time when Greece is plagued by financial crisis. The GNCHR applauds the general reference in the Report's Introduction to the impact of the financial crisis on the enjoyment of the rights protected under the Covenant and the analysis of various situations for specific rights.

The GNCHR recalls that already since 2010 it conveyed to the State the “need for constant respect of human rights during the implementation of the fiscal and social exit strategy from the debt crisis”, whilst a year and a half later it issued a Recommendation “on the imperative need to reverse the sharp decline in civil liberties and social rights”. The most recent GNCHR document is its “Recommendation and decisions of international bodies on the conformity of austerity measures to international human rights standards”, which was adopted by the Plenary on 27.6.2013.

In this regard, the GNCHR cannot but note the need to refer to the impacts of the deep financial crisis and the financial austerity measures, which clearly have affected the rights covered by the application of the Covenant.

III. Specific Observations on the draft Report

Articles 2 and 26

Protection of Roma rights (par. 18 of the HRC Concluding Observations)

Before moving on to specific observations for the relevant part of the Report, the GNCHR would like to first express its concern for the widespread prejudice that dominates Greek public opinion and the Greek Media proven by recent events. The Report, having made reference to the role of national institutions for human rights, should also include special reference to the GNCHR which since 2003 includes a representative member from the Panhellenic Foundation of Greek Roma Associations, as well as to the Ombudsman which has been particularly active in this field.

The GNCHR specifically on the situation of Roma in Greece has highlighted that the issues surrounding this particular group are not restricted to minority rights issues but in fact include individual rights and observes the following:

The Integrated Action Plan for the Social Inclusion of the Greek Roma

The Report makes extensive reference to the Integrated Action Plan (IAP) for the Social Inclusion of the Greek Roma. However, the GNCHR from the outset highlighted that it lacked the solid legal guarantees that are able to neutralize the factors that undermine it. As reported by the Ombudsman, *there is no institutionally and regulatory integrated framework in place able to ensure the effective participation/integration of Roma in Greek social life.*

Concerning issues of housing, even though the loan programme was characterized as a good practice by the Committee of Experts on Roma and Travellers, the ECRI found that the plan on housing loans did not always benefit the targeted groups. In fact, relevant decisions condemning Greece for the housing conditions of Roma, as well as relevant observations by the European

Committee for Social Rights, prove that Greece still has a lot to accomplish, especially now that the IAP is over.

At this point it is necessary to highlight that the practice of social-medical centres has proved positive for the Roma communities and therefore, the GNCHR recommends that more of them be established and their activities be extended.

The issue of pending population registering

The issue of the pending population registration of a large number of Greek Roma is clearly dominant when it comes to the case of housing reinstatement. The large number of Roma children that are not registered upon birth raise yet another issue of concern.

In this regard, there is a strong resistance of the local authorities themselves, when it comes to registering the Roma who stay or travel through their territory and frequently invoke that registration based on “racial” criteria is prohibited.

The rights of Roma women

The GNCHR shares the concern of CEDAW when it comes to lack of data concerning the employment of Roma women, their social exclusion, as well as the difficulties they face in the enjoyment of basic commodities such as access to healthcare facilities, social benefits, education and political and public participation.

The rights of Roma children

The GNCHR, under the present circumstances, calls for the confrontation of alarming cases that irrefutably violate the rights of Roma children. Agreeing with the findings of the Ombudsman, the GNCHR highlights the need to ensure for Roma children the equal enjoyment of their rights to health, education, housing, labour and social participation.

Especially on the integration of Roma children into the educational procedure, the GNCHR considers necessary the registration and documentation of the specific school population of every region and the collection of all relevant data on Roma communities. The necessary funds should be allocated for the functioning of permanent learning mentors, whilst the training of Roma mediators that will function as a link between Roma communities and schools is also necessary.

Furthermore, the GNCHR considers the segregation of Roma children unacceptable, as well as their dispersion in schools located in areas remote from their residence.

The behaviour of State organs

As constantly observed by the GNCHR, the rights of both minor and adult Roma are violated by certain state organs. Especially in relation to Roma minors, the Committee on the Rights of the Child has expressed its concern for the arbitrary and discriminatory manner with which police authorities stop and cross-check Roma minors, as well as the violation of their right to a fair trial. Data collected by the EU Fundamental Rights Agency demonstrate the alarming dimensions of discriminatory practices in Greece based on the ethnic profiling of Roma by the police.

The GNCHR highlights the inadequate manner in which the State deals with instances of police violence against Roma and proposes the adoption of measures that address cases of Roma maltreatment, such as the effective punishment thereof and allowing more Roma to serve in the police force.

Within this framework, the GNCHR stresses the need to set into motion the initiative to establish a working group that will examine the issue of human rights training among members of the police forces.

Other observations

Since the HRC requests the collection of more data on Greek Roma, the GNCHR highlights the latest research published by the FRA. In light of the aforementioned, the results of the application of the multilevel action plan on Roma for 2012-2020 are expected within a framework of a broader plan for the social inclusion of Roma that adopts a holistic approach similar to the spirit and recommendations of the GNCHR. Considering the findings of both the Ombudsman and the ECRI, there is still a need for the development of more systematic and long-term monitoring mechanisms.

Discrimination on grounds of sexual orientation (par. 19 of the HRC Concluding Observations)

The GNCHR emphasizes the need to adopt measures to address discrimination on grounds of sexual orientation. Namely:

Civil Marriage

The GNCHR expresses its regret that the State failed to take into consideration its continuous recommendations concerning the exclusion of same-sex couples from the regulatory framework of the law on civil marriage. Especially in light of the most recent ECtHR decision condemning Greece for this issue.

Instances of Racist Violence

The GNCHR notes the important positive steps taken for addressing cases of discrimination on grounds of sexual orientation through the establishment and functioning of the Racist Violence Recording Network in 2011, on the initiative of the GNCHR and the UN High Commissioner for Refugees Office in Greece, with the participation of non-governmental organisations and bodies. Apart from the Network, which in 2012 received only one complaint concerning discrimination on grounds of sexual orientation, the Office of the Ombudsman also receives on a regular basis, a limited number of such complaints, despite efforts to approach the LGBT community.

The GNCHR regrettably notes that recent anti-racist initiatives and legislation fail to include discrimination on grounds of sexual orientation or gender identity. Therefore, it stresses the need to include in any state initiative aiming to fight hate crime the protection of those that are targeted due to their different sexual orientation and/or their gender identity.

Legislation on Equality and non-discrimination

The GNCHR applauds the indication of the weaknesses in the present legislative framework, as well as the specific proposals concerning the amendment of Law 3304/2005 transposing Directives 2000/43 and 2000/78. However, the following should also be taken into account:

1. The Greek Ombudsman should become the central body responsible for the promotion and monitoring of the application of the principle of equal treatment by private and public actors in all relevant fields, except for access to goods and services. The latter should fall under the competence of the Consumer Ombudsman. At the same time, the relevant duties of other bodies established through Law 3304/2005 should be adjusted to the Ombudsman's new mission.

2. The prohibition of discrimination on multiple grounds should be added to Law 3304/2005.

3. The amendment of a number of articles of Law 3304/2005 so that discrimination prohibited by this Law cannot be disguised as discrimination against third-country nationals, who are protected by other secondary EU law instruments.

4. The amendment of a number of articles of Law 3304/2005 regarding the scope of application of the equal treatment principle, positive action, professional requirements and different treatment on grounds of age, so that they are made consistent with the wording of Directives 2000/43 and 2000/78.

5. The improvement of the wording of the provisions of Law 3304/2005 which transpose procedural provisions of the Directives (standing of NGOs, burden of proof) and their incorporation into the relevant procedural codes.

6. The amendment of a number of articles of Law 3304/2005 with a view to facilitating the legal standing of NGOs before judicial authorities, the recognition of favourable – not unfavourable – *res judicata* and the legal standing of NGOs to engage in administrative proceedings.

7. The amendment of Law 3226/2004 regarding legal assistance to low income citizens, with a view to facilitating legal aid for lodging recourses to the courts for violations of Law 927/1979 (punishment of race discrimination) and Law 3304/2005.

Finally, in light of recent events concerning the affront to the dignity of a large number of female patients and victims of sexual exploitation, it is important to highlight the legal *vacuum* concerning the protection of the rights of people with HIV and to recall the GNCHR's previous recommendations on including HIV as a ground of discrimination in Law 3304/2005.

Education and non-discrimination

The GNCHR believes that the Report should also refer to the education of people with disabilities or special educational needs. In the past, the GNCHR made specific proposals regarding the application of Law 3699/2008 on "Special Education and Education of persons with disabilities or special educational needs". However, these proposals were ignored and, moreover, major setbacks have since occurred, as existing infrastructure were abolished.

In light of recent findings of the UN Committee on the Rights of the Child, the GNCHR recalls its above proposals, highlighting the need for the education of all children in general schools based on a system that will take into account the capacities and needs of each individual child without creating special groups vulnerable to exclusion:

Regarding infrastructure: a) the GNCHR highlights the need to create Centres of Early (or Timely) Intervention and daily Educational Centres, whilst for the School Units for Special Education, it considers necessary to stress the need to build school buildings that satisfy all the necessary accessibility and functionality criteria. Also, the educational programme of these centres has to be defined in order for specialised teachers to cover the special needs of all students; the Personalized Educational Programmes needs to be monitored so that the unhindered continuation of education of all students can be ensured. Furthermore, the prompt issuance of the Presidential Decrees and Ministerial Decisions which are necessary for the implementation Law 3699/2008 is required regarding (a) the selection procedure for the appointment of Counsellors for the Special Educational Staff and their duties and obligations; (b) the formal qualifications of the specialised educational staff to be hired and c) the operation of Special Educational Classes and Inclusion Sections, as well as the integration of persons possessing new skills among the teaching staff are also crucial. Finally, the GNCHR refers to individual measures that need to be taken within the framework of the Differential Diagnosis and Support Centres.

Regarding special educational needs, problems of students with language disorders, neurological or mental illness, hearing or vision impairment, or autism should be addressed. The GNCHR considers that a) the National Accreditation of Sufficient Knowledge of Greek Sign Language and Braille can draw a lot from the experience of the Hellenic Federation of the Deaf and the Centre for Education and Rehabilitation for the Blind, and b) that books and materials should be adjusted and distributed to children with hearing or vision impairments.

Foreign citizens

In 2010, the GNCHR applauded the legislative initiative for the “**Political participation of expatriate and foreign third country nationals residing legally and on a long-term basis in Greece**”, which constituted an important step towards the substantive integration of immigrants lawfully living and working in Greece. What is more, this initiative attempted to ensure the full enjoyment of rights for the members of the aforementioned group, whilst clarifying the Greek State’s position on illegal immigration.

However, by virtue of judgment No. 460/2013 of the Plenary of the Council of the State, a series of articles of the Code of Greek Citizenship and Law 3838/2010 (“**Contemporary provisions regarding Greek Citizenship and political participation of expatriates and legally residing immigrants and other provisions**”) were found unconstitutional and Ministerial Decisions granting Greek citizenship to aliens who were born in Greece to foreign parent(s) who resided at least five years and attended a Greek school, as well as Ministerial Decisions allowing their participation in municipal elections were annulled.

The issue of participation in municipal elections should be addressed through a constitutional amendment, whilst the Bill on the “Ratification of the Code on immigration and social inclusion” regulates the situation of second generation immigrants, providing for the granting of five-year residence permits to adult third-country nationals that were born in Greece or have successfully completed six grades of Greek school in Greece, prior to adulthood and reside legally in the country. The GNCHR applauds the granting of long-term residence to **second generation immigrants**, noting of course that their full and substantial integration can only be ensured through the awarding of Greek citizenship.

National Institutions for Human Rights (NHRIs)

The GNCHR also deems it advisable that specific reference be made to its work as a **national mechanism for the protection of human rights and an independent** advisory body to the State.

The founding law of the GNCHR has been based on the Paris Principles adopted by the United Nations Organization (General Assembly A/RES/48/134, 20.12.1993) and by the Council of Europe. Both of these international organizations promote over the years the establishment of

National Institutions for Human Rights. The degree of conformity with the Paris Principles constitutes the basis of evaluation – and, at regular intervals, re-evaluation – of the National Institutions by the International Coordinating Committee of NHRIs (ICC). According to this evaluation, the NHRIs are granted A status (in compliance with the Paris Principles), B status (not fully in compliance with the Paris Principles) or C status (non-compliance with the Paris Principles), which determines their ability to participate in a series of mechanisms of the UN (cooperation with Treaty Bodies, Special Procedures, Universal Periodic Review etc.), of the Council of Europe (Human Rights Commissioner, CPT etc.) and of the European Union (Fundamental Rights Agency etc.). **The GNCHR, since 2001, has been awarded Status A (in full compliance with the UN Paris Principles)** by the International Coordinating Committee of NHRIs.

Furthermore, specific reference should be made to the contribution of the GNCHR to the functioning of institutions such as the Appeals Committees and the Asylum Service, the Immigration Committees and the Naturalisation Committees.

Education on Human Rights

As for the education on human rights **at school**, the GNCHR applauds the recent announcement made by the Ministry of Education promising to promote **actions for the correct and democratic political education** of younger generations, as well as **for shielding them from Nazi and racist practices**.

Nonetheless, the GNCHR is still disturbed by the **absence of a holistic approach** to human rights education which is obvious in the curricula of primary as well as secondary education.

Articles 3 and 23

Domestic violence against women (par. 7 of the HRC Concluding Observations)

The GNCHR focuses on domestic violence against women by requesting specifically the following:

(a) Regarding the **legal framework**, the GNCHR applauds the adoption of Law 3500/2006 which *inter alia* criminalises marital rape. The GNCHR had repeatedly expressed its concern for the absence of such a provision.

However, notwithstanding the observations made by the GNCHR, the law did not fully regulate the issue of domestic violence, since it does not deal with its essence nor does it address its causes. The GNCHR recalls the recent findings of the UN Committee on the Elimination of Discrimination against Women and the Committee against Torture, which confirm the persisting phenomenon of domestic violence against women.

In fact, even though there are a large number of cases of domestic abuse against women, **very few perpetrators are prosecuted and punished**. The UN Committee against Torture specifically calls on the Greek State to amend Article 137A of the Criminal Code, so that rape and other forms of sexual violence against women are punished as a **form of torture** and not merely as a “serious affront to sexual dignity”.

Finally, the GNCHR deplores that the Council of Europe Convention on preventing and combating violence against women and domestic violence was merely signed by Greece on May 11, 2011, but has not yet been ratified.

(b) Raising awareness to the phenomenon of domestic violence is still an open challenge for Greece. This is mainly due to the perpetuation of **patriarchal attitudes and deeply rooted stereotypes** regarding the role and responsibilities of women and men, as well as practices that create discrimination. The Committee on the Elimination of Discrimination against Women, in particular, has expressed its concern over the lack of state measures aiming to eliminate stereotypes and negative traditional principles and practices.

The lack of **studies** on the dimension of violence phenomena and the root causes thereof, as well as **statistical data** on violence against women and domestic violence based on sex, age, minority/ethnic origin and the relationship between the perpetrator and the victim, is just as problematic.

(c) The GNCHR applauds the protective measures for the victims of domestic violence included in the “National Plan for the Prevention and Combating of Violence against Women 2009-2013”; however it highlights that **effective access to justice** is not always guaranteed for female victims. While expressing its satisfaction with the adoption of Law 4055/2012 which abolishes the obligation to pay a court fee when denouncing domestic violence, the GNCHR stresses that the high cost of judicial proceedings and the fact that women are not aware of their rights and of the means to exercise them, still hinder their protection.

Application of Sharia law in Family and Inheritance law for members of the Thrace Muslim Minority (par. 8 of the HRC Concluding Observations)

The GNCHR expresses its concern about the non application of general Greek law to women of the Thrace Muslim Minority regarding **family** and **inheritance** issues. It insists that more effort should be put in informing these women of their rights and possibilities for judicial recourse, so that they can benefit from Greek civil law. The Report does not seem to adequately address these issues.

Having repeatedly expressed its position on the matter and taking into consideration the recent findings of the UN Committee on the Elimination of Discrimination against Women, the GNCHR continues to observe that the Greek civil law does not apply to the Thrace Muslim minority

regarding marriage and inheritance. Furthermore, the application of local Sharia law and general Greek Law is not in harmony with the provisions of the Covenant on **non-discrimination**.

Further disturbing is the recent No. 1862/2013 **judgment delivered by the Supreme Civil Court**, which, in an inheritance case regarding members of the Thrace Muslim community, refused to apply the provisions of the Civil Code, holding that the law applying in inheritance cases is the Sacred Muslim Law which constitutes domestic law and is specifically applied to Greek citizens of Muslim belief.

As for marital issues, as the GNCHR has already pointed out, marriage **by proxy** is contrary to Greek public order and to specific provisions of international treaties ratified by Greece. Therefore, Muslim marriage by proxy is nonexistent regarding the representative and the future spouse and null regarding the person represented.

On gender equality in general

The GNCHR has repeatedly expressed its position on gender equality in Greece, especially during the period covered by the Report. Let us note the following:

Law 3896/2010

The GNCHR welcomed in principle the adoption of Law 3896/2010 “Application of the equal opportunity and equal treatment principle for both men and women on issues of work and occupation” and the endorsement of several of its observations during the drafting process.

The aforementioned statute is not, however, without imperfections. Firstly, the definition of vocational training is not clear and consistent with EU law. This does not create legal certainty. Moreover, Article 19 on “Positive Measures” does not comply with the requirements of Article 116(2) of the Greek Constitution, which introduces an obligation for all state authorities. This constitutional provision “*obliges the legislator and the Administration, as well as other organs of the State*” to adopt in all fields the positive measures in favour of women that are “*appropriate and necessary*” for “*achieving the best possible result*” in order to minimize inequalities and with the ultimate goal of achieving real gender equality. Furthermore, Article 116(2) of the Greek Constitution stipulates that positive measures should aim to eradicate “inequalities” (this notion is wider than the notion of “discrimination” used in Article 19 of Law 3896/2010).

Moreover, there is no **autonomous individual right to paid parental leave** for all male and female workers. Article 3(4) regarding the protection of maternity is not in compliance with ECJ case law and the provisions of Article 21(1) and (5) of the Greek Constitution, which guarantee the effective protection of maternity. Especially in the private sector, women undergo unfavourable treatment with respect to access to employment and conditions of work, not only when they are

pregnant or have recently given birth, but also when they have young children or are married and at child-bearing age.

Finally, the GNCHR considered the statute inadequate for ensuring effective judicial protection of female victims of discrimination, as *inter alia* legal entities and organisations are not granted legal standing to engage in judicial or administrative proceedings in their own name for the protection of victims of discrimination.

Work and gender equality

Despite the adoption of Law 3896/2010 and the measures mentioned in the Report, the deregulation of employment relationships due to the severe financial crisis and the successive austerity measures continue to exacerbate the position of women in the labour market, rendering them even more vulnerable.

Taking into account the recent concluding observations of the UN Committee on the Elimination of Discrimination against Women, the GNCHR expresses its concern for the marginalization of women in the labour market as reflected in the **high female unemployment rates** (31% v. 24% male unemployment) and their over-representation in precarious forms of employment. The GNCHR also expressed its concern for the **adverse effects of a series of labour and social security law provisions on women**.

Furthermore, the **reversal of the Collective Agreement hierarchy, and the weakening of the National General Collective Labour Agreements and of the Sectoral Collective Agreements** affect women in particular, mainly regarding equal pay for work of equal value. These agreements used to be the best means of promoting and protecting uniform pay and employment conditions for all workers in Greece, without any discrimination.

Another source of concern is the continuous reduction of the (already inadequate) **care** structures for children and dependent persons and other social structures, which limit women's capacity to take up employment or trap them in jobs with limited rights. This perpetuates gender stereotypes, as men are not encouraged to participate in such care themselves. Harmonising family and working life should be a matter of both men and women. There is also a disturbing rise in discriminatory practices, especially on multiple grounds, at the expense of women that are employed within the **framework of contractor awards**, who are especially targeted when they are engaged in trade union activity.

Especially in the public sector, the GNCHR, keeping in mind the **Report of the ILO High Level Mission to Greece in September 2011**, highlights that the 30.000 public servant dismissals as well as pension cuts for those under 55 years of age, affect women in particular who were entitled in the past to an earlier pension if they had minor children.

Besides, women still continue to claim equal opportunities and equal professional promotion in public sector areas such as in the armed forces and the security forces where stereotypes still prevail.

Furthermore, in the above GNCHR observations the need to strengthen the Labour Inspectorate, as well as the Ombudsman is also highlighted, especially regarding the role of the latter in extrajudicial mediation. This is the more so at a time when both bodies have suffered budget cuts and an increasing number of workers are unable to have recourse to the courts for lack of financial means.

All in all, the GNCHR shares the Ombudsman's concern that **any progress made thus far will be lost** especially in matters of employment and gender equality. This will, furthermore, lead to the loss of valuable human resources and will affect the rule of law and democracy. The lack of policies for combating female unemployment, for encouraging men to participate in family care, the gender pay gap and the "glass ceiling" that hinders female professional evolution are inextricably linked to, *inter alia*, issues pertaining to citizenship, fundamental rights and democracy.

Participation of women in political and public life

The GNCHR expresses its concern for the negative climate surrounding the political system, which reflects a strong resistance to accepting the equal political presence of women in all structures of political power. Political party strategies by which party members are promoted and female members are placed in traditional posts, as well as the overall **sexism that dominates public life** prevent women from exercising their political role, maintaining the belief that politics are predominantly "male".

Family Law issues

As for gender equality in **family law**, the GNCHR highlights its observations concerning:

a) *The surname of spouses*: Article 1388 of the Civil Code, which provided that women retained their maiden name after marriage, was amended so as to allow the adding of a spouse's surname to the other, following an agreement between the couple (Article 28 of Law 3719/2008). This provision disrupts the continuum in the wife's identity, by allowing consecutive changes in surnames; it is therefore incompatible with the principle of gender equality.

b) *Parental Responsibility for children born out of wedlock*: Even though the GNCHR proposed not to amend of Article 1515 of the Civil Code on the parental responsibility for children born out of wedlock, Law 3719/2008 removed the precondition of the mother's consent in order for the father to be judicially awarded full or partial parental responsibility for child he has recognized.

c) *Validity of marriage*: The GNCHR has proposed the amendment of Article 1350(2) of the Civil Code that allows, pursuant to a court order, marriage at a younger age on serious grounds and the fixing of the minimum age in such cases at 16 years.

Gender Mainstreaming

In general, the GNCHR calls for the abolishment of sexist attitudes and **stereotypes** regarding the roles and responsibilities of women and men in the family and society, as well as for the **effective implementation of gender equality in all areas (gender mainstreaming)**.

To this effect, the GNCHR also highlights the need to adjust the provisions on family taxation to the gender equality principle. Noting the relevant observations made by the Ombudsman, the GNCHR underlines the need to adopt legislation that will allow spouses to submit separate tax returns. Even when spouses submit joint tax returns, the GNCHR proposes the introduction of an individual tax obligation for each spouse and the separate tax clearance through the abolition of Article 61(2) of the Code of Income Tax.

Finally, the GNCHR notes the establishment of a law commission for the drafting of a bill on the promotion of substantive equality and welcomes the adoption of the National Action Plan for Substantive Gender Equality 2010-2013 drafted by the General Secretariat for Gender Equality. However, considering the final observations of the UN Committee on the Elimination of Discrimination against Women, the GNCHR expresses its concern for the budget cuts regarding the aforementioned Secretariat which jeopardize its autonomy. The Commission also notes that the National Commission for Equality between Men and Women remains dormant since 2008.

Article 7

Responsibility of Police Officers (par. 9 of the HRC Concluding Observations)

The GNCHR expresses its concern for the frequency, the volume and the character of **cases of police arbitrariness**, also recorded in reports and decisions of international bodies. This arbitrariness is *inter alia* manifested through the **use of excessive violence** during the policing of demonstrations or crowd control missions, but also in case of arrest and detention of suspects; a fact that proves the consolidation of a police violence model. Another important common thread that connects police action to arbitrariness is **racist crime**. This connection is unfortunately expressed at *multiple levels*. The inability, inactiveness or strong unwillingness to examine racist attacks or the involvement of police officers themselves in racist violence acts, as well as arbitrary arrests carried out solely on racist grounds, cause great concern. However, it is the close relations of police forces with obviously racist groups or even the revealed participation of police officers in groups that carry out racist crimes which constitute phenomena that **urgently call for the adoption of measures by**

which responsibility will be attributed to and sanctions will be inflicted on members of the police force involved.

The GNCHR welcomes the recent inquiry carried out by the Ministry of Public Order and Citizen Protection into the alleged participation of members of the security forces in groups involved in racist crimes and highlights the following:

Mechanism for the investigation of complaints of police maltreatment

Following ECtHR judgments finding violations of Articles 2 and 3 ECHR¹, reports of the CPT², the Greek Ombudsman, the UN Committee against Torture³ and the ECRI⁴, which have repeatedly pointed out the inadequate or ineffective inquiries into maltreatment in the framework of disciplinary or even judicial proceedings, Law 3938/2011 provided for the establishment of an independent and effective **mechanism for the investigation of complaints of police maltreatment**, an initiative welcomed at first by both the GNCHR and the CPT⁵.

Nevertheless, apart from the fact that the Office for Combating Cases of Arbitrariness is inactive, the GNCHR notes that its institutional operation is regulated by provisions that do not serve the needs it has to cover nor the purpose it has to fulfil. As the Committee against Torture observed, its role is limited to the examination of the admissibility of complaints/reports that are in turn referred to the competent disciplinary body of the security forces for further inquiry⁶. Therefore, the GNCHR calls for the reformation of the above Committee, in accordance with the recommendations of international monitoring bodies, such as those included in the Opinion of the

¹ Greece has been condemned four times for violation of Article 2 of the ECHR (see ECtHR, *Makaratzis v. Greece*, 20.12.2004, ECtHR, *Karagiannopoulos v. Greece*, 21.6.2007, ECtHR, *Celiknku v. Greece*, 05.07.2007, ECtHR, *Leonidis v. Greece*, 8.1.2009). Greece has also been condemned four times for violation of Article 3 of the ECHR (see ECtHR, *Bekos and Koutropoulos v. Greece*, 13.12.2005, ECtHR, *Zelilof v. Greece*, 24.5.2007, ECtHR, *Galotskin v. Greece*, 14.1.2010, ECtHR, *Stephanou v. Greece*, 22.4.2010).

² CPT, *Report to the Government of Greece on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 23 September to 5 October 2001*, CPT/Inf (2002) 31 (20.11.2002), par. 11-22, *Report to the Government of Greece on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 August to 9 September 2005*, CPT/Inf (2006) 41 (20.12.2006), par. 12-21, *Report to the Government of Greece on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 20 to 27 February 2007*, CPT/Inf (2008) 3 (8.2.2008), par. 11-20, *Report to the Government of Greece on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 23 to 29 September 2008*, CPT/Inf (2009) 20 (30.6. 2009), par. 10-18, *Report to the Government of Greece on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 17 to 29 September 2009*, CPT/Inf (2010)33 (17.11.2010), par. 16.

³ Committee against Torture, *Conclusions and Recommendations: Greece*, CAT/C/GRC/CO/5-6 (27.6.2012), par. 13.

⁴ ECRI, *ECRI Report on Greece*, CRI(2009)31 (15.9.2009), par. 175-179.

⁵ CPT, *Report to the Government of Greece on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 19 to 27 January 2011*, CPT/Inf (2012) 1 (10.1.2012), par. 88-90.

⁶ Committee against Torture, *Conclusions and Recommendations: Greece*, *op. cit.*, par. 13.

Council of Europe Commissioner for Human Rights regarding the standards to be complied with by an independent and effective mechanism of investigation of complaints against the police⁷. This Opinion relies on ECtHR case law.

Human rights education for police officers

The GNCHR, would also like to highlight that, notwithstanding the measures taken for the suppression of arbitrary cases involving the security forces, the effective response to this phenomenon includes the correct - initial and periodic - education and training of security forces mainly on human rights, but also on inquiry methods, especially for the Police. The GNCHR has proposed to the Ministry of Internal Affairs, on its own initiative, to carry out and establish a **programme for the education of police officers** on human rights. At first this proposal was accepted and a working group convened a couple of times in 2009, mostly to discuss initial steps and then the development of the said programme. However, the implementation of the programme itself failed. Furthermore, following the change in Government, the Ministry of Citizen Protection disregarded the GNCHR proposal and dismantled the previous working group. What is more, a new working group was put together consisting only of department officials. The GNCHR made several attempts to communicate with the Ministry and highlighted the importance of its participation in the programme. Nevertheless, these efforts proved fruitless and the Ministry failed to brief the Commission on the continuation or non continuation of the programme. Therefore, **the GNCHR has reasonable doubts concerning the will to make substabtive changes to the training of police officers regarding education on human rights**. The GNCHR is willing to assist and cooperate with the Ministry in order to facilitate any educational initiative in this regard.

Article 8

Combating human trafficking (par. 10 of the HRC Concluding Observations)

With regard to human trafficking, the GNCHR has expressed its concern for the lack, on the one hand, of an **effective protection framework for trafficking victims** - mostly women and children - and of **protection mechanisms for witnesses**, on the other.

The GNCHR welcomes the ratification of the **UN Convention against Transnational Organized Crime and the Protocols thereto**, after their sanctioning by Law 3875/2010, which improved witness protection, an issue previously highlighted by the GNCHR.

⁷ Commissioner for Human Rights, *Opinion concerning Independent and Effective Determination of Complaints against the Police*, CommDH(2009)4 (12.3.2009).

Moreover, Greece has already signed since 2005 the Council of Europe Convention on Action against Trafficking in Human Beings and recently issued a law sanctioning it in view of its ratification.

Of course, any improvement to the legal framework is not in itself sufficient to effectively combat human trafficking. There is further need for the **effective implementation** of the legal provisions. Furthermore, **data should be recorded** which will demonstrate the effective prevention of trafficking and the protection of its victims, the prosecution of perpetrators and the assistance to victims.

The GNCHR welcomes the protection measures mentioned in the Report concerning trafficking victims. However, it highlights the need for a multilingual helpline that will support victims and for a protection scheme that will promote social integration.

The GNCHR has also noted the lack of special measures for the combating of trafficking of Roma adults and children which presents particularities and should be handled on a specific basis. In fact, the GNCHR, sharing the concern of CPT, stresses the need to investigate the disappearance case of 502 Roma children from an Aghia Varvara establishment.

Finally, keeping in mind the spirit of the concluding observations made by the UN Committee on the Elimination of Discrimination against Women, the GNCHR highlights the need to record and continuously update any data relevant to the effective implementation of the National Action Plan against human trafficking for 2010-2012.

Article 9 and 10

As far as the right to liberty and personal security is concerned and, more specifically the implementation of temporary detention (Article 9 ICCPR), the GNCHR has already proposed that temporary detention be reserved to exceptional cases and that it should be combined with the reduced imposition of penalties involving deprivation of liberty. Existing legislation on alternative measures and penalties aims to achieve a rationalization of criminal justice administration and a decongestion of detention centres as long as there are no procedural obstacles. The ECtHR in a recent judgment found Greece in violation of Article 5(4) of ECHR, for failing to meet the speediness requirement when deciding on the applicant's request to replace the measure of temporary detention (the period of three (3) months and eight (8) days does not fulfil the requirement of the "reasonable time", as mentioned in Article 5(4) ECHR)⁸. The above shows the ineffectiveness of a person's right to liberty.

⁸ ECtHR, *Shyti v. Greece*, 17.10.2013, par. 36-42.

Detention conditions for irregular immigrants (par. 11 of the HRC Concluding Observations)

From the moment the GNCHR was established, it has dealt many times with detention conditions of illegal immigrants in Greece (Article 10 ICCPR, Draft Report, p. 24). The GNCHR acknowledges the strong migration pressure on the country. However, it repeats its proposal that the Greek government should take into account and comply not only with the continuous recommendations of the CPT and the other international organs, but also with the GNCHR observations. For this reason, GNCHR recalls its observations issued after an inspection of alien detention centres made together with the Greek Ombudsman in the Department of Evros and Rodopi from 18 to 20 March 2011. This inspection showed that in recent years the situation in Evros amounts to a humanitarian crisis. The GNCHR acknowledges that there has been a rapid reduction in the migration flow through the land borders between Greece and Turkey since 2012. However, it emphasizes that the pressure has been shifted towards the east sea borders between Greece and Turkey, where there has been a rise in the number of arrests (1,139.24 %) made by the Hellenic Coast Guard in the last nine (9) months of 2013 (in comparison with the respective period in 2012).

More specifically, the main problems found during the inspection in the detention centres or derived from information provided by the competent bodies can be summarised in the following:

- Administrative deportation and detention of illegal immigrants still appears to be applied.
- Overpopulation in detention centres often leads to the detention of criminal detainees in the same centres as illegal immigrants. The GNCHR would like to express its satisfaction regarding the operation of the five (5) pre-removal detention centres and hopes that until the end of 2014 four (4) more new centres will be established.
- The GNCHR emphasizes that the issue of asylum seekers' detention merits special attention. The GNCHR stresses that illegal entry and stay cannot be considered *per se* a ground for detention. Detention of an immigrant is an extraordinary measure which should be applied in exceptional cases and only as an *ultimum refugium* after all possible alternative measures have been examined. Anyone deprived of liberty due to detention must be duly informed about the duration of his detention, which cannot exceed the reasonable time that is necessary in order to achieve the aim pursued.
- Although the GNCHR acknowledges that the Greek Authorities are making serious efforts to tackle illegal immigration, it must note that there is a great number of judgments and decisions delivered by international bodies finding Greece in violation of the right to human dignity of

detainees as guaranteed by Articles 10 ICCPR and 3 ECHR⁹. Furthermore, the GNCHR notes that there is no effective remedy in the Greek legal order for challenging detention conditions. In the same vein¹⁰, a Greek court acquitted migrants who had escaped a detention centre, holding that their escape was justified by the serious and otherwise unavoidable danger to their health¹¹.

Inadequate infrastructure, overpopulation and prolonged detention lead to serious repercussions on the health and the quality of the detainees' life. At this point, the GNCHR would like to highlight that according to International Human Rights Law, the right to health belongs to every person, without discrimination, and is not a privilege of the nationals of a country. It is a fundamental and universal right. It consists of the right to quality of medical care, food, physical exercise and social activities. Therefore, the GNCHR would like to repeat its recommendations, which are included in its last two reports.

Changes in the Asylum System

In view of the Revised National Action Plan on the reform of the asylum system and migration management, the GNCHR welcomes the recent legislative developments.

More specifically, the GNCHR is very satisfied with the operation of the new autonomous Asylum Service (1st instance) and the Appeals Authority (2nd instance). The GNCHR itself contributed to the staffing of the Appeals Committees.

As for the granting of asylum, the GNCHR emphasizes that according to a recent report of the German NGO "Pro Asyl", which interviewed ninety (90) refugees from Syria, Afghanistan, Somalia and Eritrea, the Greek asylum system is still problematic. This report highlights that the asylum system is deeply affected by the closing of the land borders in Evros and the relocation of immigration channels to the Aegean Sea that has caused the death of many people. From August 2012 to November 2013, one hundred forty-nine (149) people died, most of them refugees from Syria and Afghanistan. The new EU Regulation 604/2013 of 26 June 2013 (Dublin III) fails to improve this situation. In spite of the appeals of UN Special Rapporteur on Human Rights of Migrants Mr. François Crépeau for a fair sharing of responsibility in the EU, Greece continues to be "the custodian of an external EU border", as the UN Rapporteur stressed. Member-States maintain under Dublin III their margin of appreciation in determining the applicable criteria for granting international protection.

⁹ See *inter alia* ECtHR, *Horshill v. Greece*, 1.8.2013, *Chkharishvili v. Greece*, 22.5.2013, *Ahmade v. Greece*, 25.9.2012, *Mahmundi v. Greece*, 31.7.2012, *M.S.S v. Belgium and Greece*, 21.6.2011, *A.A. v. Greece*, 22.7.2010, *S.D. v. Greece*, 11.6.2009, *Dougoz v. Greece*, 6.3.2001.

¹⁰ See *inter alia* ECtHR, *Ahmade v. Greece*, 25.9.2012, *S.D. v. Greece*, 11.6.2009, *Rahimi v. Greece*, 5.4.2011, *A.A. v. Greece*, 22.7.2010.

¹¹ Single-member Court of First Instance of Igoumenitsa No 682/2012, 2.10.2012.

Operation “Xenios Zeus”

The GNCHR questions the methods employed by the police in order to verify whether immigrants are legal or not. Police officers state that the operation has been successful, since during the prosecution of 85,000 immigrants only 4,811 of them - 6% - were found to be illegal. However, the Human Rights Watch Report “Unwelcome Guest: Greek Police Abuses of Migrants in Athens”, questions whether this is a result of indiscriminate identity check rather than effective policing for monitoring unlawful conduct.

The GNCHR retains its doubts in relation to the extent and intensity of police “clean up” operations which display an element of racist bias.

Accommodation centres

The GNCHR has its reservations concerning the effectiveness of this new measure (“accommodation centres”) as a response to the problems of detention centres; a year and a half after their operation, they do not seem to fulfil their mission, which is the treatment of illegal immigrants in full respect of human dignity, inherent to every human being. It is also uncertain whether special treatment is provided for vulnerable groups (victims of human trafficking, minors, pregnant women, single parent families), pursuant to Articles 17 of PD 220/2007 and 11 of Law 3907/2011.

The GNCHR is willing to assist the Ministry of Public Order and Citizen Protection for taking measures, which are compatible with the international obligations of the State. Also, it stresses that Open Detention Centres should replace Closed Detention Centres since the latter fail to ensure appropriate living conditions.

Detention conditions in penitentiary institutions (par. 12 of the HRC Concluding Observations)

The GNCHR expresses its deep concern regarding the rise of the number of detainees and overcrowded Greek prisons. As a matter of fact, according to the most recent Annual Report of the Council of Europe, Greece is the second country (after Serbia) with the largest population in its detention centres, with 100 places corresponding to 151.7 detainees. According to the general statistic report of the Ministry of Justice, Transparency and Human Rights, the number of detainees in Greece is 12.479 for 8.224 placements, 4,254 people in custody included. The GNCHR emphasizes that the legislation is inefficient and that the crime rise has led to overpopulation in the detention centres.

Article 11 (par. 3 of the HRC Concluding Observations)

Regarding the prohibition of imprisonment due to the inability to fulfil contractual obligations, the GNCHR acknowledges that the amendment of Article 1047 of the Civil Code by Article 62 of Law 3994/2011 is in accordance with the ICCPR. However, the prohibition does not cover all claims, without distinction. The competent court can order personal detention in specific cases provided by law and for claims exceeding thirty thousand (30,000) Euros.

Article 14

Legislative developments guaranteeing the right to a fair trial

The GNCHR welcomes the voting and entry into force of Laws 3900/2010 “Rationalization of process and Acceleration of proceedings in administrative courts and other provisions”, 3994/2011 “Rationalization and improvement in the administration of civil justice and other provisions” and 4055/2012 “Fair trial and its reasonable duration”.

The GNCHR highlights the observations and recommendations made during the drafting process of the above statutes. Indicatively, the following GNCHR proposals were endorsed by Parliament:

1) GNCHR proposals on maintaining the provisions of Article 22 of Presidential Decree 18/1989. According to the aforementioned, the Rapporteur’s Report should be attached to the case file three days before the trial. Otherwise following a request of one of the parties, the trial must be postponed (Article 6(1) of Law 3900/2010).

2) The GNCHR proposal for the mandatory hearing of the objector or his legal representative by the judge, when requested (Article 55(1) of Law 3900/2010).

3) The GNCHR proposal to allow the UN High Commissioner for Refugees to intervene before the Council of the State or any other administrative court when the dispute concerns the recognition of refugee status or any other status granting international protection (Article 67(4) of Law 3900/2010).

4) The GNCHR proposal to ensure the fastest process for examining whether the Administration has complied with court judgments (Article 56 of Law 3900/2010).

Rapid rise in court fees for exercising a legal remedy

The GNCHR recalls and strongly underlines its previous position on the increase of costs which adversely affect the right to judicial protection. This is the more so as a large and rapidly

increasing segment of the Greek population is exposed to poverty and social exclusion¹², while the minimum monthly wage was reduced by virtue of the second Memorandum of Understanding, so as to reach EUR 586,08, for workers over 25 years old and EUR 510,95, for workers under 25 years old. Indeed, in times of serious and growing turbulence in the labour and social security field, when fundamental social rights are constantly limited, a greater number of persons than ever needs effective judicial protection.

As court fees are only imposed on individuals, the GNCHR has proposed that when a remedy exercised by the State or a legal entity of public law fails, the claimant should pay the trial costs as well as a financial penalty, as a deterrent. Also, the GNCHR recommended, as a measure of support of those hard hit by unemployment, job insecurity and deregulation of collective agreements, that court fees be abolished at least for claimants in labour and social security cases and considerably reduced in all other cases, in compliance with Articles 21, 22 (1) and (5), and Article 25 of the Constitution.

The GNCHR welcomes the introduction of a new domestic remedy aimed at affording just satisfaction in cases of excessive length of administrative court proceedings (Articles 53-60 of Law 4055/2012). These provisions also guarantee the acceleration of proceedings. However, as it results from ECtHR case law, just satisfaction should not have been excluded where the final judgment was delivered before the entry in force of the Law¹³.

Acceleration of judicial proceedings

The GNCHR recalls the concerns that it had repeatedly expressed in the past regarding the risk that the measures aimed at simplifying judicial procedures might created more problems than those they would solve. The efforts to accelerate penal proceedings, in particular, are necessary, as Greece has been frequently found in breach of the ECHR by the ECtHR in this respect. However, some measures create doubts as to their effectiveness and coherence. The GNCHR recalls indicatively some proposals it had made regarding the Bill “Rationalization and improvement of criminal justice proceedings”. The GNCHR believes that the overload of cases before courts leading to significant delays could be tackled through the decriminalization of less important crimes and administrative infringements. Indeed, the overloading of penal courts cannot be addressed without a daring and extensive revision of substantive penal law.

¹² According to EUROSTAT, in 2011, 31% of the Greek population (3.031.000 people) were exposed to poverty and social exclusion or were below the poverty line. See European Commission, *Assessment of the 2013 for Greece*, SWD(2013) 358, Brussels, 29.5.2013, p. 14 and 30, http://ec.europa.eu/europe2020/pdf/nd/swd2013_greece_el.pdf. This percentage has now obviously increased, along with the rapidly rising unemployment, the constant drastic reduction of salaries and pensions and the desorganisation of social infrastructures. See “GNCHR Recommendation: on the imperative need to reverse the sharp decline in civil liberties and social rights”, *Annual Report 2011*, p. 119 ff.

¹³ See ECtHR, *Ioannis Anastasiadis and others v. Greece*, 18.7.2013, par. 37; *Fergadioti-Rizaki v. Greece*, 18.7.2013, par. 21.

Article 17

As for the use of recording and monitoring devices, the GNCHR welcomes the State's efforts to comply with No. 1/2009 Recommendation of the Hellenic Data Protection Authority and harmonise its legislation with European data protection norms. However, the GNCHR recalls its doubts about the effectiveness of this measure which constitutes a strong intervention in people's privacy.

Article 18

Religion and religious education

The GNCHR stresses that the exercise of the right to abstain from religious education courses is regulated in a way which is not compatible with religious freedom, as it is made subject to prior formal justification. The GNCHR underlines that religious education, should include an introduction to the history and the main principles of each religion, so as to comply with constitutional and international law requirements and modern European cultural reality.

Conscientious objectors

The GNCHR acknowledges the basic principles deriving from the Council of Europe Committee of Ministers' Recommendation R 87 (8), regarding alternatives to military service. Alternative service must not have a punitive character, while its length must be proportionate to the length of the service of non conscientious objectors. Moreover, the authority deciding whether a person should be assigned to an alternative service or not, must be independent from the military services. The GNCHR recalls the *Bayatan v. Armenia* ECtHR judgment which is of fundamental importance. In this case, the ECtHR explicitly held for the first time that conscientious objection to military service falls under Article 9 ECHR (freedom of thought, conscience and religion).

Religious oath

The recent ECtHR judgment (*Dimitras v. Greece*, 08.04.2013) that found Greece in breach of Article 9 ECHR (freedom of religion) is the fourth since 2008 finding such a violation. However, it should be noted that the Court did not take into account recent amendments to the Greek Criminal Procedure Code regarding the religious oath of witnesses.

According to these amendments, the witness can choose either to take a religious or a political oath before providing his/her testimony. However, the GNCHR is not fully satisfied with this solution. Firstly, choosing a political oath instead of a religious one may be viewed as a sign that the witness is not a Christian Orthodox. This may lead to bias as to the integrity of the witness, due to the predominance of the Greek Orthodox Religion in Greek society. Secondly, witnesses are often

not asked whether they would like to choose between a religious and a political oath. Consequently, the witness must request it his/herself, thus revealing that he/she is most probably not a Greek Orthodox.

The GNCHR, therefore, repeats that the religious oath should be fully replaced by a political oath, so that the negative religious freedom is protected.

Article 19

Racist Violence and hate speech - Antiracist Legal framework

The GNCHR welcomes the efforts made by the judiciary in order to combat and prohibit discriminatory treatment. However, it stresses that more measures should be adopted for combating discrimination and xenophobia more effectively.

The GNCHR has addressed this issue and has submitted comments on the Draft Bill of the Ministry of Justice, Transparency and Human Rights on “Combating certain forms and expressions of racism and xenophobia by means of criminal law”. Some of the most important GNCHR recommendations include:

- The existing legislation (Law 927/1979) should be amended in accordance with the provisions of Council Framework Decision 2008/913/JHA, 28 November 2008. Such an amendment was brought before the Hellenic Parliament on 20 November 2013. It aims to make the legislation more effective by introducing protective legal measures and effective and proportionate penalties.
- The GNCHR highlights that States should strike a fair balance between the combating of certain forms and expressions of racism and xenophobia, on the one hand, and the freedom of expression on the other. Therefore, every expression or opinion that questions certain crimes (i.e. the holocaust) should not be prohibited in an absolute way. Otherwise it would lead to an interference with the freedom of expression which is contrary to the principles of a democratic society.
- A safety net should be established for the protection of victims and basic witnesses in cases of racist violence. This could be achieved through the suspension of the victim`s detention and expulsion and the granting of temporary residence permits by interim order of the prosecutor, until the final decision on the case is reached.

Finally, considering the rise in the number of attacks against refugees, migrants and other groups of people by extremists, the GNCHR concludes that the framework is ineffective as concerns the investigation of racist motives during criminal prosecution. For all these reasons, the GNCHR recommends that (a) an offence having a racist motive be made a special offence, or (b)

racist motivation be made an aggravating circumstance, a specific penalty frame being provided, or (c) the above be combined in some circumstances.

The GNCHR highlights that the State should take up initiatives and prove that society cannot tolerate violence and racism. At this point, it is also important to note that Nils Muižnieks, the Council of Europe High Commissioner for Human Rights, in his recent report on the escalation of racist violence in Greece, stated that the Greek Authorities should undertake initiatives in order to combat racism and extremism.

Combating Racist Violence

At this point, the GNCHR reports that it took a very long time for the three powers - legislative, executive and judicial - to acknowledge that there is organized criminal racist violence in Greece. Even though the GNCHR considers the State responsible for tolerating the Nazi criminal acts of Golden Dawn, it nevertheless applauds the efforts made for investigating the criminal acts of this political party.

Acknowledging the necessity to combat racism and xenophobia, the GNCHR has extensively dealt with this phenomenon, which is exacerbated in times of immense social tension. The GNCHR has adopted two special reports:

In its first report “*Police and the Judiciary: Combating racist violence*”, the GNCHR focused on how the Police and Judiciary systems should deal with racist violence. ECtHR jurisprudence, the recommendations of international organizations and relevant research prove that the Greek legislation, the monitoring system of incidents of racist violence and their treatment are ineffective or even inexistent.

In its second report “*Extremist Groups, Public Discourse and Racism in Sports*”, the GNCHR highlights the concerns and recommendations of international and European bodies dealing with the protection of human rights regarding the acts of extremist groups which target aliens.

Given the extent of the issue and the limited amount of space, the GNCHR refers to its 2011 Annual Report.

The GNCHR applauds the initiative taken by the Ministry of Public Order and Citizen Protection: Presidential Decree 132/2012 regulates the “Establishment of departments and offices responsible for combating racist violence” (FEK A’ 239/11-12-2012). The GNCHR also welcomes the creation of a new helpline (11414) which receives complaints for racist violence, assuring anonymity and privacy. Also, the GNCHR welcomes the establishment of educational programs, which are addressed to the police officers working in the departments and offices that are responsible for combating racist violence. However, people without the necessary legal documents

are not protected by this presidential decree. Therefore, if they decide to go to the police and report an incident, they will most likely face detention and ultimately expulsion.

Furthermore, the State must condemn any arbitrary actions and violence carried out by members of the police force.

Racist Violence Recording Network

The Racist Violence Recording Network was established by the GNCHR and the UNHCR Athens Office with the participation of NGOs. The Racist Violence Recording Network started operating on 1st October 2011 and published its first report in April 2013. The form used for reporting an instance of racist violence is common for all, so that the quantitative and qualitative trends of racist violence can be demonstrated in the best possible way. All stakeholders participating in the recording network maintain confidentiality. The Racist Violence Recording Network receives the findings of any research into the reported incident, without any reference to personal data. Its mission is to submit recommendations and raise public-awareness of the fight against racism. The findings published in the first report of the Racist Violence Recording System were reported in the Media and encouraged the State to start taking some more effective measures. However, there is still much that needs to be done.

Article 24

Protecting Children from Violence (par. 16 of the HRC Concluding Observations)

The GNCHR welcomes the introduction of Law 3500/2006 on ‘Combating Domestic Violence’ and Article 21 of Law 3328/2005 (prohibiting any form of corporal punishment of secondary education students). However, the GNCHR reiterates its previous positions, included in the 3rd Periodic Report on the Implementation of the UN Convention on Children’s Rights, in relation to the shortcomings of Law 3500/2006. More specifically, Article 4 provides that Article 1532 of the Civil Code (consequences of improper exercise of child custody) refers only to physical violence against minors for punitive reasons. However, the relevant rule should include every form of violence against minors. The GNCHR recalls that the UN Committee for the Rights of the Child recognizes that different forms of violence against children (such as corporal punishment, bullying, sexual harassment and abuse, and verbal and emotional abuse) are interlinked, and that violence in the family and school reinforce one another. Action against violence therefore must take a holistic approach and emphasize non-tolerance of all forms of violence.

Furthermore, reference should be made to the Specialized Committee on Researching and Combating Bullying in School, established in June 2001 under the auspices of the GNCHR. The

work of this Committee culminated in the publication of the booklet ‘Group Violence and Aggression in Schools’.

The GNCHR applauds the recent establishment of the Observatory for the Prevention of School Violence and Bullying under the auspices of the Ministry of Education and Religion, which focuses on recording and researching incidents of school violence and disseminating its findings to specialized bodies, responsible for combating school violence and bullying.

Unaccompanied minors (par. 17 of the HRC Concluding Observations)

The GNCHR acknowledges that the legislation regarding the guardianship of minors, following the amendment of Presidential Decree 220/2007, was improved and now includes all unaccompanied minors irrespective of prior application for asylum. However, the GNCHR shares the UNHCR doubts as to the practical application of this provision, as, according to the findings of the new Asylum Service, more often than not no final appointment of a guardian is made, and neither the interim guardian nor any legal representative of the minor appear in Court or during the minor’s interview.

For all the above reasons, the GNCHR reiterates its Recommendations:

- Police detention of alien minors for illegal entry in the country should be abolished and replaced by alternative measures of hospitality and/or protective custody in suitable facilities as long as their identification, the inquiry into the conditions and grounds of their entry, the search for their family and the determination of their legal status last.
- Deportation should be replaced by repatriation, when this is feasible and ensures the minor’s rights and social re-integration in their country of origin.
- An advisor or a custodian should be appointed to every minor, especially in the field of child welfare, the minor’s best interests prevailing.
- Unaccompanied minors/ asylum seekers constitute a particularly vulnerable group. Therefore, specialized personnel accompanied by an interpreter should be provided free of charge by the State in order to guarantee access to psychological medical and legal assistance.
- In case the minors are victims of abuse, torture, inhuman or degrading treatment or armed conflict, they should have free access to healthcare and housing in accommodation centers under the auspices of the Services of the Ministry of Health. They should also be entitled to education made accessible through courses of Greek language.

Article 27 (par. 20 of the HRC Concluding Observations)

Article 27 refers to people belonging to ethnic, religious and linguistic minorities. Even though Greece has signed the Framework Convention for the Protection of National Minorities, it has not yet ratified it. Also, despite the recommendations of EU and Council of Europe bodies, Greece has not yet ratified the European Charter for Regional or Minority Languages.

Specific topics of the Draft Report

Freedom of assembly

The GNCHR applauds Supreme Court judgment No. 2462012 which recognises that the restrictions applied to applications for the establishment of minority associations, which leads to the refusal of their registration in the registry of associations, violates the Constitution, the Civil Code and the ECHR.

Muslim Minority of Thrace

The GNCHR applauds the measures taken in order to guarantee the rights of the Muslim minority and to ensure their social inclusion. However, it expresses its deep concern regarding the implementation of the Holy Muslim Law (Sharia) instead of the Greek Civil Code in matters of family law or succession law.

Competences and selection procedure of Muftis

The GNCHR has already expressed the opinion that the Muftis competences deriving from public law should be limited to spiritual matters so that Muslims can have recourse to the courts in cases of family law or succession law disputes. Moreover, Muftis should be designated by the Muslim community. The GNCHR opinion was taken into account by the Council of Europe Commissioner for Human Rights in his 2008 Report on the Rights of Minorities.

Athens, 5 December 2013