HELLENIC REPUBLIC

GREEK NATIONAL COMMISSION FOR HUMAN RIGHTS

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Comments regarding the Bill on Aliens and Immigration

I. Comments on the Draft Law on 'Immigration and Residence of Aliens on Greek Territory' dated May 2000

A) General Comments

Greece is in urgent need of defining an immigration policy in response to the socio-economic situation which exists within it, and particularly to the needs of its long-term progress in development.

The attempt to advance a new, up-to-date and, above all, realistic legislative framework on immigration in Greece is undoubtedly a positive development, in spite of the delay which has been observable. Of particularly importance is the fact that the mapping-out and implementation of immigration policy has been undertaken by the Ministry of the Interior, in collaboration with the ministries which are jointly competent, on the model of the other member states of the European Union and that special legislative provision has been made for the protection of the human rights of immigrants.

Nevertheless, it should be pointed out that the internationalisation and, at the same time, the increase in the volume of movements of individuals and populations (in 1999, it was estimated that the world migrant population had reached the unprecedented number of 150 million) have endowed the phenomenon of migration with a new and particularly complex form, with which all the states of the 'First World' are faced. The immediate need for effective handling of the international immigration

phenomenon has now acquired priority on the agendas of regional and of international organisations (see UN Commission on Human Rights, Report, Human Rights of Migrants, UN Doc. E/CN.4/2000/82, 06.01.2000). For these reasons, the Greek Ministry of the Interior, which has now taken on immigration planning, is in urgent need of the relevant know-how, which may come from experts and research institutions in Greece and abroad (European and other countries, with wide experience in this field).

However, over and above this, for the generation and putting into operation of effective immigration planning there is an immediate need for constant collaboration and the exchange of knowledge between the ministry competent *ratione materiae* and all the other public services and social agencies involved (including Greek and international non-governmental and inter-governmental organisations which are active in Greece).

In the particular case of the public services involved, there is a need for the normalisation of the critical forms of dysfunctioning among the consular authorities, among those charged with the guarding of the frontiers, at the general secretariats for the regions and at local government agencies which have also been noted by the Ombudsman in his annual reports and other more specialised texts.

Also essential is the constant briefing and educating of the Greek public on matters which concern the new legislative system on immigration and on the trend towards the de facto creation of a more pluralistic society in Greece. A supplementary feature of immigration policy on which emphasis should be placed is the need for direct collaboration between Greece and at least the main countries of origin of immigrants who enter Greek territory. Rationalised immigration planning could be based on the setting up of a framework of bilateral or multilateral conventions on migration between Greece and these countries in connection with the acceptance of migrant workers which would be

capable of responding to and serving the needs of the workforce, for the economic development of Greece.

Greek immigration policy and practice should be based on specialist scientific research (it is highly desirable that such a research agency should be set up in the near future at the Ministry of the Interior) and its aims should be absolutely clear. While it remains firmly dedicated to the fundamental principles of law of a modern European state, Greek immigration policy should always have the current socio-economic situation and, above all, the long-term needs and prospects of development of Greece as its criteria.

B) Specific Observations

1. The draft law does not deal with the hundreds of thousands of illegal immigrants who live and work in Greece and make up the majority of the total number of aliens. Yet this circumvents the core of many of the problems which this regulatory initiative of the State sets out to solve. In order to deal with the very acute problem which already exists, it is proposed that one more opportunity should be given, on realistic terms and, this time, with better organisation of the administrative service units responsible, for the legalisation of immigrants 'without papers', within the more general framework to be determined by our immigration policy. It is, thus, worthwhile pointing out that the following should be recognised as basic, completely inter-related, principles of a modern immigration policy: (a) immigration into a host country is always capable of enriching, and should enrich, the social, academic and cultural life of the country of reception, while it must at the same time be in conformity with the humanitarian values and the mandates of modern international law; (b) immigration into a host country is successful only when the immigrants themselves ensure better conditions than those of their country of origin and normal - negotiated - co-existence with the society which accepts them. A successful outcome of immigration policy will depend upon direct

collaboration between the competent state and social agencies and on the scientific documentation by these agencies of all their positions concerning the actual needs of induction and potential for absorption of new human resources in Greece. It should be noted that the regulations of a transitional character on immigrants who are already in the country but have not been legalised should not be introduced ex post facto into the draft law by the method of amendments but should be an object of study and thinking about the problems on the part of those involved. The NCHR reserves its right to formulate its opinion on this issue.

2. Although the draft law expressly excepts refugees (Article 2, para. 1, sub-para. b), it contains provisions which could give rise to confusion, particularly as to asylum-seekers who have not yet been recognised as refugees. In Article 49, for example, where matters of administrative expulsion are regulated, there is a general reference to the "international obligations of our country". The wording: "without prejudice to the international obligations of the country and the special legislation on refugees" would be more correct.

3. Article 5 (Visa): It is regarded as desirable that a reasonable time-limit should be prescribed within which the Administration (in this case, the consular authority) will be obliged to reply to visa applications (such a time-limit should also exist in the other instances of applications by aliens for entry and residence in the country for work, etc.). The introduction of such a time-limit would make a major contribution to the more effective and reasonable functioning of the Greek Administration in the field of immigration, as required by the contemporary models of efficient and flexible administration.

4. Article 7 permits the Greek consular authority to refuse visa to an alien without giving reasons. This is undoubtedly a provision which is not in keeping with a modern rule of law, since any risks to, for example, national security could be put forward as the reasoning stipulated. It is worth noting, moreover, that it is not entirely clear how far this refusal without reasoning can also apply to a member of a refugee's family.

5. It would be extremely useful for a representative of the local Bar Association and of a specialist non-governmental organisation, if there is one in the specific region, to serve on the Immigration Committee of Article 9.

6. In Article 12, the use of the word 'may', as to the renewal of the annual residence permit for study, is likely to cause problems. It would be advisable for the total time of residence to be lengthened, since aliens have severe problems with the difficulties of the Greek language.

7. Article 22, para. 2 (Renewal of a residence permit for the provision of dependent labour): The opinion of the Immigration Committee, which is able to summon the alien to interview, and, consequently, examines the substance of the application, should have binding force for the General Secretary of the Region.

8. Article 22, paras 3 and 4 (Long-term immigrants): Long-term immigrants (immigrants who have lived legally and continuously for a period of at least five years in a host country) should receive favourable treatment from the Administration, in accordance with Recommendation (2000) 15 of the Committee of Ministers of the Council of Europe (13 September 2000) on 'Security of Residence of Long-term Immigrants'. The Council of Europe has recognised the particularity of this category of immigrants and has recommended to its member states favourable treatment of these individuals in such matters as the renewal of their residence permits in the host country, their participation in the labour market, their social security and their freedom of movement within the territory of the host country. It is thus proposed that there should be special treatment of this category of immigrants by means of (a) special provision(s) of the draft law, in implementation of the above recommendation of the Council of Europe.

9. Article 27, para. 1 (Family unification): It is reasonable that family unification (more correctly: reunification) of an immigrant working lawfully in the host country should be the cornerstone of a successful approach to the immigrant in the social and economic life and the

development of the host country. For this reason, the Legislator is under an obligation to handle the issue of family unification with the greatest care and sensitivity. The time-limit of three years set by the draft law is contrary to Article 12, para. 1 of the European Convention on the Legal Status of Migrant Workers (1977, SES No. 93). According to this Convention, the waiting time for immigrants' family unification to take place in Europe cannot be in excess of twelve months. The same time-limit of a year is also adopted by the proposal of the European Commission in connection with the Directive of the Council of the European Union and the European Parliament on the Right to Family Reunification (Article 3, para. 1 (a) Doc. COM (2000) 624 final, 10.10.2000, 1999/0258 [CNS]). This is a reasonable time-limit and it is desirable that it should be introduced into the Greek legislation.

10. Article 27, para. 2 (Members of an alien's family): It rests with the Greek Legislator to take into account the proposal on a Directive of the Council of the European Union and the European Parliament on the Right to Family Reunification which has already been made by the European Commission (Doc. COM (2000) 624 final, 10.10.2000, 1999/0258 [CNS]) and which extends the list of individuals for whom unification is permitted.

11. The prohibition of the exercise of vocational activity for three years stipulated by Article 30 (after family unification) is of rather long duration and encourages illegal work on the part of members of the family who come later. The solution of granting, initially, work permits for objects and specialisations in which there is not high unemployment of Greeks and legal aliens could be chosen.

12. In connection with Article 33, we would note the following:

(a) At the end of para. 1, as far as "as places of entertainment, others shall also be defined [by a decision of the Ministry of the Interior, Public Administration and Decentralisation] over and above those determined by the provisions in force". This provision is capable of creating dangerous

scope for activity outside the limits of control and the spirit of the Immigration Law.

(b) The provision (Article 33, para. 5, sub-para. a) which permits the transfer of the operation licence of a centre whose owner has been convicted of various criminal acts, amongst which are those infringing sexual freedom and those which exploit sexual life, should be omitted.

(c) We would call attention to two important omissions: First, the failure to make provision for the heaviest financial - administrative and/or penal - sanctions where the fraudulent use of women 'artistes' for other purposes (i.e., sexual exploitation) is discovered. In addition, the non-appealable revocation of the operating licence of a centre where more than one case of sexual exploitation of women 'artistes' has been detected should be provided for by statute. Second, the suspension of the expulsion of an 'artiste' who has denounced her sexual exploitation or is willing to co-operate with the competent authorities in proving the guilt of her exploiter. This suspension should be accompanied by police, social and economic protection of the victim.

13. It needs to be clarified whether Article 34 concerns only 'artistes' at places (centres) of entertainment. The wording of para. 1 does not confine itself to 'artistes' at places of entertainment. However, the answer should probably be in the affirmative, since Article 37 deals with other artists.

14. On Article 43 we would note the following: To begin with, the formulation of the concept of 'discrimination' does not correspond to that currently prevailing. Discrimination brings about the elimination or reduction of human rights and not an increase in them. The preferential treatment of weak or disadvantaged socio-economic categories in order to neutralise the inequalities which they suffer in practice is a positive measure which has as its purpose not the reduction but the substantiation of equality. We would therefore propose the replacement of the word 'preference' in paragraph 1 of Article 43 by the words 'unfavourable treatment'. Furthermore, the prohibition of discrimination in the same article could be extended to gender and to political, religious or

philosophical convictions. This would be an opportunity for the present draft law to introduce a modern system of sanctions (administrative or penal) against these forms of discrimination in general (see in this connection para. 13 of Resolution 2000/48 of the UN Commission on Human Rights, Human Rights of Migrants, UN Doc E/CN.4/RES/2000/48, 25.04.2000 and para. 3 of Resolution of the General Assembly of the UN 54/166, Protection of Migrants, UN Doc A/RES/54/166, 24.02.2000: both these organs of the UN stress the need to eliminate discrimination against immigrants and for states to take effective measures to create harmonious, tolerant social relations).

15. Article 44, paras 2 and 6 (Access of alien minors to education): In connection with the education of alien minors, it is thought desirable that sub-paras c., d. and e. of Article 28 of the International Convention on the Rights of the Child (UN, 1989, Law 2101/1992, OJHR A' 192) should be incorporated into the law by a specific provision. According to this, each state should make open and accessible to each child school and vocational guidance and orientation and take measures to encourage regular attendance at school and a reduction in the percentage of those alien minors who abandon their education.

16. Article 44, para. 3 (Supporting documentation for enrolment in state schools): A special paragraph should provide, by way of exception, for the enrolment with defective documentation in state schools of the children of individuals seeking asylum in accordance with Presidential Decree 61/1999, as well as of aliens who reside in Greek territory for humanitarian reasons by virtue of Article 8 of Presidential Decree 61/1999.

17. The time-limit of two days provided by Article 49, para. 5 (recourse against a decision on expulsion) is unconstitutional. At least five working days should be provided for, in order to ensure the effective protection of the alien's rights.

18. It would be useful for there to be an express account in Article 50 of the possibilities of the suspension or lifting of expulsion. In the first

paragraph of the article on the impediments to administrative expulsions provision should be made for the concurring opinion of a public prosecutor, as is the case with judicial expulsions (para. 2 of the same article).

19. In Article 51 there is no provision for the prohibition of mass expulsions (we consider that a reminder of the difference between expulsion and refoulement is not out of place). The question of the ratification of the fourth additional Protocol of the European Convention on Human Rights is, of course, a related issue.

20. The criteria on which an alien is included in the list of undesirables in accordance with Article 54 remain unknown, as in Law 1975/1991. It is in the interest of the State and of the security of law that the relevant criteria should be clearly formulated in the law and not determined ex post facto by inter-ministerial decisions, as has already been the case on the basis of Law 1975/1991 (see Ministerial Decision 4803/13/4κγ/1992, OJHR B' 407).

21. The question should be examined of whether Article 55, para. 1, at the end, does not create a mechanism for the policing of aliens who are in need of urgent hospital treatment which will make hospitals unwilling to treat them. This provision should also expressly except from its range of application children of immigrants, who, in accordance with the International Convention on the Rights of the Child (UN, 1989, Law 2010/1992, OJHR A' 192), have an absolute right, inter alia, to the enjoyment of a high standard of health (Article 24 of the Convention) and a right to education (Article 28 of the Convention), regardless, inter alia, of the legal status of their parents (Article 2, para. 2 of the Convention).

22. Para. 1 of Article 58 contains regulations which may contradict others in the same draft law. Thus, in Article 11, para. 1(d), for example, a condition for the granting of a residence permit for study is that the alien "should have ensured accommodation for residence", while provision 58, para. 1 of the draft law prohibits what the other (Article 11) requires as a condition for the granting of a residence permit.

23. The sixth paragraph of Article 58 should deal specifically with those who act from base motives (personal gain, exploitation of aliens, etc.) so that those who assist aliens for humane reasons are not punished.

24. It would be advisable to add to Article 60, para. 4, in accordance with the proposals of the General Confederation of Labour of Greece, the Labour Inspectorate.

25. The rejection with no reason given of an application for naturalisation of Article 65 has no place in a modern rule of law.

26. Article 62 (Prerequisites for naturalisation): The law should provide for special, favourable treatment of non-indigenous individuals and of recognised refugees who reside lawfully in Greek territory when these individuals apply for naturalisation (see Article 6, para. 4 (g) of the European Convention on Nationality, 1997, ESS No. 166). Because of the particularly vulnerable character of these individuals, it is reasonable and permissible for the required time of residence in Greece (as one of the prerequisites for naturalisation) to be less than that for other aliens and that their applications should receive priority in being examined by the Administration.

27. In Article 68, the reference to members of the teaching and research personnel in a specific discipline (e.g., Sociology) from a specific institute of higher education (the Panteion University) raises a serious legal problem of favourable treatment of the specific university over all the other institutes of higher education. If, furthermore, the description of the members in question of the Naturalisation Committee necessarily points to specific individuals, it constitutes a personal, blatantly unconstitutional, provision which infringes, together with many other principles, that of equality. In conclusion, we regard it as an omission that among the members of this Committee there is no provision for a member of the academic and research personnel with a knowledge of Law or even for a representative of the Bar Association (given that the undertaking of administrative duties by judicial functionaries is, after the revision of the Constitution, to be prohibited).

Athens, 9 November 2000

II. Additional Observations on the Draft Law 'Entry and Residence of Aliens on Greek Territory. Acquisition of Greek Nationality by Naturalisation' dated 06.12.2000

The National Commission for Human Rights, which has submitted its Observations on the draft law on 'Immigration and residence of aliens on Greek territory', having taken cognisance of the draft law of 06.12.2000 on 'Entry and residence of aliens on Greek territory - Acquisition of Greek nationality by naturalisation', would lodge the following additional Observations in connection with the latter.

1. To begin with, the National Commission for Human Rights would refer to the positions which were expressed in the text of its Observations on the draft law of 25 May 2000.

2. The draft law on 'Entry and residence of aliens on Greek territory - Acquisition of Greek nationality by naturalisation' which was tabled in the Greek Parliament on 7 December 2000 is a legal text certain points of which continue to fall below the standards of modern international and European law.

3. The National Commission for Human Rights would note the change in the title of the draft law and the omission of the term 'immigration' from that title. We consider that that term should remain, as corresponding objectively to the issue which the draft law is called upon to regulate.

4. In Article 1, the definition of an immigrant which was present in the previous draft law (Article 1(b)) has been omitted. The National Commission considers it useful that there should be such a definition in the law.

5. In Article 2 ('Range of application') the category of subjects of member states of the EU has been omitted, as a category to which the law in question does not apply. The National Commission considers the inclusion of these persons in Article 2 to be more legally correct.

6. The wording of Article 41, para. 1 of the draft law gives the impression that it recognises "fundamental human rights" only to aliens "who reside lawfully in Greek territory". However, both the Greek Constitution and the European Convention on Human Rights, amongst other legal texts protecting fundamental human rights, protect the majority of human rights without restrictions based on nationality or the legality of the presence of an individual on the territory of a state.

7. It should be noted that the draft law undervalues basic social rights of aliens in the case of Article 31 (prohibition of the exercise of vocational activity in the case of members of the alien's family for three years from the reunification of the family), a point in the draft law which is not in keeping with the standards of protection of human rights of a modern European state. The National Commission would stress that the above three-year ban on work for the members of an alien's family in practice encourages illegal work on the part of these individuals (see relevant Observations of the National Commission, B. 9-11).

8. Our Observations on the (old) Article 33 (now Article 34) have not been taken into consideration at all. This is evidence of a lack of awareness of the very acute problem of the sexual exploitation of women aliens under the guise of the 'artiste'.

9. Articles 41 and 42 of the draft law should be amended in such a way as to remove the contradiction between these provisions and the International Convention on the Rights of the Child (Law 2101/1992) (which has augmented legal force by virtue of Article 28, para. 1 of the Constitution) and, more particularly, Article 2, para. 2 of the above Convention, which provides that the Contracting States must effectively protect the child against "any form of discrimination ... based on the legal status ... of its parents, legal representatives, or members of its family". By

the new, positive, provision of Article 42 (3) b. the Greek Legislator protects the right to education of the children of "de facto refugees", but leaves unprotected the children of illegal immigrants. The law should clearly provide for the right of access to education of all alien minors without exception, in accordance with the above International Convention.

10. The omission from the final draft law of the provision prohibiting racial and other forms of discrimination (formerly Article 43), a provision of particular ethical and practical importance for an item of legislation whose range of application directly concerns aliens in Greece. It is right that we should recognise that this is a principle which is established both in the Greek Constitution and in the international instruments binding upon Greece.

11. The provisions of Articles 34 et seq. need immediate revision with a view to minimising the scope for illegal exploitation of alien women 'artistes in places of entertainment' by the notorious rings of 'entrepreneurs' who operate in Greece. The law should provide for the heaviest of sanctions against such 'entrepreneurs' and special protective treatment for these alien women, as well as the suspension of their expulsion in the event of their co-operation with the Greek authorities for the prosecution of their exploiters (see the relevant Observations of the National Commission, B. 12-13).

12. "Without prejudice to the international obligations of our country" should be added to the new Article 46 (as to the former Article 49). An express reference to the obligations of the country which arise from international law on human rights is also desirable.

13. The addition to Article 50 (premises for the detention of aliens) of a special paragraph recognising the right of detainees (under administration expulsion) seeking asylum to communicate with their lawyer, the UN High Commission for Refugees or other organisations for the protection of human rights is seen as desirable. Applications for asylum on the part of detainees should be given priority in examination by

the Administration by an express provision which it would be also advisable to add to the draft law.

14. The National Commission for Human Rights regards as positive the provision of Article 68 of the transitional provisions of the draft law for the legalisation of immigrants who reside and work, for a period which requires further thought on its determination, in this country (see relevant Observation of the National Commission, B. 1).

15. Furthermore, the National Commission for Human Rights recognises as a positive step the reduction of the waiting time for an alien for his family reunification (Article 28 et seq. and 69) from three to two years. However, Greek legislation should be fully adjusted to modern European and international legal standards and give special protection to the right of family unity and reunification of legal alien immigrants as one of the most elementary preconditions for a harmonious and creative presence of alien immigrants in this country. More particularly, the following is proposed: (a) two-year residence for family reunification should become one-year (see para. B. 9 of the Observations of the National Commission of 09.11.2000); (b) it is also desirable that the parents of the alien and his spouse who lived with and were dependent upon them in the country of origin should be included in the members of his family, as already provided for in current Greek legislation.

In conclusion, we regard the new formulation of the proposed provisions of Articles 48.2 and 45.1b as improved in comparison with the previous provision 48.1 because it narrows the instances of revocation of the residence permit and of expulsion of aliens for reasons of public health.

Athens, 30 December 2000

The Commission expressed its criticism and submitted recommendations regarding certain provisions and omissions of the above Bill (later Law 2910/2001) which were considered to contravene current international standards of immigration and human rights law.

In particular, the Commission stressed the lack of research conducted by experts on which the above Bill should have been based; the rejection by Greek consulates of visa applications without providing any reasoning; the lack of favourable treatment of long-term immigrants; the lack of effective protection of immigrant families; the need to prevent human trafficking, especially in women, through immigration legislation; access of immigrant children to education; access of detained immigrants to legal counseling.

The Commission noted that the Greek government should take all appropriate measures for the undertaking of specialised research regarding contemporary conditions of migration and the creation of an integrated immigration policy.

9 November and 30 December 2000