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## **EUROPEAN SOCIAL CHARTER**

Comments from the  
Greek National Commission for Human Rights  
on the  
21<sup>st</sup> National Report on the implementation of  
the European Social Charter

submitted by

**THE GOVERNMENT OF GREECE**

(Articles 7, 8 and 17  
for the period 01/01/2003 – 31/12/2009;  
Articles 16 and 19  
for the period 01/01/2005 – 31/12/2009)

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**CYCLE XIX-4 (2011)**



**HELLENIC REPUBLIC**  
**NATIONAL COMMISSION FOR HUMAN RIGHTS**

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Neofytou Vamva 6, 106 74 Athens, Greece  
Tel: +30 210 7233221-2, fax: +30 210 7233217; e-mail: [info@nchr.gr](mailto:info@nchr.gr)

<b>Comments on the 21<sup>st</sup> Greek Report on the implementation of the European Social Charter</b>
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**Article 7 par. 1- Minimum age of admission to employment**

*Page 7 of the Report:* The NCHR has noted on several occasions that the Labour Inspectorate may not perform its duties efficiently despite the efforts of its staff, due to lack of human resources and of the necessary infrastructure, a problem also noted by the Labour Inspectorate itself in its annual reports. If it is not strengthened and its scope of action is not extended so as to cover all the sectors and all the regions of Greece, its effectiveness will diminish even more.<sup>1</sup>

**Article 7 par. 10 – Special protection against physical and moral dangers**

*Page 11 of the Report:* Law 3064/2002 and Presidential Decree 233/2003 regarding trafficking were amended by Law 3875/2010 (OG A' 158/20.09.2010) "Ratification and implementation of the United Nations Convention against Transnational Organized and its three Protocols and relevant provisions". The said law improves the legal framework for the protection of minors against trafficking by extending, for example, the reflection period as recommended by the NCHR.<sup>2</sup> Given the importance that the Committee for Social Rights attaches to the question of

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<sup>1</sup> NCHR, "Comments on the Bill "Implementation of the Principle of Equal opportunities and Equal treatment of Men and Women in Matters of Employment and Occupation-Harmonization of Legislation with Directive 2005/54/EC of the European Parliament and of the Council of 5 July 2006"", *Annual Report 2008*, p. 49 <[www.nchr.gr](http://www.nchr.gr)>.

<sup>2</sup> NCHR, "Positions and Proposals of the NCHR on Trafficking in Persons- The Situation in Greece", *Annual Report 2007*, p. 52 <[www.nchr.gr](http://www.nchr.gr)>.

trafficking, the NCHR attaches to the present comments its Report on Trafficking, the content of which, irrespective of some legislative changes, remains pertinent.

Under Article 44 par. 1 of Law 3385/2005 as amended by Law 3875/2010, victims of trafficking, if they are characterized as such by the Public Prosecutor under certain conditions, they are granted a residence permit irrespective of whether or not they cooperate with the prosecutorial authorities.<sup>3</sup>

**Page 12 of the Report:** Greece ratified the Optional Protocol to the UN Convention on the Rights of the Child on the trafficking of children, child prostitution and child pornography by Law 3625/2007. Article 8 par. 3, in conjunction with par. 1 of Law 3625/2007, amends the legal framework on the protection of personal data providing for the disclosure by the prosecutor of the data concerning prosecution or convictions related to crimes, felonies or offences of intent, in particular against life, sexual liberty, financial exploitation of sexual life, personal freedom, property, rights related to property, violations of the legislation related to drugs, conspiracy against public order as well as offences committed against minors. The NCHR has noted that the said provision does not define the kind and the extent of information which may be disclosed. Therefore, the disclosure related to the prosecution or convictions may well result in the disclosure of the identity of the minor victim, which is in contravention of article 8 of the UN Protocol.<sup>4</sup>

**Page 13 of the Report:** The Ombudsman for the Rights of the Child has submitted to the competent Ministries recommendations regarding the protection of the rights of minors in internet cafes.<sup>5</sup>

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<sup>3</sup> Also recommended by the NCHR, *ibid.*

<sup>4</sup> NCHR, "Disclosure of personal data concerning criminal prosecutions and convictions", *Annual Report 2008*, p. 42 <[www.nchr.gr](http://www.nchr.gr)>.

<sup>5</sup> Greek Ombudsman, "The protection of rights of minors in internet cafes" (June 2010) [http://0-18.gr/downloads/internet\\_cafe\\_protaseis\\_Iounios\\_%20teliko\\_2010.pdf](http://0-18.gr/downloads/internet_cafe_protaseis_Iounios_%20teliko_2010.pdf) [in Greek].

## **Article 8- Right to the protection of working women**

At this point it should be noted that the financial crisis in Greece brings about a growing deterioration of women's status in the labour market. The introduction of a new kind of collective agreement – the Special Undertaking Collective Agreement – which may cover a large number of matters and prevails over Sectoral Collective Agreements (Article 13 of Law 3899/2010, OJ A' 212), is at the expense of women, due to their limited participation in unions and their limited possibilities of individual bargaining. Thus, women are deprived of an important safety net. Given that Sectoral Collective Agreements often provide for more favourable working terms and conditions than the legislation or National General Collective Agreements, including measures which enhance the protection of maternity, parenthood and the family, the primacy of Special Undertaking Collective Agreements is very likely to undermine the protection of maternity, parenthood and the family. It is obvious that women will be more and more compelled to accept unfavourable individual working terms and conditions under the growing threat of unemployment (which is much higher for them than for men).

The NCHR has repeatedly stressed the need to grant parental leave as an autonomous, non-transferable right to all employees of both sexes, in both the private and the public sector. Moreover, regarding the private sector, where parental leave is unpaid, the NCHR has underlined the need to replace pay with social benefits, and to maintain in all cases social security coverage.

The NCHR notes the existence of serious problems in law and practice concerning parental leave and the protection of maternity, such as the following:

*Maternity leave:* Article 52 of the Code for Civil Servants (CCS) (Law 3528/2007, OG A' 26) provides for a five months' paid maternity leave (two months before and three months after childbirth). Civil servants who give birth to more than three children are entitled to an additional two months'

leave for every further child (starting with the 4<sup>th</sup> child). By virtue of article 4 par. 5 of Law 2839/2000 (OG A' 196), the above provisions also apply to the personnel employed by the State on a contract of indefinite duration. The personnel employed by the State on a fixed term contract are not entitled to the maternity leave provided by the CCS, but only to the shorter maternity leave provided for the private sector. This maternity leave is seventeen weeks (eight weeks before and nine weeks after childbirth) only (article 11 of Law 2874/2000 (OG A' 286), which sanctioned article 7 of the General National Collective Agreement of 23.05.2000). Thus, employees of the same employer (the State) are treated differently and discrimination is created to the detriment of employees of the State on a fixed term contract, as compared to their colleagues who are civil servants or are employed by the State on a contract of indefinite duration,

Moreover, the conditions for granting the pregnancy and childbirth allowance by the Social Insurance Fund (IKA) are stricter than those applying to the sickness allowance; this is contrary to Directive 92/85/EEC.<sup>6</sup> Besides, several ministerial decisions limit in an unlawful way the scope of application of article 142 of Law 3655/2008, which grants a special maternity leave, thus creating discrimination against certain categories of mothers, whom they deprive of the protection provided by this Law.

*Parental leave:* a) Article 53 of the CCS provides for reduced working hours or, alternatively, nine months of paid parental leave for both parents, until the child reaches the age of four years. However, this is not granted as a personal and autonomous right, as required by Directive 96/34/EC.<sup>7</sup> b) According to the same article of the CCS, when the mother does not work, the father is not entitled to the above, unless the mother is

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<sup>6</sup> Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (10th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC), OJ L 348, 28/11/1992 p. 1-8

<sup>7</sup> Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC, O.J. L 145 , 19/06/1996 p. 4-9.

unfit for raising the child. c) Employees of the State employed on a fixed term contract, are not entitled to the above, but only to the shorter parental leave provided for the private sector (three months and a half for each parent, until the child reaches the age of three and a half), which is unpaid (article 5 of Law 1483/1984, OG A' 153). Thus, employees of the same employer (the State) are treated differently and discrimination is created to the detriment of employees of the State on a fixed term contract, as compared to their colleagues who are civil servants or are employed by the State on a contract of indefinite duration.

There is a serious problem with civil servants' parental leave in practice: when the nine months' leave is not requested upon the expiry of maternity leave, but later, while the child is still under four, by a parent who made no use of the reduced working day, a 'fictitious use' of the reduced working day is taken into account, the leave being proportionately curtailed. The Legal Council of the State agreed with this practice,<sup>8</sup> which is in breach of the European Charter and EC law and which continues.

Parental leave in the private sector (Law 1483/1984) is ineffective, given that it is unpaid and pay is not replaced by social benefits, whereas in order to maintain his/her social security coverage, the employee needs to pay both his/her and the employer's contribution. As a result, take up of this leave is very low.

It would be very useful for the members of the European Committee for Social Rights to request from the Greek Ombudsman the English version of the two Annual Special Reports "On the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation" by its Department for Gender Equality where several problems regarding the implementation of laws addressing the issues under article 8 of the European Social Charter are depicted. It is noted that the Greek Ombudsman is one of the Equality

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<sup>8</sup> Legal Council of the State (LCS) Opinion 64/2008. The LCS (Νομικό Συμβούλιο του Κράτους) represents the State before national and international/European courts and gives opinions at the request of public authorities submitted through a minister, which are not binding, unless the minister endorses them.

Bodies who are competent for monitoring and promoting equal treatment between men and women in the field of employment and occupation. The other body is the Labour Inspectorate, which, however, is not independent, thus not fulfilling the criteria laid down by Directive 2006/54 (recast).<sup>9</sup>

### **Article 16- The right of the family to social, legal and economic protection**

In addition to the observations made under Article 8, with respect to the part of the Report regarding the Roma population, we refer to our “Report and Recommendations on Issues concerning the Situation and Rights of the Roma in Greece” attached to the present comments.

### **Article 17- The right of mothers and children to social and financial protection**

**Page 49 of the Report:** There is a typing error: the Law concerned is Law **3719/2008** (and not Law 3718/2008, as quoted in the Report) on “Reforms for the Family, Children and Society”. The NCHR has adopted, *inter alia*, the following comments regarding the relevant bill:

*a) Parental custody (article 21 of the bill):* The introduction of the rule of joint custody after the divorce or annulment of the marriage constituted a dangerous repealing of basic family law principles safeguarding the interests of the child. Moreover, the basic terms of the provision on joint custody, such as the term “usual acts of the child’s daily life” were unclear and would cause harmful tensions to the detriment of children and more frequent intervention of the courts for parents’ disputes to be resolved. The Explanatory Report acknowledged the fact that the new

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<sup>9</sup> On the problems mentioned above, under article 8 of the ESC, see in particular NCHR, “Comments on the 7<sup>th</sup> Report of Greece (2005-2008) to the UN Committee for the elimination of all forms of discrimination against women” (25.11.2010) <[www.nchr.gr](http://www.nchr.gr)>, and S. Koukoulis-Spiliotopoulos, “Retirement and harmonisation of family and work: issues of substantive gender equality and judicial protection (with reference to ECJ 26.3.2009 C-559/07)”, *Review of Social Security Law (Επιθεώρηση Δικαίου Κοινωνικής Ασφάλισης)*, 2009, pp. 753-785.



provision might indeed result in an increase of disputes and that it required mature parents. Due to the obvious problems likely to be caused by the provision in question, the NCHR recommended that it be withdrawn from the bill, which was done.

*b) Adoption (article 14 of the bill, article 16 of Law 3719/2008):* The NCHR took the view that should the court substitute for the consent of the parents for their child to be given for adoption – after they have authorized the initiation of the adoption procedure –, there should be proof that they are indeed of unknown residence.

*c) Divorce (article 19 of the bill, article 15 of Law 3719/2008):* The NCHR held the view that certain serious acts of domestic violence and any attempt on the spouse's life should constitute irrebuttable presumption of irreparable breakdown of the marriage. This proposal was not endorsed.

*e) Article 1532 CC:* The NCHR proposed an amendment to article 1532 CC (consequences of improper exercise of custody): the exercise of any kind of violence against a minor to constitute case of improper exercise of custody. This proposal was not endorsed.

*f) Children born out of wedlock (article 15 of Law 3719/2008):* Regarding the custody of children born out of *wedlock*, article 1515 par. 1 CC, provides that it belongs to the mother. Par. 2 of this article, as amended by Law 3719/2008, provides that the father who has recognized his child may be assigned the custody in whole or in part after he/she applies to court, if that is in the best interest of the child. The requirement of the mother's consent, which was originally included in this provision, was omitted in Law 3719/2008. The NCHR took the view that the consent of the mother, should be explicitly required for the assignment of parental custody, in whole or in part, to the father, in order for abusive practices to be avoided.

***Protection against maltreatment and abuse:*** Law 3500/2006 “Combating domestic violence and other provisions”. The observations of the NCHR were the following:

a) The Bill does not deal with the essence of the problem – the violence against women – nor with its root causes i.e. the persisting roles of “man-master” and “woman-servant”.

b) The acts it purports to penalise are those already covered by the Penal Code, except for rape within marriage. Moreover, confusion will be created as to which acts will continue to be regulated by the Penal Code or by the new law. Furthermore, all the provisions of the Law should be incorporated in the relevant Codes (Penal Code, Code of Penal Procedure, Civil Code, Code of Civil Procedure) in order for legal certainty to be created.

c) The relevant legislation is neutral from the point of view of gender, covering perpetrators and victims of both genders. However, it fails to address the reasons why in practice the perpetrator – husband or partner – is often left unpunished when the victim is the wife or the female partner.

d) The establishment of *ad hoc* institutions to deal with the issue is not provided for.

e) The institution of the mediation of the Public Prosecutor in criminal issues, as provided for in the Bill, raises doubts regarding its constitutionality and effectiveness.

f) The police and the Public Prosecutor remain the main actors of the pro-judicial phase, although they have already been proven to be unsuitable for the task and overburdened by other tasks, while the establishment of an *ad hoc* institution to deal with the problem, such as a special body of family social workers, is not provided for.

g) The NCHR has also proposed that further criminal acts, which it mentioned specifically, be included in the notion of domestic violence.<sup>10</sup>

**Page 55 of the Report:** In 2003 Law 3189 “Reform of Juvenile Criminal Law” (OG A’ 243) was adopted. The NCHR had proposed, *inter alia*, the following: a) The introduction into Greek legislation of special

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<sup>10</sup> NCHR, “Observations-Resolution on the Bill re. “violence within the family””, *Report 2005*, p. 96.

protective measures aiming at the rehabilitation and social integration of juvenile offenders; b) The amendment of the Bill so that specialized psychological care is provided to juvenile offenders; c) The strict observance of the rule requiring the separate detention of drug addicts and non-drug addicts also in the case of minor detainees. The NCHR also stressed the need to avoid institutionalized treatment of juvenile offenders. Law 3860/2010 (OG A' 111) "Improvements of Penal Legislation on minor offenders, prevention of and combating minors' victimization and criminality" amended partly Law 3819/2003. The NCHR, preoccupied by the negative effect of the criminal record on the efforts of juvenile offenders to integrate back into society, especially in relation to their access to the labour market, adopted a decision entitled "Criminal Record of Juveniles and Young Adults".<sup>11</sup> Unfortunately, its recommendations regarding the reform of the criminal record were not included in the bill.

**Page 60 of the Report:** The part of the Report referring to the question of unaccompanied minors does not depict accurately the existing situation.<sup>12</sup> First, it needs to be noted that the Public Prosecutor assumes his/her tasks as temporary guardian in some cases only partially or not at all, due also to the fact that the Court's Social Service, provided for by the law, is not established yet. Furthermore, it is not true that minors are always detained in special areas and not with adults. In addition, it is to be noted that the existing reception facilities do not suffice to accommodate the needs of all unaccompanied minors entering Greece.

**Page 70 of the Report:** With regard to Law 3304/2005, we refer to our "Comments regarding Law 3304/2005 "Implementation of the principle of equal treatment irrespective of racial or ethnic origin, religious or other beliefs, disability, age or sexual orientation" and recommendations for its amendment" attached to present comments.

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<sup>11</sup> NCHR, "Criminal Record of Juveniles and Young Adults", *Annual Report 2008*, p. 66.

<sup>12</sup> UNHCR, Observations on Greece as a Country of Asylum (December 2009), <http://www.unhcr.org/refworld/docid/4b4b3fc82.html>; UNHCR, Unaccompanied Minors Asylum Seekers in Greece (April 2008), [http://hosting01.vivodinet.gr/unhcr/UAM\\_english.pdf](http://hosting01.vivodinet.gr/unhcr/UAM_english.pdf).

**Page 70 of the Report:** Regarding Law 3838/2010, it needs to be mentioned that the Fourth Section of the Conseil d'Etat with its judgment 350/2011 found the said Law unconstitutional. The constitutionality of the Law will further be examined by the Grand Chamber of the Court.

**Page 72 of the Report:** The General Secretariat for Gender Equality is attached to the Ministry of Interior, Decentralization & E-government.

**Page 76 of the Report:** Article 44 of Law 3386/2005 has been amended by Law 3907/2011 “Establishment of Asylum Service and Service of First Reception, adjustment of Greek legislation to the provisions of Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals and other provisions” (OG A’ 7).

**Page 77 of the Report:** The reception of asylum seekers in Greece is quite problematic mostly due to the lack of sufficient and appropriate facilities.<sup>13</sup>

#### **Article 19 par. 6-Family reunion**

**Page 83 of the Report:** Presidential Decree 131/2006 “Harmonisation of the Greek Legislation with Directive 2003/86/EC regarding family reunion” was supplemented by Presidential Decree 167/2008 (OG A’ 223).

#### **Article 19 par. 8-Guarantees regarding expulsion**

**Page 85 of the Report:** Regarding article 48 par. 1 of Law 3772/2009 which amended article 76 of Law 3386/2005, the NCHR has made the following comments regarding the relevant bill: According to article 48 of the bill “an alien is considered dangerous for the public order or security especially when he/she is prosecuted for an offence punished

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<sup>13</sup> See, *inter alia*, European Court of Human Rights, *M.S.S. v. Belgium and Greece*, Judgment of 21 January 2011.

with imprisonment of at least three months”. This provision makes the criminal prosecution against an alien a presumption of dangerousness leading to his/her deportation.

However, the prosecution by the Public Prosecutor is based on indications for the perpetration of an offence and on the dangerousness of an individual. Furthermore, in order for an individual to be detained in remand in the context of a criminal prosecution, an additional and separate estimation of his dangerousness or probable absconding is required. The mere indication of the perpetration of an offence does not prove that it has been perpetrated nor that it will be repeated in the future. Thus, the prosecution for an offence may not replace the estimation of the police regarding the dangerousness of an individual, which needs to be reasoned. Otherwise, the deportation of an alien on the basis of his/her prosecution for an offence would equate him with a convicted person, thus violating the presumption of innocence. Besides, according to an advisory opinion of the Legal Council of the State “in the light of the presumption of innocence, the revocation of residence permits may not be based solely on the prosecution of aliens for an offence”.

Moreover, it needs to be noted that the deportation of the accused terminates the pending trial. Consequently, his/her right to judicial protection, so that he/she can be cleared via a fair trial, as well as the right of the victim to judicial protection as a civil party in the trial are violated.

Furthermore, according to the provision in question, the deportation is feasible on the basis of prosecution for an offence which is punished with imprisonment of at least three months, i.e. for the vast majority of offences enumerated by criminal law, including for offences perpetrated due to negligence or offences prosecuted after a criminal complaint is filed (such as defamation). The broad spectrum of cases when deportation may be imposed in combination with the absence of prior estimation as to the dangerousness of the accused, violates the principle of proportionality as well. It needs to be noted that Law 3386/2005 provided for the deportation of an alien when he/she was convicted to imprisonment for over 1 year.

The right to private and family life of the alien under deportation needs also to be taken into account. The European Court of Human Rights, even in cases when an alien has been convicted for particularly serious crimes, has held that deportation violates the principle of proportionality when it endangers family unity and the very existence of the family life of the alien.

Apart from the non-conformity of the provision in question with the Constitution and international human rights law, this provision also creates systemic problems for the legal framework regarding migration. According to the Explanatory Report of the bill, the said provision aims at combating irregular migration. However, according to Law 3386/2005 (migration law), individuals who have entered or stay in the country irregularly are deportable for having violated the provisions of Law 3386/2005. Therefore, the *ratione personae* scope of the new provision does not cover the irregular migrants, but the regular ones, and it does not contribute at all to curtailing irregular migration. On the contrary, it renders the rights granted to regular migrants by the State precarious, given that the slightest indication of criminal behavior on the basis of which a Public Prosecutor may initiate the procedure of prosecution will result in their deportation. This precarious situation generated by the presumption of dangerousness hinders the social inclusion process of third country nationals, a strategic goal of the relevant EU Directives and of the Greek migration law.

Par. 2 of article 48 of the bill amends article 76 of Law 3386/2005, in order to increase the maximum time limit for detention of aliens under deportation from three to six months, with the possibility for it to be extended to up to 12 months, if they refuse to cooperate or if the issuance of the necessary documents is delayed in their country of origin.

It needs to be noted that the provision in question incorporates selectively the so-called 'Return Directive' (Directive 2008/115/EC). Although, the maximum time limits which are set are in conformity with the Directive, the required guarantees, such as the periodic review of the

lawfulness of the detention by judicial authorities, legal aid, suspension of the deportation decision, are completely ignored. These guarantees had to be provided for, also, due to the recent conviction of Greece by the European Court for Human Rights in the case *S.D.* because of the limited ability of detained aliens to challenge the lawfulness of their detention before the courts.<sup>14</sup>

Even if the provision in question complied with the Directive, the circumstances under which the extension of the detention's time limit for aliens under deportation will be implemented, i.e. the detention conditions in Greece, need to be taken into account. Several reports of international and national bodies and NGOs have underlined: a) the large number of irregular migrants living in Greece under deplorable conditions whose deportation in the immediate future is not feasible, b) the lack of sufficient –both in quality and quantity- detention centres for long periods, c) the lack of access to services of interpretation and legal aid, and d) the particularly problematic asylum procedure.

Lastly, the same provision provides for stricter penal and administrative penalties for those who transfer or facilitate the transfer of irregular migrants, especially in the case of rigs. The setting of stricter penalties constitutes the traditional means of the policy against criminality, but at the same time its effectiveness is dubious, especially if one takes into account the limited capacity of border monitoring, the large number of persons involved in these activities, and their extreme profitability. The NCHR observed that the provision in question does not violate any rights, and therefore the evaluation of the aforementioned considerations is left to the discretion of Parliament.<sup>15</sup>

Article 76 of Law 3386/2005 was further amended by Law 3900/2010 “Acceleration of administrative trials and other provisions” (OG A’ 213) in

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<sup>14</sup> European Court of Human Rights, *S.D. v. Greece*, Judgment of 11 June 2009.

<sup>15</sup> NCHR, “Comments on the Bill of the Ministry of Justice titled “Reform of the Forensic Service, the therapeutic treatment of drug users and other provisions””, *Annual Report 2009*, pp. 35-36.

relation to the proceedings by which the lawfulness of the detention is decided.<sup>16</sup>

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<sup>16</sup> NCHR, “Comments on the Bill of the Ministry of Justice titled ‘Acceleration of proceedings in administrative courts and other provisions’” (21.10.2010) [www.nchr.gr](http://www.nchr.gr).



**HELLENIC REPUBLIC**  
**GREEK NATIONAL COMMISSION FOR HUMAN RIGHTS**

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

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

**I. Introduction**

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

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

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

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

Few of the recommendations were followed by the State. However, they were crucial for the compliance with the EU law. Specifically, the law prohibits expressly, as it ought to, every direct or indirect discrimination. Moreover, the law defines correctly the terms of

«direct» and «indirect» discrimination, «harassment», as well as the requirements of limited exceptions to the principle of equal treatment.

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

### ***B) The comments of the Economic and Social Committee***

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

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

### ***C) The need to amend Law 3304/2005***

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

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

### ***A) The prohibition of multiple discrimination***

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

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

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

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

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

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

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

### ***B) Discriminatory treatment of third country nationals***

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

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

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

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

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

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

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

### ***D) Different treatment due to age***

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

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

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

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

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

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

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

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

Furthermore, the requirements in order for legal entities to represent discrimination victims provided for in article 13, par. 3 of Law 3304/2005 (*prior* consent of the discrimination victim given before a notary or in writing signed and having the authenticity of the signature certified) hinder the application of the provision. The Directives require the victim's "*approval*", which can be given later on, and not his/her "*consent*", which must be given in advance. Moreover, with the requirement of "*consent*" there is the risk that the deadline for recourse to the court or to another competent authority will elapse.

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

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

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

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

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

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

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

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

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

In particular, the NCHR recommends:

(a) The expansion of the competence of the Ombudsman in the private sector, apart from the case of access to and supply of goods and services, which should be assigned to the Ombudsman for Consumers. Moreover, every public authority, which receives complaints or information regarding the violation of the equal treatment principle, including the Labour

Inspectorate, should communicate them to the Ombudsman (or the Ombudsman for Consumers) for investigation and mediation. The respective competences of the Labour Inspectorate and the Commission for Equal Treatment of the Ministry of Justice should, therefore, be abrogated.

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

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

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

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

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

## **V. NCHR’s recommendations**



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

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

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

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

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

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

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

**HELLENIC REPUBLIC**  
**NATIONAL COMMISSION FOR HUMAN RIGHTS**  
**6 Neofytou Vamva, 106 74 Athens**  
Tel: +30 210 72 33 221; fax: +30 210 72 33 217, e-mail: [info@nchr.gr](mailto:info@nchr.gr)

**REPORT AND RECOMMENDATIONS OF THE NCHR ON ISSUES  
CONCERNING THE SITUATION AND RIGHTS  
OF THE ROMA IN GREECE<sup>17</sup>**

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<sup>17</sup> The present report is a revised form of the position paper on the situation and rights of the Roma in Greece which was discussed in the plenary session of 2/10/2008 of the Commission and drafted by Christina Papadopoulou, Human Rights Officer of the NCHR. Andreas Takis, Deputy Ombudsman, has co-signed the revised text. The report takes into account the spirit and the content of the fruitful discussion which took place, and incorporates as far as possible the proposals and comments - constructive, yet frequently not in agreement with one another - of the NCHR members, and particularly of those who submitted them in writing (S. Spiliotopoulou, P. Stangos, N. Theodoridis, C. Botopoulos). The report has been supported by the ad hoc Working Group on Roma affairs (L. Argyropoulou-Chrysochoidou, P. Stangos, A. Takis, C. Lambrou, N. Theodoridis, C. Botopoulos, I. Nikolakopoulou-Stefanou, and L. Divani, former member of the NCHR and compiler of the 2001 report on Roma affairs), of agencies and individuals (A. Takis, Deputy Ombudsman, M. Voutsinou, and A. Papadopoulou, advisor at the Ombudsman Authority, the Union of Greek Roma, the Panhellenic ROM Youth Association, the Sofades ROM Association, the Panhellenic Union of Greek Roma, the National Focus Centre on Racism and Xenophobia, the Hellenic Human Rights Union, the Oikokoinonia NGO, the Klimaka NGO, the Arsis NGO, the Praksis NGO, the Doctors of the World, the Greek Helsinki Monitor, the Directorate for Development Programmes of the Interior Ministry, the General Secretariat of Public Order, the Office of the Minister of the Environment, Planning and Public Works, the Secretariat General of Public Order, the KELPNO, the Municipalities of Athens and Trikala, the ROM Inter-municipal Network, the Administrative Regions of Attica and Western Greece, Nadina Christopoulou, anthropologist, Evgenia Katoufa, journalist/social worker, Marina Tsafou, sociologist), who in different capacities and from various positions are active and/or involved directly in the management of Roma issues. The problems and the proposed solutions were further elaborated and discussed at the two meetings / consultations convened by the

## **SUMMARY**

The present Report is the outcome of a process of consultation with agencies and individuals active in the management of Roma issues, and of elaboration by an ad hoc working group.

Taking as a starting-point the observation that there is a gap between the adoption of policies and positive measures for the Roma and their substantive implementation in the field, with a view to eliminating their social exclusion, the Report gives an account of the history of the NCHR's concern, and that of its members, with Roma issues. Certain basic field data are then given in connection with the Roma in Greece, such as the definition of Roma identity in relation to the vehicle for the rights' claims used by the group vis-à-vis the non-Roma society and state institutions. The Report does not propose a definition of 'Gypsyess', but rather a definition of the subjects entitled to benefit from positive measures on the part of the state and society, with a view to combating social exclusion and ensuring access to the mechanisms of production and distribution of goods within the State.

The national and international framework of protection and the findings of international bodies, as well as Greece's convictions by international jurisdictional mechanisms are cited in detail. In addition, the Report includes a summary description of the different types of establishment of the Roma in Greece and the related challenges posed to state planning and co-existence with the Roma population, the internal hierarchies and power relations within the group, as well as its problematic connections with public institutions and services. The Report stresses the importance of the integration of Roma children in the educational process as a precondition for ending the vicious circle perpetuating the social exclusion of the group.

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Commission (11/7 and 20/11, 2007). The Commission would like to express its warmest thanks to all those who have contributed to the formulation of the proposals and to an understanding of the issues touching upon the situation of the Gypsies in Greece today. The author of the report made *in situ* visits to and had discussions with the residents at the Roma settlements or encampments at Halandri, Attica, the Gallikos river, and Evosmos, Thessaloniki.

A brief account of the implementation of the Integrated Action Programme for the Social Integration of the Greek Roma is undertaken, while an account of two actions of the NCHR for 2009 in the field of training of professional groups involved in the management of Roma affairs is also given.

In conclusion, the NCHR Report formulates a series of recommendations to the Greek State aiming at an effective policy on Roma on the basis of an actual respect of their rights and of compliance with the recommendations of national and international mechanisms.

### ***Introduction***

In the last ten years or so, there has been a large number of reports<sup>18</sup>, publications, studies, and events (conferences, congresses, etc.) on Roma, as well as resolutions and decisions of international organisations and judgments by international jurisdictional bodies. The shared assumption of all those agencies and actors is that there is a gap between the adoption of policies and positive measures and their substantive implementation in the field, thus, resulting into the Gypsies being victims of negative discrimination and social exclusion.

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<sup>18</sup> As to the Gypsies/Roma in Greece and/or Europe, the following are noted by way of indication: 'Focus: Roma in Greece', European Roma Rights Centre (ERRC), 2000; 'The Situation of Roma in selected European Countries', Report by the International Helsinki Federation of Human Rights to the OSCE Conference and Other Forms of Intolerance, Cordoba, Spain, June 2005; 'Roma Poverty and the Roma National Strategies: the Cases of Albania, Greece and Serbia', Minority Rights Group International, at [www.minorityrights.org](http://www.minorityrights.org), 'Cleaning Operations: Excluding Roma in Greece', ERRC & Greek Helsinki Monitor, Country Report Series, No. 12, April 2003; 'Greece: Continuing Widespread Violation of Roma Housing Rights', GHM + COHRE + MRG - Greece + PACONGR + Greek Gypsy Union, October; 'Torture and other forms of ill-treatment in Greece in 2003: the situation of women, Roma and aliens', report prepared by the OMCT & GHM, 16 October 2003 hearing of the EU Network of Independent Experts in Fundamental Rights; 'Denied a Future: report on Greece', Save the Children 2003, [www.savethechildren.org](http://www.savethechildren.org), 'The Roma in Greece: History and Present-Day Reality [in Greek]', Greek Group for Minority Rights, 2002; 'Roma/Gypsies: a European Minority [in Greek]', J.P. Liegeois - Nicolae Gheorghe, 1999, Miltos Pavlou: 'Racism and Discrimination against Immigrants and Minorities in Greece: the State of Play', HLHR - KEMO Annual Report 2007; 'Serial Abuses in Need of Rigorous Response', COHRE - ERRC - GHM - MSF; World Bank Involvement in Roma Issues, [www.worldbank.org](http://www.worldbank.org).

This increasing concern for the Roma is not in itself good news, as it reflects the lack of real statutory guarantees at the national and international level. In Greece, the Gypsies/Roma are included in numerous administrative instruments, action plans and national strategies (National Report on Strategy for Social Protection and Social Integration 2003 - 2005, 2006 - 2008, 2008 - 2010, National Strategy for the European Year of Intercultural Dialogue 2008, etc.), without, however, there having been any notable improvement of things in the field. It is also known that Greece has been compromised at the international level by a number of convictions by international jurisdictional bodies and is at the top of the list of states negatively assessed as regards Roma issues.<sup>19</sup> A racist trend against Roma has made its appearance in various European countries, and is at times resulting in extreme policies, measures and aggressive manifestations (such as fingerprinting of the Roma, racist statements by senior state functionaries, etc.), as those recently observed in neighbouring Italy, the Czech Republic, and in some other EU countries.<sup>20</sup> These phenomena render even more necessary and urgent a comprehensive policy on Roma inclusion in Greece, a net improvement of the existing programmes, and a strict monitoring of their effectiveness in practice. In fact, in spite of the observed delays in the implementation of the measures adopted on paper, and in spite of the obvious distance between the declared goals and the results produced, no overall assessment of the progress of the programmes has been completed so far. Against this background, there seems to be a direct connection between state inadequate intervention, and the manifestations of aggressive behaviour of non-Roma towards Roma.

In this state of affairs, the NCHR has decided to attempt an examination of the situation of the Roma in Greece today, and to formulate recommendations for the elimination of social exclusion, from the viewpoint of human rights and non-discrimination, and by adopting a holistic approach. Obviously, the effectiveness of NCHR's recommendations to the competent State authorities is interwoven with necessary changes in the way of looking at the Roma and of co-existence with them on the part of the society as a whole. It goes without saying that comprehensive changes in attitude are necessary, both on the part of the collective bodies representing Roma communities and the Roma themselves.

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<sup>19</sup> See more below, in the section of the report devoted to this subject.

<sup>20</sup> See in this connection (and on Greece), '2008 Hate Crime Survey: Roma and Sinti', [www.humanrightsfirst.org](http://www.humanrightsfirst.org).

### ***History of the involvement of the NCHR in Roma issues***

The NCHR adopted a first position paper on Roma issues<sup>21</sup> in the second year of its operation (in 2001, before there was a body representing the Greek Roma within the Commission) by means of which it recommended that the state should take up its responsibilities as regards the solution of the problems of Roma, and adopt policies for the sensitisation of society. In 2003, the NCHR<sup>22</sup> increased its membership by adding two NGOs (over and above the original four) to its composition, one of which was the Panhellenic Federation of Greek Roma Associations. A number of member-agencies of the NCHR are active in issues of Roma protection (there is an *in extenso* account of the composite actions of the Ombudsman on Roma below). The accumulated experience of the Ombudsman via *in situ* monitoring of settlements and the investigation of individual cases constitutes the empirical base of the NCHR. The Commission is convinced that the two institutions' complementary roles may increase the possibilities for an effective State response. Apart from the Ombudsman, the PASOK and SY.RIZ.A political parties have tabled questions in this connection in Parliament (primarily on issues of resettlement and education); non-governmental organisations examine various matters depending upon the range within which they act; and the representatives of the ministries inform - if not always adequately - the Commission on their Roma related actions.

The NCHR systematically includes Roma issues whenever it is asked to comment upon Greek reports to Treaty Bodies, national action plans, or bills touching upon protection from discrimination.<sup>23</sup> In addition, it makes specific reference to Roma whenever it consults with

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<sup>21</sup> See Report on the Acta of the NCHR 2001: 'The situation of Roma in Greece'.

<sup>22</sup> By decision 6/2/2003 of the Plenum, by virtue of Article 2, para. 1c, and Article 9 of Law 2667/1998.

<sup>23</sup> See: Comments on Greece's Report on the implementation of the International Covenant on Economic, Social and Cultural Rights, NCHR Report 2002. List of issues addressed before the CAT, NCHR Report 2003. Comments on the draft law on the implementation of the principle of equal treatment regardless of racial or national origin, religious or other convictions, disability, age or sexual orientation, Annual Report 2003. Comments on the first report of Greece on the International Covenant on Civil and Political Rights, NCHR Annual Report 2003. Comments on the Report of the Ministry of Foreign Affairs on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, Annual Report 2007. Views and proposals of the NCHR on the National

representatives of international experts and/or bodies<sup>24</sup>. At these meetings and in its comments on the State reports, the NCHR has noted, *inter alia: the lack of co-operation of the local authorities for the resolution of problems faced by Roma. The difficulties in the implementation of integration programmes due to the lack of unity in the representation of Roma. The de facto problem of registration of Roma in civil registers, due-inter alia- to omissions on the part of the competent services of the central administration and of local government, a deficiency impeding the planning and implementation of appropriate actions. The problem of the non-inclusion of Roma originating from the Balkans in the programmes. The difficulties in the implementation of the subsidized housing loans programme due to the lack of understanding of the procedure on the part of Roma and, in addition, due to unclear competencies between local government and the Interior Ministry. The illegal character of the forced evictions of Roma from encampments in various regions of the country, without them being offered a resettlement in another site meeting conditions of safety and minimum dignity. The need to build upon the good practice of the medical-social centres. The ineffectiveness of the measures adopted so far aiming at the integration of Roma children into the educational process. Last, but not least, the inadequate investigation of cases of alleged use of force by police officers against Roma, and of discriminatory treatment and abuse with probable racist motives by non-Roma citizens.*

During 2007, the NCHR set up an ad hoc group on Roma issues and convened two working-meetings attended by a wide range of agencies (NGOs, collective expressions of Gypsy citizens, university academics, public administration and self-government, independent authorities, etc.). Many of these submitted views and proposals regarding the interconnected fields where violations occur: housing, education, health services, employment, and problems in relations with state and municipal administrative procedures. Furthermore, in October 2007, the President of the Commission, C. Papaioannou, together with the Deputy Ombudsman A. Takis, had a special meeting on Roma issues with the General Secretary of the Ministry of the Interior, Mr P. Georgiadis.

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Report on Strategy on Social Protection and Social Integration 2008 - 2010, which was approved by the Plenary Session of 10/7/2008.

<sup>24</sup> Working-meetings with: Gay McDougall, Independent Expert of the UN on Minority Issues (Sep. 2008), CPT delegation (Aug. 2005), joint conference on issues of racism with the ECRI (18 November 2004), a series of meetings with the Council of Europe Commissioner for Human Rights and/or with representatives of his office.

Amongst the members of the NCHR, the Ombudsman, by virtue of his mandate, and particularly with his new competence (by virtue of Law 3304/2005) as Agency for the Promotion of the Principle of Equal Treatment, has substantive contact with and understanding of the problems of Roma and of the obstacles as regards the management and resolution thereof. Aspects of his experience in the investigation of individual cases, via performing *in situ* inspections and undertaking, as of 2005, of a "composite action for the improvement of housing condition of Roma", appear in a series of his findings, in the Authority's annual reports, in the special report (2004) of the Human Rights Section on 'Disciplinary/administrative investigation of complaints against police', and in the published conclusions of the December 2007 European Working-Meeting, co-organised with the Office of the Commissioner for Human Rights of the Council of Europe, on the elimination of the social exclusion of Roma. An inter-sectional team on Roma issues operates within the Ombudsman's Office, while a network of exchange of information with agencies and civil society unions active in the protection of Roma rights has been set up.

***Definitions and basic field data about the Roma in Greece***<sup>25</sup>

The Roma who live in Europe do not constitute a homogeneous group, but a mosaic of populations, while a variety of names are given to them in different countries: Tsingani in Greece<sup>26</sup> (but also 'Katsiveli' in villages in Northern Greece, from the medieval Italian 'cattivello'), Gitanos in Spain, Ciganos in Portugal, Cale, Gitans, Tsiganes or Manouches in France, Kaale in Finland, Sinti and Zigeuner in Germany, Zingari in Italy, Roma in a number of countries in south-eastern Europe, etc. The Gypsies refer to the non-Gypsies as Balamé or Gatzé, which signifies the 'other race', i.e., the non-Gypsies.

The beginning of their migration is dated to circa the 11th century AD. The basis on which it is believed that they originally came from Northern India is linguistic: it has been found that Romani or Romanes idiom (which takes the form of at least 20 dialects and more than 60

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<sup>25</sup> For a collection of various academic approaches providing stimuli for thinking on the Roma of Greece, see the volume published by the Hellenic Ethnology Society: 'The Roma in Greece [in Greek]', Athens 2002.

<sup>26</sup> It is conjectured - but without scientific certainty - that the term derives from a heretical group in the Byzantine world who were called 'Athingani' - 'untouchable' - variations on which were to be used in many countries. According to another version of the theory, this comes from the negative prefix 'a-' and the verb 'thingano' (touch), that is = 'untouchable'.



idioms, and is not a written language, but is primarily used as a code of communication not understood by non-Gypsies) resembles to other linguistic forms of that region in morphology and vocabulary. During the course of their migration, these groups of Roma/Gypsies encountered other 'Travellers', of indigenous European origin - Quinquis in Spain and Portugal, Tinklers/Tynkers or Travellers in Ireland and England, Jenische in Germany, Omsreifere in Scandinavia, etc. Their relations with the Roma/Gypsies are not entirely clear, but they have also adapted themselves to the wandering life for various reasons, such as poverty, wars, etc.

In the administrative and political instruments of the countries where Roma groups are present, various terms and paraphrases reflecting the State policy are used. In France, the periphrasis 'Personnes d' origine nomade' (persons of nomadic origin) was used up to 1972, while today it has been replaced by the term 'Roms et Gens de Voyage' (Rom and Travellers), a term based on the *habitus* of the individuals, which also includes the groups of non-Indian origin, and free of negative or cultural associations - in accordance with the 'sacro-sainte laïcité' of French democracy.

The term 'Gypsy' is not generally regarded as derogatory, but it involves negative connotations in certain European countries, such as Germany. As far as Greece is concerned, this seems to be an acceptable term for most groups, whereas the term 'Rom' and/or 'Roma' (which means 'man' in Romani) is increasingly used in the "politically correct" discourse, as it has the advantage of differentiation from terms imposed by the non-Roma. It is a term corresponding more to the will of the Gypsy groups of Central and Eastern Europe (constituting approximately 70% of the total Gypsy population in Europe), and it has been used by the international organisations, particularly in the last 20 years. In the present report, both terms are used interchangeably, as they are familiar to and acceptable by the groups present in Greece.

In Greece, the Gypsy presence is traced back in c. the 14th century, while after the Asia Minor Disaster (1922), there has been a major migratory wave of Gypsies coming to Greece from Constantinople and Smyrna regions. It should be noted that Greek nationality was given to Gypsies living in Greek territory in 1955 by Legislative Decree 3370/1955. This remained in effect a dead letter until 1979, when new statutory regulations attempted to settle the issue of the nationality of the Gypsies. A considerable concentration of Gypsy population is observed in various areas of Attica and Thessaloniki, in the Western

Peloponnese, in Thrace, in Chios and Lesvos islands, and in a number of cities in the rest of the country's geographical divisions.

It is extremely difficult to calculate the exact number of Roma in Greece -and elsewhere - as there is no systematic way of collecting data regarding ethnic identity (the last census recording racial origin or mother tongue was that of 1951, and in that, the Gypsy population amounted to 7,429 persons). Conservative estimates speak of approximately 250,000 individuals of Gypsy origin, with clear tendency to becoming sedentarised, whereas the degree of their sedentarisation is closely linked to their labour needs. It should be noted that a significant number of newly-arrived Gypsies, originating mainly from Albania and the countries of former Yugoslavia, has been added to the overall Gypsy population. The residence of these newly arrived Gypsies in Greece goes relatively unimpeded, as the public authorities tend to avoid addressing the problems of this particular group. Nevertheless, it should be noted that frictions between them and the indigenous Gypsies are observed. In any event, insufficient light has been cast upon these differentiations within the Gypsy population, as high demographic rates, relatively high geographical mobility of the Gypsy population, and the de facto problem of registration of Roma in civil registers, make difficult any attempts at census-taking, on top of causing problems in many other areas –such as transactions with public authorities.

***Routes of identity: 'Gypsy' identity, or composite identity?***

From the time of their appearance in Europe, until very recently, the Gypsies were perceived by politicians and the intelligentsia in two diametrically opposed ways: the dominant state approach veered between persecution (or elimination), assimilatory policies, regulated control and toleration of Gypsy groups, whereas intellectuals (particularly under the ideological horizon of 19th century's Romanticism) frequently developed a discourse stressing the exoticism of the Gypsies as a kind of 'familiar aliens', who live *next to us, but not with us*. Attitudes, preferences, practices and behaviours of the Gypsies were interpreted as expressions of a unified 'Gypsy culture': the Gypsies are 'by their nature' wanderers and nomads,<sup>27</sup> are gifted with 'second sight', etc. It should be noted, however,

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<sup>27</sup> For a comprehensive study of the mobility, territoriality, and of the ways of settlement, sedentarisation, and migration of Gypsy groups, see Efi Karathanasi, *The dwelling of the Gypsies: the bio-space and the socio-space of the Gypsies* [in Greek]', publ. Gutenberg, Library of Social Science and Social Policy, Athens 2000.

that as regards the Gypsies' qualities, they are ascribed mostly negative ones, that is, those which non-Gypsies would not ascribe to themselves.

A third approach, originating in the sphere of social sciences, began to be articulated in the 70's. This approach was proposing a new way of looking at majority-minority social relations, and examined the defining characteristics of the Gypsies as a causal function of relations and interactions with the majority population. The research is directed to the examination of the characteristics of the Gypsies, either as a development of a kind of counter behaviour to the norms of the majority, or as a survival strategy (resilience) and interaction of Gypsies with the socio-economic parameters of the society of the majority, or as a combination of both the above. More recent approaches are adopting a rights' discourse (human rights, the right of social inclusion and participation), stressing the necessity, on the one hand, of Gypsies' participation in the shaping of the policies concerning them, and, on the other, of statutory guarantees for the adoption and implementation of positive measures in view of eliminating inequalities.

The dynamics of the evolution of Gypsy identity<sup>28</sup> and of the Gypsy self-perception in Greece seems to be differentiated from that in the rest of Europe to a certain extent. This difference is important as it determines the ideological basis on which the Gypsy communities lay claim to their rights and define their strategies/tactics. In the case of a *de jure* minority, its members are subject to special statutory regulations as to their rights and obligations; whereas in the case of a *de facto* minority, its members are not entitled to, or do not desire, to make reference to the minority status.<sup>29</sup>

While most Roma groups in Europe seem to line up with the minority approach, and, consequently, use its conceptual framework in their search for rights<sup>30</sup> (almost all

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<sup>28</sup> See in this connection: E. Papataxiarchis, 'Concerning the cultural construct of identity', in *Concerning Constructs, Topics II* [in Greek], Society for the Humanities' Study, publ. Nisos, Athens 1996, pp. 197 - 219.

<sup>29</sup> In the contemporary approach governing the minorities' law, the so-called subjective approach has been adopted: this means that, *inter alia*, a decisive factor for the recognition of a group as a minority is its expressed will to be perceived as such.

<sup>30</sup> For a line of thought as regards the legal definition of the concept of a 'minority', see L-A. Sicilianos - E. Bredimas (eds.), ' *The protection of minorities. The Framework-Convention of the Council of Europe* [in Greek]', publ. Sakkoulas, Athens-Komotini 1997. Also, for a pragmatic and critical scientific review of the minority phenomenon, see Tsitselikis K.,

intergovernmental and non-governmental organisations refer to the Gypsies as the "biggest minority in Europe"), many of the Gypsy collectivities in Greece state<sup>31</sup> that they prefer a claimant platform on the basis of 'vulnerable' group.<sup>32</sup> Their quest for recognition, acceptance and equality is pursued not on the basis of ethnic differentiation, but on that of ethnic 'likeness with particularities'. They compare themselves with other groups with a 'multiple' identity (e.g., Vlachs, Black Sea Greeks, Arvanites), and they underline their readiness to fulfill their obligations towards the state (fulfillment of military obligations, Gypsy victims of the German Occupation<sup>33</sup>, etc.).

This choice seems to stem either from the actual marginalisation of the group as a result of socio-economic mechanisms that perpetuate particularity,<sup>34</sup> or from a reservation over the usefulness of adopting 'minority' terms (due to the stigmatisation in the use of the term in the Greek context and administrative practice).

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Christopoulos D. (ed.), *The minority phenomenon in Greece* [in Greek], publ. Minority Groups Research Centre, 1997.

<sup>31</sup> See published *Declaration of Self-Determination* at the 3rd Panhellenic Conference of the Panhellenic Federation of Greek Roma Associations, Thessaloniki 28/4/2001: "*We, the Greek Gypsies, declare categorically and in every direction that we are an indissolubly united part of Hellenism and any other type of reasoning and approach by whomsoever expressed will meet with our opposition*".

<sup>32</sup> For an analysis of the exclusion-on-a-minority-basis v. exclusion-on-a-socio-political- basis, see Aiki Vaxevanoglou, *Greek Gypsies, Marginalised and Patres Familias* [in Greek], publ. Alexandria, Athens 2001.

<sup>33</sup> The Gypsies speak proudly of the bust of Vasilis Mitros, 'Capetan Gyftos', erected a few years ago in the town of Kymi. With regard to the recognition of the Gypsy victims of the Holocaust, it is debated, even beyond the frontiers of Greece, whether it was based on racial hatred or whether it was due to their delinquent activities. This rather disturbing 'competition' of the extent of victimization, reflects the small leverage which the Gypsies exert over the decision-making circles and policy centres.

<sup>34</sup> This is an option adopting an analysis of the social inequalities on the basis of "class", and rejecting the 'post-Marxist' and postmodern concept of perpetual differentness, as a conscious choice. See in this connection: C. Katsikas, Eva Politou, *The Rejected Other: Gypsies, members of minorities, the repatriated, and aliens in Greek education* [in Greek], publ. Gutenberg, Athens 1999.

At times, the desire of belonging to Greece is exaggerated (e.g. it is argued that the Gypsy groups are of ancient Greek descent), and this may arise from the –unconscious- realisation that, in Greece, citizenship is based on the *jus sanguinis* principle and shared descent, and not upon a 'civic' Greekness. Such a non-civic Greekness, in conjunction with the ideological construct of the cultural supremacy of the Greeks, and of Greece - as the foundation of European civilisation - has rendered the 'otherness' and/or minority status rather problematic.

The majority of the non-Roma Greeks perceives Roma as 'problematic' and considers that their non successful integration is the result of their own culture and attitude. This is corroborated by the fact that once a Gypsy achieves its integration to the society (on the basis of a series of indicators, e.g., steady job and settlement, inclusion in social security schemes, etc), he automatically stops being perceived as Gypsy by the non-Gypsies. At the other end, the Gypsy perceives himself rather as a neglected and, therefore, marginalised member of the Greek family than as a member of a 'minority' within the majority. This is why the Greek Roma criticize the -in their view- greater effort of the Greek State to address the problems of aliens (including those of Roma descent), while it still neglects 'its own' poor and marginalised Gypsies.

In any event, from the point of view of the NCHR, neither presumption of 'Greekness', nor that of 'Gypsiness' is required for the defense of the Gypsies' rights. The 'otherness'<sup>35</sup> of the Gypsies is of importance to the extent that it constitutes the major reason for social exclusion. The Commission neither adopts, *en bloc*, nor rejects the 'ethnic' platform for claims, and is fully aware of the dynamics and complexity of the shaping of composite identities in contemporary societies. Thus, the NCHR proposes a 'definition' not of 'Gypsiness', but rather of the subjects entitled to benefit from a series of positive measures on the part of the state and the society; measures which aim at eliminating their disadvantaged position and their exclusion from the society and at ensuring their access to the mechanisms of production and distribution of goods within the state.

### ***The case of the Muslim Gypsies of Thrace***

During the 1980s, a part of the Muslim Gypsies of Thrace were incited to migrate primarily to the Prefecture of Attica (Gazi, Kolonos, Votanikos, Keramikos, Lavrio) as manual workers

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<sup>35</sup> For a line of thinking in connection with the conditions on which otherness becomes 'of interest', see D. Christopoulos, *Otherness as a power relation: Aspects of the Greek, Balkan and European experience* [in Greek], publ. KEMO, 2002.

in high-risk sectors. The process by which Muslim Gypsies determine their own identity is of a more complex character than is the case of other groups. The residents of the old settlements define themselves as Turks. Only the formerly itinerant groups are self-defined as 'Gyfti' or 'Gioufti' ('Athingani' for the Greek side); they retain Romani as their mother tongue, and they reject the use of the derogatory Turkish word '*çingene*' for themselves. In the last 15 years, considerable numbers of the formerly itinerant groups tend to abandon Gypsy cultural characteristics and the Romani idiom, in an attempt to avoid the stigma accompanying the 'Gypsy identity'. Some Gypsy groups use religion as the basis of their self-identification ('Muslims'), without necessarily observing the Muslim rituals in full.

In recent years, the Greek State has emphasized the division of the minority of Thrace into three constituents: the persons of Turkish origin, the Pomaks, and the smaller group of the Athingani/Roma. The Greekness of the Gypsy constituent is somewhat over-emphasized, within the context of a generalized effort to avoid the absorption of the Pomaks and Gypsies by the constituent of Turkish origin. However, the actual link connecting the constituents within the minority is their common expectations of their inclusion and participation in the society to which they belong.<sup>36</sup>

### ***On the edge of the city***

The Gypsies usually settle on vacant sites owned by the state, municipalities, or other legal persons of public law, and more rarely on private land, with the tolerance or indifference of the owners, or because of the inability of the latter to enforce judicial measures. When an urban development plan for the aforementioned sites comes forward-either for a public purpose or following pressures from the local population-, the mechanisms of compulsory removal are activated, taking the form of forced eviction (issuing of protocols of administration eviction), or of tearing down the constructions ('cleaning-up' operations). Access to water, electricity, garbage removal, drainage, etc. are totally defective, if present at all. This is the context where exclusion is built up, and where the possibility of peaceful co-existence of the communities is subverted. Thus, the Roma encampments and/or settlements, in conjunction with the inequalities in income distribution, and the other

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<sup>36</sup> See Troubeta S., *Fabricated identities for the Muslims of Thrace* [in Greek], publ. Kritiki, 2001, and Avramopoulou E., Karakatsanis L., *Routes of identity: from Western Thrace to Gazi*, Athens 2001, at [www.kemo.gr](http://www.kemo.gr).

deficiencies of the Greek welfare State and public planning, are transformed into areas of acute tension between those living there and those in the vicinity.

The Roma community is not fully familiar with private ownership (possession, disposal, ownership). Settling in private sites or public areas does not, a priori, take place with the intention of exercising control over them: what Property Law interprets as a violation of the right to property, could be described as '*diakratesis*', i.e. where there is no will or intention to act as owner.<sup>37</sup> In addition, competitiveness in the economic field intensifies the contrast between two systems of management of space: the one (that of Roma) which is based on 'quasi-possession' and the group, and the other which is based on ownership and the individual; thus, the obstacles to the use of land by Roma groups are intensified.

The Gypsies settlement on the property of others is the main factor for the persecution which they undergo; moreover, the observed tendency to become sedentary is often undermined by the local reactions and the discontinuity of public policies. Because of their functional illiteracy and the negative prejudice of the authorities, they are more confused by bureaucratic procedures than non-Gypsies are. Being unfamiliar with the real estate market, when they buy land (thanks to the housing loans, within the framework of the Integrated Action Programme, a considerable number of Gypsies have bought land and/or houses), it is often either not suitable for building, or falling outside the town plan. Thus, they put up makeshift constructions or build houses, only to have them knocked down by the demolition squads; typically, the Roma illegal constructions are demolished in a more frequent fashion than in the case of the illegal constructions of non-Roma.

Having been for centuries the target of various forms of aggressiveness, the Gypsies have developed noteworthy *survival strategies*,<sup>38</sup> including exercising economic functions<sup>39</sup> that

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<sup>37</sup> A term used by A. Georgiadis - M. Stathopoulos for the act which is marked by physical exercise of power over something, but is not governed by the will that this should come into the ownership of the possessor: see *Civil Code* [in Greek], A. Georgiadis - M. Stathopoulos, p. 219. On the territoriality of the Gypsy groups as compared with that of the ambient community, see Efi Karathanasi, *op. cit.*, pp. 243 - 281.

<sup>38</sup> See on the modes of social organisation of the Roma: Kathryn Kozaitis, 'Aliens Among Foreigners: Social Organization Among the Roma of Athens', in *Urban Anthropology*, Vol. 26 (2), 1997, pp. 165 - 199.

often call for circumstantial changes of location. In the process of their gradual sedenterisation and urbanisation, they frequently face the hostility of local communities and the ineffective way in which their problems are managed by the State. By extension, they adopt behaviours of introversion and resistance to influences from outside the group, since the former threaten the cohesion of the latter, thus, perpetuating their marginalisation. A still prevalent foundational feature of their social organisation is the *extended patriarchal family*, with all that this entails in terms of power relations within the family life cycle. Gypsy women, within their own social group, are the victims of multiple discrimination to a much greater extent than men, and the violations of their fundamental rights within the context of the group and outside of it are particularly marked.<sup>40</sup> The networks of support and interdependence within the Gypsy community are still strong. The choice of self-employment and that of mobility is connected with the exceptionally limited range of opportunities available to Gypsies. It is also connected with the efforts they make to be less dependent upon those who reject them, through the feeling of security when being employed in the 'family business'. In addition, the delinquency associated with drug trafficking and use observed in certain Roma settlements and encampments, complicates further the internal hierarchies and power relations and compromises smooth co-existence with the vicinity.

Parents see their children as "extra labour" available, whereas economic and emotional dependence on the family and the broader Gypsy environment is very powerful. Functional illiteracy and lack of connection with the State institutions and functions is quasi generalised, and communication with the non-Gypsy environment is very restricted. A conflict with the paternal family, the clan, or the community, in the name of certain alien ideals or practices, would result in the loss of their sole *support asset*.

***Protection framework; findings of International Bodies, convictions of Greece by international jurisdictional mechanisms***

The major international instruments binding upon Greece form a complex of principles and rules constituting a framework of reference for the defense of Roma rights (primarily the

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<sup>39</sup> See Lila Leontidou: *Cities of Silence: Workers' settlement in Athens and Piraeus* [in Greek], publ. ETBA, Athens 1989.

<sup>40</sup> This is also stressed in the comments of international organs and commissions, such as CEDAW and the HRC, on Greece, in which they request that the country takes measures for their elimination.



provisions protecting the family, the free development of the personality, the personal dignity, and non-subjection to discrimination): ICCPR, ICESCR, CEDAW, CERD, CRC, CAT, European Convention on Human Rights, European Social Charter. In the domestic protection framework, Article 21 of the Constitution is the principal foundation for measures in favour of the housing rehabilitation of Roma,<sup>41</sup> while other social policies can find their grounding in the same article and/or in Articles 4, 5, 7, and 16. Law 3304/2005 on the 'implementation of the principle of equal treatment irrespective of racial or ethnic origin, religious or other affiliations, disability, age or sexual orientation' completes the legal protection framework.

The regulatory framework of the international instruments is reinforced by the action of a number of international organisations, and by a system of organs and mechanisms for the monitoring of their implementation with increased jurisdictional powers. In recent years, Greece has been convicted six times for violations of Roma rights: four from the European Court of Human Rights<sup>42</sup>, one from the European Committee of Social Rights<sup>43</sup> (Council of

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<sup>41</sup> According to which, "the acquisition of a home by the homeless or those inadequately sheltered shall constitute an object of special state care". In addition, the provisions of the revised Code of Municipalities and Prefectures (Law 3463/2006), and at an earlier date, Article 19 of Law 2946/2001, constitute legal foundations.

<sup>42</sup> Bekos-Koutropoulos, Judgement 13/12/2005: three violations, two of Articles 3 (abuse by the police and absence of effective investigation) and 14 (failure to investigate a racist motive). Karayannopoulos, Judgement 21/6/2007, two violations of Article 2 (injury by the police resulted to permanent handicap and absence of effective investigation). Petropoulou-Tsakiri, Judgement 6/12/2007, violation of Articles 3 (absence of effective investigation into abuse by the police) and 14 (failure to investigate a racist motive and racist behaviour). Sampanis *et al.*, Judgement 5/6/2008, violation of Article 14 (treatment involving discrimination), in conjunction with Article 2 of the 1st Protocol (right to education), and Article 13 (absence of the possibility of real recourse). This was the notorious case of the segregation of Roma children at a school at Aspropyrgos.

<sup>43</sup> Collective complaint (No. 15/2003), European Roma Rights Centre & Greek Helsinki Monitor, Decision 7/2/2005. Three violations of Article 16 of the European Social Charter (inadequacy of available permanent housing, lack of facilities for temporary shelter, and forcible eviction).

Europe), and one from the Commission on Human Rights of the United Nations.<sup>44</sup> Furthermore, the European Committee of Social Rights of the Council of Europe has admitted the collective complaint (28/3/2008) of the International Centre for the Legal Protection of Human Rights over issues of forced evictions without the provision of alternative housing, and the absence of means of substantive protection; emphasis is put on the failure of Greece to act along the lines indicated by the previous decision over the collective complaint of the European Roma Rights Centre (see footnote 25). Furthermore, the concluding observations of CEDAW<sup>45</sup> on the sixth periodical report on Greece speak of a system of multiple discrimination regarding access to education, medical treatment, and employment in the case of Roma women, and call upon Greece to take positive measures to deal with the matter. The CAT,<sup>46</sup> in its recommendations after the examination of Greece's fourth periodic report, speaks of ill-treatment by police officers during the course of forced eviction operations, and calls upon Greece to take measures to stop these phenomena and to punish those responsible. The CERD<sup>47</sup> proposes the adoption of positive measures and policies, more particularly to ensure access by disadvantaged populations (including the Roma) to specialised training programmes. The CRC,<sup>48</sup> in its concluding comments, expresses its dissatisfaction at the very poor health and education of Roma children, and recommends closer collaboration with NGOs specialised in children's rights, as well as the reinforcement of an understanding of the Convention itself by Roma children; moreover it recommends that the settling of matters pending with the state and municipalities concerning Roma children should be facilitated, that the allowances scheme to families with children of school age is improved, and, more generally, it recommends the adoption of positive measures as to all aspects of the exclusion of Roma children, with emphasis on street children, and of an improvement in the system of social benefits and policies, with the participation of the

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<sup>44</sup> Communication 1486/2006 by Andreas Kalamiotis against Greece, Views of the Human Rights Committee of 24 July 2008: Violation of Article 2, para. 3 (right to effective legal remedy and compensation) in conjunction with Article 7 (prohibition of torture) of the ICCPR. The case concerned the lack of effective investigation on the alleged use of force by police officers; the Commission held that besides the satisfactory compensation of the victim, Greece should take measures so as to avoid similar violations in the future.

<sup>45</sup> See CEDAW/C/GRC/CO/6, 2 February 2007.

<sup>46</sup> CAT/C/CR/33/2, 10 Dec. 2004.

<sup>47</sup> CERD, A/56/18/2001.

<sup>48</sup> CRC/C/114(2002), 1 Feb. 2002.

Roma themselves in the formulation of the latter. The CESCR<sup>49</sup> expresses its grave concern over continuing discrimination against the Roma at the level of social rights, in spite of the measures taken (within the framework of the Integrated Plan of Action), over the evictions and all the problems in connection with the housing situation, over the low standard of education and health, the ill-treatment by the police with effective impunity, etc. It also recommends a more exact assessment of the actual needs, the participation of the Roma in the formulation of programmes, and the evaluation of the effectiveness of the measures taken. The CCPR,<sup>50</sup> for its part, expresses grave concern over the instances of the use of unjustified violence on Roma by the police, the failure to adequately investigate these occurrences, and the leniency of judges in the few cases which have reached the courts, resulting in a status of effective impunity. The ECRI (European Commission against Racism and Intolerance), in its third report on Greece,<sup>51</sup> refers to the problem of integration of Roma children into the educational process, and recommends the intensification of efforts to eliminate direct and indirect discrimination. In 2001, in the lengthy report<sup>52</sup> drawn up by a delegation of the Council of Europe which visited Greece with the special mission of examining the situation of the Roma, emphasis is laid on the problems of housing, living conditions and education, while the issue of the multiple discrimination of Roma women is underlined. The former Human Rights Commissioner of the Council of Europe, Alvaro Gil Robles, in his 2006 report to the Committee of Ministers and the Parliamentary Assembly 'on the status of the human rights of the Roma, Sinti and Travellers in Europe'<sup>53</sup>, refers to the problem of non-absorption of funds for the improvement of living conditions in Roma encampments due to the unwillingness of the municipalities, lack of transparency and mismanagement of funds. The present Human Rights Commissioner of the Council of Europe, Thomas Hammarberg, and/or staff of his office have repeatedly visited encampments in different parts of the country, and made recommendations on the same issues and in the same spirit. In October 2007, the Commissioner and the UN Special Rapporteur on the Right to Adequate Housing, Miloon Kothari,<sup>54</sup> issued a joint statement

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<sup>49</sup> E/C.12/1/Add.97, 7 June 2004.

<sup>50</sup> CCPR/CO/83/GRC, 25 April 2005.

<sup>51</sup> ECRI (2004)24, 8/6/2004.

<sup>52</sup> Report on the Field Visit of a Delegation of the CoE in Greece on Roma Issues, June 2001, Directorate General III - Social Cohesion.

<sup>53</sup> CommDH(2006)1, 15 February 2006.

<sup>54</sup> CommDH/Speech (2007)16 at [www.coe.int](http://www.coe.int). Also, UN Document A/HRC/4/18.

addressed to the European governments, calling upon them to take positive measures on the right to housing of Roma in Europe. In conclusion: all the institutions/organisations without exception stress the need to take positive measures to counter discrimination, the inadequacy of the State response, and the need for credible and comprehensive investigation of the alleged cases of abuse and probable racist motives on the part of the police.

At the level of EU institutions and initiatives, and on the part of civil society at a European level, a large number of initiatives on Roma issues have been taken. Various studies show that few countries in Europe manage to absorb sufficient Community resources available from the structural funds that could be used for the improvement of the situation of Roma populations. It is worth noting that Greece absorbed in the period 2000 - 2005 only 28.7 million euro (from EQUAL, the European Social Fund/ESF, and the European Regional Development Fund/ERDF).

In May 2004, the EU Network of Independent Experts in Fundamental Rights, in its report on the state of fundamental rights in Europe, called upon the Union to produce a Directive aiming at the integration of the Roma. On the more specific issue of education, in April 2006, the EUMC (the predecessor of the FRA, i.e., of the Fundamental Rights Agency) made public a comprehensive report<sup>55</sup> on the access of the Roma to education in the countries of the EU, the findings of which were discouraging. The research of the EUMC as a whole has demonstrated that the Roma are the most vulnerable group in terms of manifestations of racism in the whole of Europe.

In March 2008, the *European Roma Policy Coalition* was formed. Within this body, eight major European NGOs work together on the creation of a unified *European Framework Strategy for the Integration of the Roma*. The starting-point for this joint action was the important Resolution by the European Parliament (adopted on 31/1/2008) on a *European Strategy for the Roma*. In this, the European Parliament called upon the Commission to submit to the Council a progress report on the formulation of such strategy before the end of 2008. It also urged the Fundamental Rights Agency of the EU to include 'tsiganophobia' among the priority issues in its working-programme, and favoured a 'bottom-up' approach to the issue, through collaboration with the Roma themselves. A little earlier (on 14/12/2007), the European Council had called upon "the member -states and the Union to use every means to improve the degree of integration [of the Roma], and the Commission to examine existing policies and to submit a progress report by the end of June 2008". In

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<sup>55</sup> 'Roma and the Travellers in Public Education', 2006, [www.fra.europa.eu](http://www.fra.europa.eu)

January 2008, on the initiative of Spain, an *Inter-governmental European Network* was set up in Seville, consisting of 12 member-countries (including Greece), with a view to improve the utilization of the Structural Funds' resources (the latter being the main financing source for the social cohesion programmes). The third meeting of the managing committee of this Network was held in Lesvos on 2 and 3/10/2008. At the EU level, and on the initiative of the European Commission, on 16/9/2008 a summit meeting on the improvement of the position of the Roma communities throughout Europe was held in Brussels.<sup>56</sup> The meeting was attended by ministers of the member-states of the EU and candidate countries for membership, as well as representatives of the Open Society Institute, the World Bank, Roma unions, and two Roma members of the European Parliament (from Hungary). The working document of the meeting notes the means and policies available at the EU level for the promotion of Roma inclusion, as well as the major differences as to their implementation in the member-states. The document makes reference to the *medical-social centres* operating in Greece (funded with 100,000 euro per annum by the European Social Fund) as a *good practice*. The Greek Ombudsman participated in the meeting.

In terms of actions of the NHRIs, the Greek NCHR (and the Ombudsman, as the National Body for the Promotion of the Principle of Equal Treatment) are not alone in their efforts against the social exclusion of Roma in Europe. By way of example, we note the recent report on Roma by the French National Human Rights Commission, and the special notes on Roma issues by the Ombudsmen of Spain and Portugal.<sup>57</sup>

***The Integrated Action Plan for the Social Inclusion of Greek Roma (IAP): a review***

At the request of the NCHR to the Interior Ministry's representative within the Commission, the most recent note of review (Sept. 2008) on the IAP (adopted in 2001 and put into action in 2002, succeeding the National Policy and Measures for the Greek Gypsies Framework of 1996) and the Housing Loans Programme, was sent to the Commission. In addition, information on educational actions in schools and other educational and vocational training

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<sup>56</sup> [IP/08/1072](#), [MEMO/08/462](#). Commission Staff Working Document: Community Instruments and Policies for Roma Inclusion, COM(2008)420, Brussels, SEC(2008)XXX.

<sup>57</sup> See 'Étude et propositions sur la situation des Roms et des Gens du Voyage en France', 7/2/2008, [www.cncdh.fr](http://www.cncdh.fr), 'The Portuguese Ombudsman - Roma related activities 04-07', [www.provedor-jus.pt](http://www.provedor-jus.pt), 'Issues Concerning Roma population at the Ombudsman of Spain', [www.defensordelpueblo.es](http://www.defensordelpueblo.es).

programmes involving Roma are also contained in the report of activities of the Ministry of Education to the NCHR for the year 2007.<sup>58</sup>

The IAP is part of the National Action Plan for the social inclusion of vulnerable groups of the population; the Deputy Minister of the Interior is responsible for the monitoring and coordination of the programme within the context of the Inter-Ministerial Committee, where all the jointly-responsible ministries sit. It has two pivotal priorities: the *infrastructures* (addressing the rehabilitation of the Roma in terms of housing), and the *services*, in the fields of education, health, employment, culture, and sport.

The Housing Loans Programme involves the granting of 9,000 housing loans of a sum of 60,000 euro each, with a subsidised interest rate and the guarantee of the Greek State (should they become actionable). The programme also provides for other infrastructure works (e.g., water supply, drainage, etc. projects) carried out by local government with state funding. According to the note of review mentioned above, the programme is under constant review, and its latest version (Joint Ministerial Decision 33165/23-06-06) provides for the "consideration of social criteria of assessment", the setting up of assessment committees at the local level including Roma representatives and social workers, the involvement of local government in the actions, the simplification of the procedures for the submission of applications, and a strict monitoring of the loans' granting procedures; in 2005, the existing data base was updated, and new tools for a more effective management of the loans have been added. However, given that more than 80% of the total sum has already been drawn down, even if these adjustments were observed to the letter, they have come somewhat belatedly. In a self-critical mood, the note of review observes that "... The State funding of the programme might make Roma place total reliance on state support", and notes the need for an increased sense of responsibility on the part of the Roma representatives.

Another aspect of the infrastructure part of the programme is the "*Construction of settlements and/or purchase of sites for the construction of individual housing carried out by the municipalities, on public, municipal, or communal land to Greek Roma included in the loans programme*". This action falls within the competences of the municipalities and the communes. There is provision for "*the possibility of purchase of land -by the Local Government Organisations with the funding support of the Ministry of the Interior- for re-settlement, or improvement of the housing situation in areas with acute problems*" (such action has occurred - at a cost of 5.76 m. euro - in 18 local government authorities), "*the*

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<sup>58</sup> See NCHR Annual Report 2007.

*construction of basic infrastructures (water supply, drainage, electric lighting, road works, children's playgrounds) in new settlements".* Also provided for is *"the construction of permanent settlements"*. The results of this part of the actions on housing seems rather modest (some 230 dwellings have been constructed in total), according to the figures quoted in the Ministry's note.

The third action on housing is the *"improvement of the living conditions in existing settlements until such time as a viable solution of permanent housing rehabilitation is achieved"*, that is, re-settlement of temporary settlements, setting up of temporary settlements (557 prefabricated dwellings up to now), construction of basic infrastructures in existing settlements, construction of health infrastructures (30 medical-social centres and three mobile medical-social units). There is also provision for the *"construction of cultural and educational infrastructures"*. This part of the programme also seems to have had meagre results. However, according to all accounts and evaluations the operation of the medical-social centres is very satisfactory and constitutes a good practice. In order to obtain funding, the local government bodies have to submit proposals assessed by a committee where the central administration, the local government and the Roma communities are represented. So far, such projects have been approved in 92 municipalities, with a budget of 80.54 m. euro in total; 42.20 m. euro have already been paid.

On the services part of the programme, educational activities are provided for by the Ministry of Education and Religious Affairs, aiming at the inclusion of Roma children in the educational system: facilitating school registration, providing a "travelling pupils card" and some financial support to the pupils' families, creating a network of mediators, in-service training of teachers and administrative staff - sensitisation of public opinion, and the production and publication of special teaching material for pupils and teachers. The first phase of the 'Inclusion of Roma Children in the School' programme has been completed, and has been put up for tender again. In the last three years, it has been implemented by the University of Thessaly, and had a budget of 5,307,351 euro; it includes 170 'intervention schools' (support classes, creative workshops, in-service training of teachers and administrative staff), and 170 'monitoring schools'. There is information on the number (8,065) of pupils registered at the intervention schools in the school year 2006 - 2007, but there is no information as to how many of these have completed the school year. In addition, according to the report of activities, various actions in the sphere of education, training and continuous education addressed to Roma citizens are being implemented.

In the field of health (Ministry of Health and Social Solidarity), there is provision for preventive health and vaccination programmes carried out by means of mobile medical-

social units visiting the encampments, and medical-social centres targeting Roma who live in organised settlements. In the field of employment (Ministry of Employment and Social Solidarity), the note of review states that "programmes of integrated interventions for socially vulnerable groups of the population are being implemented", and that "projects are also being implemented within the framework of the European Programme 'Equal'". As regards culture and sport (Ministry of Culture), it is reported that the Ilio 'Mouseioskevi' Cross-cultural Workshop is in operation, its object being the Gypsy culture; visits by Roma pupils to museums and theatre performances, 26 'houses of culture' in 13 municipalities, and participation in team sport programmes. There is reference to the operation of the ROM Inter-municipal Network, where take part municipalities with Roma communities and Roma representatives; the network successfully collaborates with the central administration, local agencies, NGOs, etc. The note of review concludes with the statement that the programme will be evaluated, the data will be updated, and a long-term action plan for its fourth period will be drawn up.

As the Ombudsman aptly notes, in Greece, *an integrated statutory and regulatory framework effectively ensuring the participation of the Roma in social life is, in effect, non-existent* (with the exception of scattered and/or outdated regulations, such as the Public Health Provision of Ministerial Decision No. Γ.Π/23641, OG B' 973/15.07.2003, dealing with the settlement of itinerants). The IAP lacks the legal guarantees which would contain undermining factors, such as inadequate administrative procedures, non-sensitized citizens or civil servants and state organs acting illegally. This deficiency has been identified both by the Roma themselves and by a number of political and administrative decision makers interested in the empowerment of the Roma community.

Along with the need to fill the legal gaps, there exist additional facets of the social exclusion of the Gypsies reflected over and around the housing issue. It is no coincidence that, among the actions on housing which have been designed, the loans programme has advanced furthest (indeed, it is almost completed), in spite of the fact that it applies only to one type of settlement, is costly, and prone to mismanagement. The rest of the actions face the negative stance of the local authorities and communities. The municipalities are very reluctant to attempt any form of registering the Roma residing in and/or passing through their areas; they invoke the fact that any record based on 'racial' criteria is prohibited by law. However, a municipality ought to know the number of, those among its citizens, who are in need of protection and support so that the appropriate action to be planned. This action



should not be based on racial criteria, but on the premise of citizens' equality regarding access to the services provided by the municipality and by other state structures.

### ***Playing hide-and-seek with racism in the school playground***

In the whole of Europe, circa 50% of Roma pupils -with small differentiations from one country to another- do not complete the primary school curriculum, even if registered.<sup>59</sup> Young Roma are out on the streets of the city from an early age, and their socialisation is distorted.

Many studies have dealt with the educational needs of Roma children and large sum of public money has been spent on the design and implementation of special programmes, the production of educational material, and the training of teachers in schools engaged in inter-cultural education. However, these programmes are designed on inadequate demographic data. The Roma do not take part in the decision-making process regarding their children's education, the particular local conditions are not taken into account, there are no mechanisms in place for the monitoring and assessment of the implementation of such programmes, and the co-ordination of the institutions involved is non-sufficient. First and foremost major economic and human resources are required on the part of the state, in order to include the Roma children in the educational process. It is also recommended that terms such as 'race',<sup>60</sup> 'people' and 'minority' are prudently used.

A factor often underestimated is that, even when Roma children are enrolled in school,<sup>61</sup> they will probably have to face the objections of their own family and social environment. The latter may try to discourage the children from attending classes, and go to work instead, contribute to the family income, and remain 'one of them'. In order for Roma children to remain at school, they have to be accepted as such, i.e. be depicted in the books and the

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<sup>59</sup> See 'Roma and Travellers in Public Education: An overview of the situation in the EU Member States', EUMC, 2006.

<sup>60</sup> It is worth drawing attention to the campaign recently initiated by the German Human Rights Institute for the elimination of the use of the term 'race' in public documents, in view of the fact that it is of dubious usefulness in any context of social policies and/or legislative interventions.

<sup>61</sup> It should be noted that in the research carried out in the late '90s by *Ekpaideftiki & Anaptyxiaki SA* in six municipalities in Western Attica where a significant number of Roma resides, **lack of acceptance** was stated as the main problem (among housing, employment, education and lack of acceptance) by the Roma themselves.

curriculum. The school must manage to convince them that, should they complete the class, they will have a better life than if not. On the other hand, Roma parents should also acknowledge the fact that their children's defective education is part of the vicious circle perpetuating their social exclusion. It is essential to recognize that the inclusion of Roma children in the educational process and the rest of the aspects of their social integration are totally interconnected; therefore, *any educational measure to be taken should be part of an overall social policy scheme.*

***Two scheduled actions of the NCHR***

1. The NCHR has scheduled for May 2009 a seminar, to be jointly organised with the Roma Section of the Directorate for Social Cohesion of the Council of Europe, for lawyers and NGOs defending Roma in national and international courts. The goal of the seminar is to turn to account strategic litigation on issues of discrimination and the treatment of Roma in Greece which may contribute to reversing administrative practices and social attitudes.

2. Human rights organisations have repeatedly criticized the police's attitude towards Roma. In addition, Greece has been convicted by international jurisdictional mechanisms on a number of cases, while there are many incidents of alleged abuse of power by the police against Roma. Even when internal and judicial enquiries are initiated, they are rarely concluded, and when so, the perpetrators are hardly ever punished. The widespread prejudice of Greek public opinion and mass media against Roma,<sup>62</sup> do not easily generate protests.

The NCHR, within the framework of setting up an ad hoc working group for the training in human rights of the police force -a proposal accepted by the Minister of Interior-, will propose as a starting point of the cooperation agenda, inter alia, the judgments of the European Court of Human Rights concerning Roma abuse by police. The police itself needs both to acknowledge the problem and accept the findings and recommendations of the domestic and international bodies. Otherwise, no human rights course will be able to prevent cover-up and impunity.

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<sup>62</sup> To recall two recent widely publicized cases which demonstrate the prejudice on the part of the media and society at large: the first, concerning two Roma children who were found dead after the parents were first incriminated for selling them; and the second, concerning a little Roma girl who had the misfortune to resemble a little Italian girl who had gone missing, so that it was rumoured that she was the missing girl that had been kidnapped by the Roma, whereas in the end it proved that this was not the case at all.

***An effective policy vis-à-vis the Roma: Recommendations of the NCHR to the Greek state***

In the light of the aforementioned, the NCHR submits a number of recommendations aiming at eliminating the social exclusion of Roma:

1. The Commission underlines the ***urgency*** for taking measures and shaping comprehensive policies in a ***holistic manner***. Conditions in the field leave no room for further negligence, inertia, or ineffective interventions.<sup>63</sup>
2. The Greek State needs to change the way in which it apprehends and responds to the repeated recommendations of all domestic and international bodies dealing with Roma. ***Execution of the judgments*** of the European Court for Human Rights and ***compliance with the observations*** of other jurisdictional organs ***are an obligation, and not an option***.
3. Policies should be based on ***systematic needs assessment and collection of data of their beneficiaries***. Particular attention should be paid to the method of data collection and use in order to prevent any potential abuse thereof. Guarantees such as confidentiality, consent of the subject, credibility of the bodies and individuals collecting the data and monitoring mechanisms are necessary.<sup>64</sup>
4. Addressing the social exclusion of the Roma must be a ***priority of both the policy makers and the police***.
5. Policies and measures should aim at providing substantive support to the group, but the ultimate aim is ***mainstreaming of the policies*** concerning Roma. ***Participation of the Roma in the decision-making is essential***.
6. ***Gender perspective*** must be an essential component of all policies, in order to address the phenomenon of multiple discrimination of women both within the group, and within society as a whole.

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<sup>63</sup> Attention should be drawn, by way of indication, to the calls (20/11/2008) by senior UN officials to a number of European countries, including Greece, to undertake "urgent actions for the elimination of inadmissible conditions of poverty, marginalisation and exclusion experienced by the Roma in Europe": 'UN experts urge European wide action to lift conditions of exclusion and stop violence against Roma', [www.unric.org](http://www.unric.org).

<sup>64</sup> See the proposals for a solution to this major issue of the Minority Rights Group International: 'Disaggregated Data Collection: a Precondition for Effective Protection of Minority Rights in South-East Europe', [www.minorityrights.org](http://www.minorityrights.org).

7. As regards the IAP, an **independent external evaluation** of its implementation so far is a precondition for any future improvement. A **comprehensive study of housing programmes by Region / Municipality** needs to be developed prior to the new phase of the IAP. The study should take into account the distribution of the Roma population by region and their actual housing and educational needs. Central co-ordination is essential, as is the collaboration of the Roma themselves.

8. The next phase of the housing programme should include **identification and distribution of tasks and responsibilities of all public authorities involved in the management**.<sup>65</sup> **Effective inter-ministerial - and inter-institutional - co-ordination** of actions is also needed.

9. The **success of the medical-social centres should be further turned to account** by expanding the services provided by them and by increasing their number.

10. **Inclusion of Roma children in the educational process should be a priority**. To this aim, an accurate recording of the school-age population of each region and the systematic collection of statistics on the educational status of Roma on a local scale are essential. The determination of educational priorities by special interventions at the level of each school unit is equally important.<sup>66</sup>

11. **Incentives** should be given **to teachers** so as to remain in schools with Roma students for a reasonable period, as well as to Roma **families** so as to facilitate the registration of children at schools (e.g., allowances to families when *their children complete the course*, thus discouraging drop-outs). It is also important that resources are available for **social-counselling services** (on the successful model of '*learning mentors*', tested in other countries, e.g. in Denmark and in Britain) at school and at the municipality. It would be useful to train Roma to act as **mediators between the Roma communities and schools**.

12. The **segregation of Roma children is unacceptable**, as is their allocation at schools away from their residence.

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<sup>65</sup> This role has been undertaken by the Ombudsman, in determining, for example, the positive obligation of a municipality, ensured by the intervention of the Region, to find a suitable site for re-settlement before the expulsion of Roma from the place where they are living. The improvement of the living conditions of the Roma living in the municipality is part of the obligation of the local government organisations to show special social care for their citizens in need (see, *inter alia*, Articles 24, 261, 249, 262 of the Code of Municipalities and Communes).

<sup>66</sup> In this context, the recent initiative of Eurostat for the development of common statistical indicators to facilitate the monitoring of education is welcome.

13. Efforts to *link vocational training and/or continuous education programmes* (with particular emphasis on children aged between 12 and 18 who have never taken part in the educational process) *with the labour market*<sup>67</sup> via incentives given to potential employers.

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<sup>67</sup> On the model of the Spanish 'ACCEDER' vocational training programme for Roma: within this framework there is in advance provision for the signing of agreements with public services (local government authorities, etc.) and private companies to employ the trainees (183 agreements signed with the broader public sector and 350 agreements signed with the private sector). The programme is cited as a good practice by a large number of bodies involved in Roma affairs, including the working-document of the summit meeting at EU level mentioned above, of 16/9/2008.

**HELLENIC REPUBLIC**  
**NATIONAL COMMISSION FOR HUMAN RIGHTS**

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Neofytou Vamva 6, 106 74 Athens, Greece  
Tel: +30 210 7233221-2, fax: +30 210 7233217; e-mail: [info@nchr.gr](mailto:info@nchr.gr)

**Positions and Proposals of the NCHR on Trafficking in  
Persons  
The Situation in Greece**

**I. Introduction**

Trafficking in Persons is a complex phenomenon connected with many different factors that include immigration, organized crime, prostitution, forced labor, human rights, violence against women and children, pedophilic networks, social pathology related with these phenomena, corruption of diplomatic authorities and law enforcement personnel, etc.

It is a modern form of slavery and a blatant violation of human rights of the victims. This form of abuse and exploitation, nourished by social apathy, is nowadays more shocking than it was in the past.

The victims of forced work (that includes trafficking of humans and the sale of children) are about 13 millions worldwide. Their traffickers earn 32 billion dollars a year, according to the May 2006 Report of the International Labor Organization (ILO). 56% of victims are women and young girls and 40% are children under 18 years of age. In Europe, the prostitution turnover exceeds the turnover of narcotics and arms, while a new type of pimp-businessman-trafficker has emerged, that of a trafficker who exploits a big number of women and children. According to recent research in Greece, the rate of Greek to alien victims, from 70/30 it was in the past, it has now reached 20/80, while prostitution clientele increased by 600%. Prostitution of this form and of this size is unprecedented in Europe. It has acquired the characteristics prostitution had in the past in Thailand and the Philippines, where prostitution in slavery conditions was a known phenomenon. Trafficking is therefore a threat and a challenge of international dimensions because it undermines fundamental human rights, the state of law, and international legal order. It affects all

countries, rich, poor, developed and underdevelopment, because all countries are either countries of origin, transit, or destination.

Greece was in the past a country of origin of immigrants. In the early 90s it became a country of destination of legal and illegal immigrants because of the political changes in the wider region of Eastern Europe and the Balkans. Unfortunately, Greece became a transit and destination country for trafficking victims, coming mainly from South Eastern and Eastern Europe, Africa and Asia.

According to official statistics of the Ministry of Public Order, trafficking victims are coming May 2006 from Albania, Bulgaria, Romania, Russia, Moldavia, Nigeria, Belarus, Lithuania and the Ukraine. Trafficking in humans involves mostly women and girls, who are trafficked, mainly but not exclusively, for sexual exploitation. Victims are mostly women coming from poor countries, lured into trafficking with false promises for a better life in Greece or in another country, and forced to work in the sex industry with threats and violence. Often victims "consent" to their exploitation but under severe violence and fear. The lack of legal documents, the ignorance of Greek language, the lack of alternative solutions, the continual threats for their families in the countries of origin, are some of the reasons that lead victims to this situation. These women can seldom find the courage or the necessary support networks to escape and to testify against their traffickers. The most recent Report of the U.S Department of State on Trafficking in Persons, estimates that of the 600.000 to 800.000 persons trafficked internationally, 80% are women and girls. They are victims of various forms of exploitation, including sexual exploitation but also forced labor and organ trade. According to the 2005 Report of the ILO, 40% of the victims are children, while 98% of victims of sexual exploitation are women and girls.

The Greek state launched action to combat the phenomenon in the early 2000s. The measures it received include new legislation, prosecution of perpetrators, protection and aid to the victims, and prevention measures in the form of public awareness campaigns and development of cooperation on regional and national level.

Combating the phenomenon is becoming more difficult, because it touches upon many different fields and requires combined and coordinated action in the framework of complex approaches related with new legal weapons, flexibility of regulations related with immigration, increasing effectiveness of local and international law enforcement systems, efficiency of the judiciary system, social

tolerance of violations of human rights and social cooperation in different stages of the chain of exploitation.

## **II. Legal Framework**

### ***A) Legislation***

#### **Greek legislation**

a) Law 3064/2002 on trafficking of human beings

b) Presidential Decree 233/2003 for the implementation of article 12 of Law 3064/2002 and

c) Immigration Law 3386/2005

It is worth noting that article 11(3) of the most recent amendment of the immigration law, Law 3536 of 2007, provides that recognized trafficking victims are not deported and that deportation orders are suspended. This new provision covers a previous legal deficiency and protects victims of trafficking against deportation.

#### **International and European laws**

Greece has signed but not ratified, the UN Protocol (UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organized Crime), and the Convention of the Council of Europe (Convention against Trafficking in Human Beings).

Greece signed (7/9/2000) the Additional Protocol in the Convention of UN on the rights of Child with regard to the sale of children, children's prostitution and children's pornography (25.5.2000). The NCHR suggested to the GoG in March 2006 to ratify the protocol.

Greece as a member of the EU, is bound to implement EU Decision-frame 2002/629/DEY that penalizes trafficking in persons, and EU Directive 2004/81/EK providing for reflection and residence permits to victims of trafficking.

### ***B) Proposals***



Greek legislation meets international and European law standards. Legislation on combating trafficking and protection of victims is sufficient and satisfactory. However, the enforcement of some provisions has proved to be problematic.

1) NGO representatives support that the one-month reflection period for adult victims of trafficking and two months for minor victims of trafficking, is very short and not adequate to the victims to get off the influence of their exploiters and to reach a decision to cooperate with the authorities. **It is suggested to extend reflection period to 3 months**, as it has been proposed by international organizations and NGOs. The procedure under which a person is recognized as a “potential victim”, and enjoys of the reflection period, protection from deportation, and special treatment to decide whether or not he/she wants to cooperate with the authorities, is not clear. **We suggest the procedure under which a person is recognized as a potential victim to be clarified** and the authorities to be obliged to contact prosecutors in order to set in motion the reflection provisions of the law.

2) The issuing of residence permits only to victims who cooperate with the authorities, is ineffective, because victims who do not cooperate do not enjoy of full protection of their human rights. Victims who from fear of traffickers do not cooperate with the authorities remain unprotected. **We propose to reform the residence permit regulations** so that protection to the victims to stop being connected with cooperation with the authorities, and to protect victims who do not want or cannot cooperate with the authorities because sometimes there is not sufficient evidence against traffickers. It should be noted that the Council of Europe Convention contains relevant provisions. Italian legislation is model legislation on this issue, because it provides for humanitarian residence permits to trafficking victims. The Prosecutor should be notified to take all necessary protection action for minors and unaccompanied minors, to support children giving priority to their situation as minors and not to crimes they have probably committed as victims.

3) Although the law penalizes the "customer" who intentionally makes use of trafficking victims' services, it is very difficult to substantiate mens rea (intention of client) during the penal process. As a consequence, the customer usually escapes punishment. **It is also noted that the number of sentences**

**for trafficking cases is low** and that sentences mostly come from first degree courts. This is due to the general problem of length of litigation in Greece, which is affecting the effectiveness of the legislative framework to combat trafficking and to protect victims. It has also been observed that several times during the penal process charges change from felony (trafficking) to misdemeanor (pimping), thus negatively affecting the effectiveness of legislative framework for prosecution of traffickers.

4) The referral system for victims is informal because the law does not explicitly provide for a referral system. **We suggest to the GoG to take the necessary steps to legislate a comprehensive referral system** with an analytical list of duties of all involved institutions (governmental, NGOs, IOM).

5) **We recommend Greece to ratify** the UN Palermo Protocol and the Convention of the Council of Europe and the Additional Protocol in the Convention on the rights of Child. The NCHR calls on the government to submit the soonest possible to the Parliament the draft legislation it has prepared ratifying the Additional Protocol in the Convention on the rights of Child.

### **III. Inter-Ministerial Committee and National Action Plan**

In May 2004 a special committee consisting of General Secretaries of eight Ministries was established. The scope of the Committee was to coordinate - on political level – tasks for the implementation of law 3064/2002. The Committee was tasked to propose a National Action Plan. The Committee cooperates closely with the IOM and with NGOs specialized in victim protection. A product of this cooperation was the Memorandum of Cooperation signed by IOM and twelve NGOs.

The GenSecs Committee presented a New Action Plan in November 2006. However, the Committee consists only of high ranking Government officers and is deprived of the participation of experts and executives of the administration with competence and expertise on combating trafficking.

### **IV. Interdiction**

The Ministry of Public Order is responsible for interdiction of trafficking. The MPO cites in its web page statistics on trafficking-related crimes.

A Committee to Combat Trafficking (OKEA) was established in April 2001. OKEA was chaired by the Chief of the Greek Police and had as members police officers, representatives of different Ministries, and experts.

The MPO has 14 anti-trafficking units around Greece. Two new units were established in Athens and Thessaloniki, under the Organized Crime Division.

The Ministry of Public Order is implementing the “Ilaeira” project that aims at coordinating action of all involved organs through joint operations throughout Greece.

Training of police personnel, justices and prosecutors is very important. For this reason, specific trafficking courses have been included in the Police Academies and the National Justices’ School. In addition, YDAS/MFA financed training seminars to police personnel justices, and prosecutors.

Finally, it should be noted that a Prosecutor of Athens has been appointed as Trafficking Prosecutor by the Head of the First Instance Prosecutors of Athens.

### ***Proposals***

Important steps of progress have been made in connection with interdiction. However, the following problems remain:

1) Substantiated allegations of NGOs for visas to trafficking victims should be further investigated. The state is accountable for not undertaking action against corrupted administration officers (police personnel, diplomats, border guards, etc) who tolerate or facilitate trafficking in persons, because it is its duty to protect those depending on its jurisdiction. The efficiency of the State is assessed on the basis of effectiveness of the administration officers. Therefore actions of administration officers reflect upon the state. For this reason, violation of rules of administration should be severely punished.

2) The establishment of OKEA was a positive development. However its activity dwindled the last years and its duties were informally transferred to the Inter-Ministerial committee.

3) The anti-trafficking police units in Athens and Thessaloniki are very successful. Trafficking units outside big cities are not very effective however, because local police personnel are not sufficiently trained on trafficking. Nevertheless, it has been observed that, in the case Police manages to dismantle a trafficking network outside of Athens, it takes a long time to the network to restart operation.

4) Police escort to victims during the court proceedings is necessary. However, there is not always police escort in trials outside Athens. Central anti-trafficking units should teach local police personnel what police assistance they should offer during court proceedings.

5) Anti-Trafficking units and Prosecutors should be notified when a person to be deported is a potential trafficking victim, so that they take all necessary action to secure that procedures for suspension of deportation and protection the potential victim is entitled to is set in motion.

6) The multi-language Know-Your-Rights police brochure should be posted in all police detention centers.

7) Specialized NGOs and officers of a special Independent Committee should have access to all aliens' detention centers to monitor conditions of detention and ensure full protection of rights of detainees.

8) Training of police personnel, justices and prosecutors would have been more effective if it were interactive with smaller number of participants in each course that could include role playing, case studies, simulations etc. AGIS program designed to train law enforcement personnel and justices in cooperation on combating trafficking, could be used as a model. Our proposal is to increase and improve training and to use AGIS and Ilaeira projects as models. We also propose to design and provide training to police personnel as to how to testify against perpetrators and how to better conduct preliminary investigation, in order to resolve the problem of deficient substantiation of trafficking crimes.

8) Police operations to arrest traffickers are often badly organized, because they are conducted without sufficient preparatory investigation. All allegations of police personnel turning a blind eye to trafficking cases or of involvement into trafficking networks should be carefully investigated.

9) It is necessary to offer psychological support to victims throughout the prosecution procedure, in order to ensure their protection and the effectiveness of

the prosecution of traffickers. NGOs with expertise on victim protection should be used in the process.

10) Although there is a witness protection system in place, it is activated only when an organized network is involved. Since it is difficult to collect evidence on organized network involvement, witnesses and victims they are not always effectively protected. Moreover, the law provides that the witness protection system has to be in place till the final and irrevocable judgment of case. From the contacts of persons involved with victims, it has come out that victims were either not well informed about the witness protection mechanism or that they had misunderstood the information given to them. We propose the establishment of a comprehensive witness protection system, in order to exclude phenomena of victims denying testifying because they feel that they are not sufficiently protected. The protection should ideally be extended to their families in the countries of origin, via international cooperation with foreign law enforcement and judicial authorities. Article 28 of the Council of Europe convention provides so.

11) The substantiation of trafficking cases has been proved difficult for several reasons, the most important of which is that there is need for additional testimony, for cooperation of husbands of victims who do not want to testify in order to protect their families, and because defendants intervene on witnesses the majority of whom are foreigners. The informal tasking of a prosecutor with trafficking duties is an important step of progress. However, the institutionalization of the appointment of a “Prosecutor for Trafficking” on the model of the “Prosecutor for Terrorism”, would have been more effective.

12) The lack of specialized interpreters affects negatively the process of the preliminary investigation, the inquiry, and the judicial procedure in the Court Room. We suggest the GoG to take all necessary measures to resolve the interpretation problems.

13) The contribution of specialized NGO personnel in the investigation and substantiation of trafficking cases has been proved effective if we take into consideration the example of the United Kingdom, Denmark etc.

## **V. Protection and aid to victims**

The recognized trafficking victims and the victims in reflection period are entitled to protection that includes:

- Hot-lines run by the National Centre of Social Solidarity (197), Solidarity NGO, European Women Network, etc.
- state and NGO shelters
- psychological and social support
- legal aid
- hospital and medical care
- voluntary repatriation by IOM (action financed by YDAS/MFA)
- residence and work permit
- vocational training

Although the law does not explicitly provide for a referral system, the Memorandum of Cooperation concluded among the Inter-Ministerial committee, IOM and twelve NGOs, designates the National Center for Social Solidarity as an informal coordinator of a referral system.

### ***Proposals***

The State cannot protect the victims of trafficking and the potential victims of trafficking if legislation is not effectively enforced and if interested parties do not have access to the competent for the protection and aid to victims administration mechanisms. Although the Greek government, mainly via YDAS/MFA, has been generous in financing support mechanisms, the NCHR believes that it is imperative the Government to further strengthen the framework of victim protection in the following areas:

1) Greece does not have the necessary institutions, governmental or non-governmental, to offer protection and assistance to victims who are not women or minors exploited for sex. Protection that can be provided to men and children victims of forced labor and of other forms of exploitation is very limited. We propose the creation and establishment of necessary support structures (shelters, legal aid, etc).

2) Hot lines should offer services to other languages except for Greek.

3) Trafficking of Roma victims, adult and minor, presents challenges and particularities that should be assessed separately.

4) If the Center for Urgent Social Care is officially (and not informally) entrusted the role of the "coordinator" of the referral system, it should upgrade and improve its infrastructure and it should hire experts to meet the needs of the victims.

5) TIP Training should be provided to professionals (doctors, nurses, social workers, psychologists, lawyers etc) who often are the first to come in contact with victims. IOM recently held a training seminar for labor inspectors of the Ministry of Employment which participants found very useful.

6) Since work is an essential condition for social rehabilitation of victims, it is necessary to take measures to ensure access of victims in the labor market. To attain this goal, it is necessary to develop more action to raise awareness of employers.

7) The Handbook of OSCE "National Referral Mechanisms" could be used as a tool for effective coordination of protection structures. The National Referral Mechanism it describes is a frame of cooperation with which government agencies coordinate, in cooperation with NGOs, action for protection of victims.

## **VI. Prevention and Public Awareness**

Many public awareness campaigns against trafficking have been conducted in Greece the last years. This action had mainly the form of congresses and conferences, TV or radio spots, and was initiated by state agencies (Ministry of Foreign Affairs, General Secretariat for Gender Equality, Centre of Research on Gender Equality), NGOs (Arsis, STOP NOW, European Women's Network) and the IOM. It should be noted that IOM has conducted extensive research on the attitude of general population vis a vis trafficking, the results of which have not been concluded yet.

Also, some NGOs (Arsis, ACT UP, Nea Zoi) are conducting public awareness through street work. This action is mainly addressed to victims and potential victims and aims at locating victims and offer them protection and support.

## ***Proposals***

The public awareness campaigns conducted the last years were an important effort for the prevention of the phenomenon. However, the purpose of the campaigns, i.e. Greek society to start viewing trafficking as a heinous crime, has not been accomplished yet, because public awareness campaigns have had fragmented character. Therefore it is necessary to outline a prevention strategy that would include comprehensive and consistent action.

1) It is of outmost importance to conduct public awareness campaigns targeting male population and potential users of victims' services, informing them on the actual conditions victims and the ways networks recruit and hold victims, in an effort to discourage demand for such services by making males understand that they promote human slavery when they use such services.

2) Trafficking should be included in the curricula of primary and secondary schools. It is evident that the work of Police and Justice becomes more difficult if there is social tolerance to the phenomenon. Society is gradually getting used to view trafficking of poor people and of people coming from the less "lucky" parts of the world as something "natural", because it is not taking place any more in "secret" neighborhoods of the city, as the "red lights" districts of the past, but in broad light and in front of their eyes in bars, night clubs, and rented rooms. Therefore society becomes apathetic and reacts only when it finds out that a trafficker or a pimp was a priest. Research on the social and cultural causes that lead to demand of such services, could provide the clues for effective public awareness campaigns. An issue for public debate is whether the advertisement of such services through newspapers' ads promotes demand of such services.

3) It is necessary to conduct public awareness campaigns addressed to target groups of professionals, such as the (Marianna Vardinoyianni) Congress sponsored by the MFA, the World Bank, IOM and NGOs. The Congress aimed at negotiating a moral code for the business community against the use of trafficking victims, and concluded with the signing of the Declaration of Athens "Business Community against Trafficking of Human Beings."

## **VII. Cooperation**



Greece is a party in regional initiatives (Alternative Seat of the Stability Pact Europe, Economic Cooperation of Black Sea Countries, SECI) which develop action to effectively confront the phenomenon in the countries of origin of victims.

Efforts to network with institutions involved in combating trafficking are also taking place. Such important initiatives are:

- The cooperation of the Inter-Ministerial committee with IOM and twelve anti-trafficking NGOs for a more effective action and the co-ordination of their efforts to fight trafficking and support victims.
- The Diplomatic Forum organized by IOM and MFA with the participation of representatives of competent ministries, international organizations, diplomatic authorities of countries of origin, transit and destination, and NGOs.
- Networking initiatives have also been developed for the cooperation between government agencies and NGOs on national, regional and international level (NGO Network Ariadni, Hera Project, Cooperation between representatives of police, justices, and NGOs from different countries sponsored by the AGIS EU project).

### ***Proposals***

1) Networking initiatives should be further strengthened at all levels.

2) It would be useful to appoint a National Rapporteur on Trafficking as proposed by the EU Experts' group, as other countries including Sweden, Netherlands and Germany have already done. The National Rapporteur would be tasked to follow and record the situation on trafficking, drawing information from a wide spectrum of sources. He would forward his information to the competent organs to combat the trafficking and to evaluate and update the National Action Plan. The NCHR emphatically highlights the need to establish an effective coordination organ to combat trafficking in persons.

3) The NCHR would like to highlight the active role local authorities could play in all phases of combating trafficking (interdiction, prosecution, protection and support to victims, prevention and public awareness). Expertise of other countries can be used to this direction. Greece could also benefit from the example of the French "police de proximite."

4) In order to have comparable elements, we suggest to the GoG to standardize the procedure of data collection, type of data collected, indicators, research and analysis of the phenomenon.

5) It is essential to assess and evaluate the effectiveness of action and initiatives taken so far.

In conclusion, in the ideal situation that the National Action Plan is implemented with the contribution of all involved institutions and government agencies, trafficking in persons in Greece will most certainly not disappear but it will considerably reduce in size.

14 June 2007