EUROPEAN COMMITTEE OF SOCIAL RIGHTS COMITE EUROPEEN DES DROITS SOCIAUX



3 November 2004

Collective Complaint No. 15/2003 European Roma Rights Center v. Greece Case Document No. 11

ADDITIONAL INFORMATION FROM THE EUROPEAN ROMA RIGHTS CENTER (ERRC) ON THE MERITS

registered at the Secretariat on 3 November 2004

EUROPEAN ROMA RIGHTS CENTER



29 October 2004

Mr. Regis Brillat Secretariat General Directorate General of Human Rights -- DG II Secretariat of the European Social Charter The Executive Secretary Council of Europe F-67075 Strasbourg Cedex France

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Dear Mr. Brillat,

Concerning ERRC v. Greece, we would kindly request that the Committee view as material:

- The document previously submitted by the Centre on Housing Rights and Evictions (COHRE) to the Social Charter secretariate entitled "Complaint No. 15/2003 by European Roma Rights Center (ERRC) v. Greece; Observations by Centre on Housing Rights and Evictions (COHRE)";
- The revised recommendations documented presented in paper form on the day of the oral hearing, entitled "Proposed Conclusions in *ERRC v. Greece;* European Roma Rights Centre (ERRC), supported by: Centre on Housing Rights & Evictions (COHRE), Greek Helsinki Monitor (GHM)";

These documents are enclosed herewith.

In addition, we submit here a memorandum which summarises and encloses a number of legal actions pertaining to the application of Greek law related to the forced eviction of Roma in Greece as requested by the Committee during oral hearing on October 11.

With reference to the cases included in this database, we would call particular attention of the Committee to the May 2004 ruling by the European Court of Human Rights in the case of *Connors v. United Kingdom*,¹ in which for the first time the Court found a violation of the European Convention of Human Rights in a case involving the housing rights of Roma. The factual profile and policy framework at issue in *Connors* is in many respects similar to the cases submitted here, particularly on the Ministerial Regulation concerning relocation of wandering nomads, and then later, itinerants. While the relevant Article 8 rights under the European Convention of Human Rights can be considered as more narrowly drawn than the housing rights in Article 16, a number of issues addressed in the *Connors* decision are of relevance for examining the cases attached here, most notably:

In the *Connors* ruling, the Court found wanting the statutory regime provided for nomads because of deficiencies as to local responsibility for implementation. The Court stated "Nor does the gypsy



¹ European Court of Human Rights, Case of Connors v. The United Kingdom, *(Application no. 66746/01)*, Judgment, Strasbourg, 27 May 2004 (hereinafter "Connors Judgment").

population gain any benefit from the special regime through any corresponding duty on the local authority to ensure that there is a sufficient provision for them".²

• The Court examined a number of U.K. cases in which domestic courts apparently came to the conclusion that Roma/Gypsies living on sites established by local authorities for the purpose of furthering traditional Gypsy lifestyles did not in fact have a right to legal security of tenure, as required by international law.³

Perhaps most striking about a comparison between the situation in Greece as belied by a number of the attached cases and the facts in the Connors case is the extent to which the situation in Greece is to a significant degree more extreme than the facts at issue in *Connors*. In the attached cases, many individuals have actually been threatened with criminal prosecution and incarceration for violating the relevant statutory framework. Prosecution or even the threat of prosecution of individual victims for reasons arising from failures or breaches of duty by the local authority is clearly incompatible with Article 16 of the Charter as well as the standards arising from the Connors decision. The Committee should take a very dim view of any system of rules aiming at establishing the right to adequate housing, in which a breach of these rules by the government might result in deprivation of liberty for a member of a vulnerable social group.

We await with interest the conclusions of the Committee.

Sincerely,

Claude Cahn Programmes Director

 $^{^{2}}$ Connors Judgment para. 90.

³ Connors Judgment para. 77.

Proposed Conclusions in ERRC v Greece

European Roma Rights Centre (ERRC)

Supported by:

Centre on Housing Rights & Evictions (COHRE) Greek Helsinki Monitor (GHM)

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I. Violations

The ERRC respectfully submits that the European Committee on Social Rights conclude that the Government of Greece has not acted in conformity with Article 16 of the Charter, in particular that the Government has:

1. Forced Evictions - General

1. Carried out forced evictions of Roma in Greece and failed to provide adequate redress to victims which has resulted in segregation of significant parts of the Roma population.

2. Failed to restrain local authorities from carrying out and threatening forced evictions

3. Failed to guarantee security of tenure to Romani occupants of houses and land and protection from forced evictions. The government should consider providing an executive "amnesty" for the Romani informal settlements currently existing on state-owned land, granting title to land and property to persons factually resident on a particular plot, and establishing a "year zero" for the purposes of zoning and future regulation.

4. Failed to ensure that *policies* and *laws* contain the following safeguards in relation to evictions:

- (a) Evictions only proceed where there is a justifiable reason for doing so, in accordance with international human rights law.
- (b) Evictions conducted for discriminatory reasons or carried out in a discriminatory fashion are prohibited.
- (c) Due process in accordance with international standards is guaranteed in relation to any forced eviction, including (i) opportunity for genuine consultation; (ii) adequate and reasonable notice; (iii) full disclosure of information concerning the eviction, including purpose for which land or housing will be used; (iv) presence of government officials during eviction; (v) proper identification of those carrying out eviction; (vi) evictions not to proceed in bad weather; (viii) provision of legal remedies; adequate pecuniary and non-pecuniary civil compensation as well as comprehensive criminal and administrative redress in cases of forced evictions; and (ix) provision of legal aid where possible for those seeking redress in courts.
- (f) Evictions do not result in individuals being rendered homeless or vulnerable to other human rights abuses.
- (g) Adequate alternative housing, resettlement or access to productive land is made available to those affected by evictions who are unable to provide for themselves.
- (h) Prosecution of officials who carry out forced evictions.

5. Failed to establish any mechanisms to prevent evictions. This would include, for example, a moratorium on evictions and the establishment of an effective institutional framework to prevent forced evictions of Roma. Such a framework should:

- Establish an office at the national level with adequate Roma representation in order to ensure forced evictions are not arbitrarily or indiscriminately applied to Roma
- Ensure that any eviction plans that relate to Roma accommodate the unique circumstances and historical disadvantage of Roma communities.
- Ensure that evictions can only be carried out after a Court examines all the circumstances of the case in accordance with international human rights law
- Provide that evictions can only be carried out by a court official and a member of the national office.

2. Forced Evictions - Ministerial Decree for Organised Relocation

6. Maintaining and enforcing the discriminatory 1983 Ministerial Decree entitled "Sanitary provision for the organised relocation of wandering nomads" until 3 July 2003.

7. Failed to provide adequate reparation, including pecuniary and non-pecuniary compensation, to Roma who suffered loss during the period that the 1983 Ministerial Decree was used by public authorities to forcibly evict and segregate Roma and provide a comprehensive list of where it was used.

8. Failed to develop an institutional mechanisms for ameliorating the socio-economic effects of years of systemic discrimination against the Roma, including an effective mechanism for monitoring and enforcing the implementation of the plan. Such a plan should contain a clear plan of action and be developed in a participatory manner.

9. Maintained and enforced the Ministerial Decree of 2003, entitled the 'Amendment of the A5/696/25.4.83 Sanitary Provision respecting the organised settlement of itinerant persons or other provisions' without:

- (a) Ensuring it contains the safeguards set out in Conclusion4 above.
- (b) Providing training in non-discrimination for municipal officials and others involved in the implementation of the Decree.
- (c) Undertaking regular monitoring of implementation of the Decree to ensure that no direct or indirect discrimination occurs in the application of the Decree.
- (d) Providing swift and readily accessible remedial measures in the event that direct or indirect discrimination does occur in the application of the Decree.

To ensure conformity with Article 16, the Decree would require amendment in accordance with this conclusion. Further, it should apply to either:

- (i) all itinerants (by abolishing article 6(3) of the Amended Decree) or
- (ii) provide for a genuine and effective accommodation program for self-identified itinerant Roma.

3. Non-Improvement of Housing Conditions

10. Failed to ensure Roma, particularly those in informal settlements, have immediate access to adequate potable water, electricity, waste removal, public transport, roads and other public infrastructure. Roma also lack access to education and health care.

11. Failed to ensure that the Roma– at least half of the Roma population- have equal access to housing and are not segregated from the rest of the Greek population.

12. Failed to ensure that local and national authorities carry out plans to improve the housing conditions. The Government should urgently consider establishing a national body to ensure the implementation of housing programs designed to benefit the Roma. The body should

allow for adequate Roma representation and be given sufficient enforcement powers to carry out its duties.

13. Failure to ensure that improvement programs, which involve relocation, are properly implemented out and do not effectively result in forced eviction.

4. Other Violations

14. Failed to enact and implement comprehensive policies designed to curb and prevent residential and other racial segregation of Roma in Greece. The Government should consider the appointment of a human rights commission office or special ombudsperson with enforcement powers to review any actions taken with respect to Roma, to make recommendations for alternative or follow-up measures designed to ameliorate conditions of disadvantage resulting from systemic discrimination and to assist in the development of programs for alleviating disadvantaged status of Roma communities.

15. Failed to adopt and enforce comprehensive anti-discrimination legislation that are enforced by an effective and independent body with adequate resources. The law/s should and be in conformity with current European and international standards, for example the European Council of the European Union Directive 2000/43/EC "implementing the principle of equal treatment between persons irrespective of racial or ethnic origin" and General Policy Recommendation No 7 of the European Commission against Racism and Intolerance.

16. Failed to ensure that adequate legal assistance is available to victims of discrimination and human rights abuse by providing free, efficient and effective legal services to indigents and members of weak groups, including Roma.

17. Failed to conduct systematic monitoring of access of Roma and other minorities to social and economic rights -- the right to adequate housing in particular -- and establish a mechanism for collecting and publishing disaggregated data in these fields, in a form readily comprehensible to the wider public.

18. Failed to effectively promote human rights. For example, the government has not:

- Conducted any significant public information campaigns on human rights and remedies available to victims of human rights abuse
- Conducted public information campaigns on human rights in the Romani language.
- At the highest levels, spoken out against racial discrimination against Roma and others, and make clear that racism will not be tolerated.

II. General Findings

The ERRC also recommends that the Committee make the following additional findings:

5. International instruments

19. The Government would be assisted in fulfilling its obligation under Article 16 if it ratifies the following international instruments:

- Revised European Social Charter.
- Protocol 12 to the European Convention on Human Rights.
- Council of Europe's Framework Convention on the Protection of National Minorities, expressly recognising Roma as a national minority.
- European Charter for Regional and Minority Languages, expressly recognising Romani as a minority language in Greece.
- Declaration under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, recognising the competence of the Committee on the Elimination of Racial Discrimination to hear individual complaints.

6. Continuous Review of Greece

20. Due to the consistent and long-term failure of the Government of Greece to act in conformity with Article 16, the Contracting Party should report back to the Committee within 12 months on measures it has taken to ensure compliance with Article 16 of the Charter in relation to the matters raised in this collective complaint.

21. The Committee should be given an opportunity to undertake a mission to Greece upon receipt of the follow-up report from Greece to investigate the measures taken by Greece.

7. Costs

22. The legal costs of ERRC as they relate to this collective complaint should be paid by the Government of Greece.

Complaint No. 15/2003

By

European Roma Rights Center (EERC)

v.

Greece

Observations

By

Centre on Housing Rights and Evictions (COHRE)

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I. INTRODUCTION

These observations are being submitted by the Centre on Housing Rights and Evictions (COHRE), an independent NGO, which is a leading international non-governmental human rights organization committed to promoting practical and legal and other solutions to endemic problems of homelessness, inadequate housing and living conditions, forced evictions and other violations of economic, social and cultural rights. COHRE places particular emphasis on securing respect for the rights of groups that have traditionally faced discrimination. COHRE is registered as a not-for-profit foundation in the Netherlands with eight offices in Europe, Asia and the Pacific, Africa, Latin America and the United States.

COHRE has consultative status with the Council of Europe. COHRE has worked in numerous European countries, assisting in the design of housing and property restitution laws and institutions in various European post-conflict situations, working with national-level non-governmental organisations to monitor violations of housing rights in member states of the Council of Europe and undertaking targeted advocacy on the housing rights of Roma, Travellers, the homeless, refugees, returnees, people living with HIV/AIDS and women in South-Eastern Europe. COHRE has also participated in discussions at the Councul of Europe over standards relating to the right to housing and Roma.

While COHRE is not currently registered as an organisation entitled to submit collective complaints under Article 1(b) of the Additional Protocol of 1995, and is not an international organisation of trade unions and employers that may be invited to submit observations on certain collective complaints under Article 7(2), COHRE believes it is important to provide the Committee with information and analysis related to housing rights and forced evictions, the central issues in this collective complaint.

We submit these observations to:

- 1. Present relevant international and regional jurisprudence and case law on forced evictions and the right to housing, as well as an analysis of Article 16 of the European Social Charter.
- 2. Raise the concern that forced evictions of Roma may continue in Greece under general laws relating to forced eviction as well as the amended law on "Sanitary provision for the organised relocation of wandering nomads."
- 3. Present recommendations as to how the government of Greece could ensure security of tenure and take pro-active policies to realize the right of Roma to adequate housing.

II. INTERNATIONAL AND REGIONAL JURISPRUDENCE AND LAW

International Jurisprudence

The right to adequate housing is one of the most well-defined rights under international human rights law. The Universal Declaration of Human Rights (hereinafter "Universal Declaration") contains one of the earliest statements recognizing the right to adequate housing, stating in Article 25(1) that:

Everyone has the right to a standard of living adequate for the health and well-being of himself [or herself] and of his [or her] family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his [or her] control.⁴

When the United Nations codified the rights enshrined in the Universal Declaration in legally binding international instruments, it included in the International Covenant of Economic, Social and Cultural Rights one of the strongest expressions of the right to adequate housing. Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (hereinafter "ICESCR") states:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself [or herself] and his [or her] family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.⁵

The Committee on Economic, Social and Cultural Rights (Committee) elaborated upon the concise content of the right to adequate housing through the unanimous adoption of its General Comment No. 4 in 1991.⁶ General Comment No. 4 obligates States Parties to, *inter alia*, respect, protect, promote and fulfill security of tenure, stating "all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats."⁷

⁴ Universal Declaration of Human Rights, Art. 25(1), G.A. Res. 217A (III), U.N. Doc A/810 at 71 (1948).

⁵ International Covenant on Economic, Social and Cultural Rights, Art. 11(1), G.A. Res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, *entered into force* 3 January 1976.

⁶ See Committee on Economic, Social and Cultural Rights, General Comment No. 4, The right to adequate housing (Art. 11 (1) of the Covenant) (Sixth session, 1991), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI\GEN\1\Rev.1 at 53 (1994).

In 1997, the Committee further elaborated on the obligations under the Covenant with the unanimous adoption of General Comment No. 7, which defines and proscribes the practice of forced evictions.⁸ Forced evictions are prima facie incompatible with the requirements of the International Covenant on Economic, Social and Cultural Rights, in particular the right to adequate housing.⁹ Indeed, the international community has affirmed that the practice of forced eviction "constitutes a gross violation of human rights, in particular the right to adequate housing."¹⁰ Since forced evictions are clearly retrogressive measures, they constitute violations of the right to adequate housing unless justified under the Covenant.¹¹ Principles of international human rights law require that the obligation to respect and protect persons from forced eviction has immediate effect.¹²

Evictions should also not result in rendering individuals homeless or vulnerable to the violation of other human rights.¹³ General Comment 7 to the International Convenant on Economic, Social and Cultural Rights obliges States to explore "all feasible alternatives" prior to carrying out any forced evicitons, with a view to avoiding or at least minimizing the use of force or precluding the eviction all together.¹⁴ It further provides assurances for people evicted to receive adequate compensation for any real or personal property affected by an eviction.¹⁵ When forced evicitons are carried out as a last resort and in full accordance with General Comment 7, affected persons must, in addition to being assured that homelessness will not occur, also be afforded the following eight prerequisites prior to any eviction taking place; each of which might have a deterrent effect and result in planned evictions being prevented:

(a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions and where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the

¹⁴ *Id*.at ¶ 14.

⁸ See Committee on Economic, Social and Cultural Rights, General Comment No. 7, The right to adequate housing (Art. 11 (1) of the Covenant): forced evictions, UN Doc. E/C.12/1997/4 (1997) (hereinafter "Committee, Comment 7").

⁹ Committee on Economic, Social and Cultural Rights, General Comment No. 4, The right to adequate housing (Art. 11 (1) of the Covenant) (Sixth session, 1991), par. 18, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI\GEN\1\Rev.1 at 53 (1994).

¹⁰ United Nations Commission on Human Rights, Resolution 1993/77, UN Doc. E/CN.4/RES/1993/77 adopted unanimously on 10 March 1993.

¹¹ The Committee has stated that forced eviction, to be considered justified under the ICESCR, may only take place in "very exceptional circumstances" and in "strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality" and that they "should not result in rendering individuals homeless or vulnerable to the violation of other human rights." General Comments No. 4 and 7.

¹² The obligations of States Parties to the Covenant in relation to forced evictions are based on Article 11(1), read in conjunction with other relevant provisions. In particular, Article 2(1) obliges States to use 'all appropriate means' to promote the right to adequate housing. However, in view of the nature of the practice of forced evictions, the reference to Article 2(1) to progressive achievement based on the availability of resources will rarely be relevant. The State itself must refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions. Committee, Comment 7 at par. 9.

¹³ Committee on Economic, Social and Cultural Rights, General Comment No. 7, UN Doc. E/C.12/1997/4 (1997).

affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.¹⁶

The State itself must also refrain from forced evictions and make sure that that the law is enforced against its agents or third parties who carry out forced evictions; the State's obligation to ensure respect for the right to not be forcefully evicted without adequate protection "is not qualified by considerations relating to its available resources."¹⁷ As further provided in General Comment 7, "[s]tate parties must ensure that legislative and other measures are adequate to prevent and, if appropriate, punish forced evictions carried out, without appropriate safeguards, by private persons or bodies."¹⁸

Regional Jurisprudence

The decisions of other regional bodies include jurisprudence on forced evictions and provide guidance. Such bodies have determined that forced evictions violate civil and political rights as well as various social rights. For example, the Article 8 jurisprudence of the European Court of Human Rights (hereinafter "European Court") includes cases involving forced eviction.¹⁹ One such example is <u>Mentes & Others v. Turkey</u>²⁰ in which the European Court held that forced evictions constitute a violation of Article 8²¹ and ordered the Government of Turkey to pay compensation to the petitioners. The European Court has also held in the case of <u>Akdivar and Others v. Turkey</u> that forced evictions constitute a violation of Article 1 of Protocol 1 to the European Convention.²²

In <u>Buckley v. the United Kingdom</u>²³, the Commission found that an applicant's complaint that she was prevented from living with her family in her caravans on her land fell within the scope of Article 8 of the Convention as relating to her right to respect for her family life, private life and home. In its opinion, the Commission stated that the <u>"concept of a home is not limited to those</u>

¹⁶ *Id.* at ¶ 6.

¹⁷ *Id.* at ¶ 9.

 18 Id. at \P 10.

²⁰ Mentes & Others v. Turkey, App. no. 00023186/94, Judgment 28 November 1997.

²¹ Article 8(1) of the European Convention on Human Rights sets forth the following guarantees: "Everyone has the right to respect for his private and family life, his home and his correspondence [emphasis added].

¹⁹ See, e.g., Mentes & Others v. Turkey, App. no. 00023186/94, Judgment 28 November 1997 (involving the destruction of housing by the Government of Turkey; Akdivar and Others v. Turkey, App. no. 00021893/93, Judgment 16 September 1996 (involving large-scale evictions, forced relocation and demolition of villages by the Government of Turkey. The Court held that there had been a violation of both Article 8 of the Convention and Article 1 of Protocol No. 1 and ordered the Government of Turkey to pay compensation); Cyprus v. Turkey, App. no. 00025781/94, Judgment 10 May 2001 (regarding Greek Cypriots displaced from northern Cyprus. The Court held that there are continuing violations by the Government of Turkey of Article 8 of the Convention and Article 1 of Protocol No. 1); Larkos v. Cyprus, App. no. 00029515/95, Judgment 18 February 1999 (involving an attempt by the Government of Cyprus to evict the Petitioner in 1987.) The Court held that there had been a violation of Article 8 of the Convention in conjunction with Article 14, which prohibits discrimination).

²² Article I of Protocol I states: "Every natural or legal person is entitled to the peaceful enjoyment of his [or her] possessions. No one shall be deprived of his [or her] possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law." First Protocol to the [European] Convention for the Protection of Human Rights and Fundamental Freedoms, Art. I, 213 U.N.T.S. 262, *entered into force* 18 May 1954.

²³ Buckley v. the United Kingdom, 23/1995/529/615.

which are lawfully occupied or which have been lawfully established. 'Home' is an autonomous concept which does not depend on classification under domestic law [emphasis added].²⁴ Although the European Court of Human Rights reversed the finding of the Commission that there was a violation of Article 8, the Court did agree that the case "concerns the applicant's right to respect for her 'home."²⁵ Moreover, the Court specifically rejected the argument of the Government that only a home *legally established* could come within the protection of Article 8.²⁶

The protection of Article 8 encompasses each of the following rights: the right of access,²⁷ the right of occupation,²⁸ and the right not to be expelled or evicted, and is thus intimately intertwined with the principle of legal security of tenure.²⁹ Indeed, in the case of <u>Cyprus v.</u> <u>Turkey</u> the Commission specifically stated the following: "The Commission considers that the evictions of Greek Cypriots from houses, including their own homes, which are imputable to Turkey under the Convention, amount to an interference with rights guaranteed under Article 8 paragraph 1 of the Convention, namely the right of these persons to respect for their home, and/or their right to respect for private life..."³⁰ In <u>Velosa Barreto v. Portugal</u>,³¹ the Court confirmed that Article 8 does not give a landlord the right to recover possession of a rented house on request and in any circumstances.

²⁶ Id.

²⁴ Id.

²⁵ Buckley v. the United Kingdom, 25/109/1996, Reports 1996-IV

²⁷ Wiggins v. United Kingdom, No. 7456/76, 13 D & R 40 (1978).

²⁸ Id.

²⁹ Cyprus v. Turkey, 4 EHRR 482 (1976).

³⁰ *Id.* at ¶ 209.

³¹ 1995 Series A, No. 334.

Further, the European Court has developed extensively under its Article 8 jurisprudence the concept of "positive obligations," under which a Contracting State must not only restrict its own interferences to what is compatible with Article 8, but may also be required to protect the enjoyment of those rights and secure the respect for those rights in its domestic law.³² In addition, protections available under Article 1 of Protocol 1 to the European Convention -- guaranteeing the peaceful enjoyment of one's possessions -- have been interpreted to include the protection of housing rights.³³ In some circumstances, forced evictions may rise to the level of cruel and degrading treatment or punishment, as banned under Article 3 of the Convention.³⁴

In another forum, the Committee Against Torture, the Committee held that the "burning and destruction of houses constitute, in the circumstances, acts of cruel, inhuman or degrading treatment of punishment."³⁵ The Committee Against Torture also held that the failure of the state to provide redress and compensation violated Article 16 of the Convention Against Torture, which obliges states parties to prevent acts of cruel, inhuman or degrading treatment that do not amount to torture and are instigated by or with the consent or acquiescence of a person acting in an official capacity. The Committee also found the resulting investigation and failure to prosecute those responsible constituted violations of the obligation imposed on states parties by Articles 12 and 13.³⁶

The African Commission on Human and Peoples' Rights (African Commission) also provides persuasive guidance with the recent case of <u>Social and Economic Rights Action Centre and</u> <u>Center for Economic and Social Rights – Nigeria (SERAC and CESR).³⁷</u> In that case which dealt, *inter alia*, with forced evictions and housing destruction by both the Government of Nigeria

³³ In the Önervildiz v. Turkey, a case involving the destruction of slum dwellers' homes following an explosion at a rubbish tip, the European Court of Human Rights, while finding a violation by the Turkish government of Article 1 of Protocol 1 ruled, inter alia, "The Court reiterates that the concept of 'possessions' in Article 1 of Protocol No. 1 has an autonomous meaning and certain rights and interests constituting assets can also be regarded as "property rights", and thus as "possessions" for the purposes of this provision ... the Court considers that neither the lack of recognition by the domestic laws of a private interest such as a 'right' nor the fact that these laws do not regard such interest as a 'right of property', does not necessarily prevent the interest in question, in some circumstances, from being regarded as a 'possession' within the meaning of Article 1 of Protocol No. 1 ... It must be accepted ... that notwithstanding that breach of the planning rules and the lack of any valid title, the applicant was nonetheless to all intents and purposes the owner of the structure and fixtures and fittings of the dwelling he had built and of all the household and personal effects which might have been in it. Since 1988 he had been living in that dwelling without ever having been bothered by the authorities (see paragraphs 28, 80 and 86 above), which meant he had been able to lodge his relatives there without, inter alia, paying any rent. He had established a social and family environment there and, until the accident of 28 April 1993, there had been nothing to stop him from expecting the situation to remain the same for himself and his family. ... In short, the Court considers that the dwelling built by the applicant and his residence there with his family represented a substantial economic interest. That interest, which the authorities allowed to subsist over a long period of time, amounts to a 'possession' within the meaning of the rule laid down in the first sentence of Article 1 § 1 of Protocol No. 1..."

³⁴ See Mentes and Others v. Turkey, 58/1996/677/867 and Selcuk and Asker v. Turkey, 12/1997/796/998-999.

³⁵ *Hijirizi et al v. Yugoslavia*, Communication No. 161/2000, CAT/C/29/161/2000, decision can be accessed at <u>www.unhchr.ch</u> (select <u>Documents</u>, <u>Treaty Body Database</u>, <u>CERD</u>, and <u>Jurisprudence</u>).

³⁶ Id.

³² E.g. Costello-Roberts v. United Kingdom, March 25, 1993, Series A, No. 247-C; 19 E.H.R.R. 112, par.26. See also Botta v Italy Botta v Italy (1998) EHHR 241 (1998) (European Court of Human Rights and López Ostra v. Spain (1995) 20 EHHR 277.

³⁷ African Commission on Human and Peoples' Rights, Decision 155/96, *The Social and Economic Rights Action Center and the Center for Economic and Social Rights – Nigeria* (27 May 2002).

and private security forces of Shell Petroleum Development Corporations, the African Commission held that these acts violated Article 14 of the African Charter³⁸ as well as the right to adequate housing which, although not explicitly expressed in the African Charter, is implied in Articles 14, 16 (protection of the best attainable State of physical and mental health) and 18(1) (protection of the family). In reaching its conclusion, the African Commission also drew:

... inspiration from the definition of the term 'forced evictions' by the [United Nations] Committee on Economic, Social and Cultural Rights which defines this term as 'the permanent removal against their will of individuals, families and/or communities from the homes and/or lands which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.³⁹

Similarly, this European Committee on Social Rights should find inspiration from the international treaties, including the CESCR and its interpretations, to inform its interpretation and application of Article 16 of the European Social Charter.⁴⁰

C. Article 16 of the European Social Charter

It is against this significant foundation of international law that Article 16 of the European Social Charter must be evaluated as it relates to the substance of the complaint in this case about the treatment of the Roma in Greece and the responses of the Greek government. Significantly, the provision in Article 16 of "full development of family life" in the European Social Charter (hereinafter "ESC") includes the recognition of the right to adequate housing. The critical role of this right was recognized by the Committee of Independent Experts overseeing the ESC; in its Conclusions XII-1(p. 30), the Committee "stressed the need to consider family welfare in terms of the right to receive adequate housing and essential services (such as heating and electricity), these being necessary for the welfare and stability of families".⁴¹ This conclusion is similar to the one that was reached by the United Nations Committee overseeing the International Covenant on Economic, Social and Cultural Rights (ICESCR) -- ratified by Greece; the Committee derived the right to adequate housing from the "right to an adequate standard of living, including adequate food, clothing and housing".⁴²

³⁸ Article 14 states: "The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate law." African [Banjul] Charter on Human and People's Rights, Art. 14, *adopted* 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M.58 (1982), entered into force 21 October 1986.

³⁹ African Commission on Human and Peoples' Rights, Decision 155/96, *The Social and Economic Rights Action Center and the Center for Economic and Social Rights – Nigeria* (27 May 2002) (citing Committee on Economic, Social and Cultural Rights, General Comment No. 7, The right to adequate housing (Art. 11 (1) of the Covenant): forced evictions, par. 4, U.N. Doc. E/C.12/1997/4 (1997)).

⁴⁰ The international covenants that have been ratified by Greece are particularly relevant since Greece, in its Constitution, provides that such international conventions are an integral part of Greek law after ratification and having been put into effect in accordance with their respective terms; those international conventions then override any law provision to the contrary. Article 28 of the Constitution, entitled "International Law."

⁴¹ Quoted in Lenia Samuel, Fundamental Social Rights: Case Law of the European Social Charter, Council of Europe, 1997, at p.352.

⁴² See Committee on Economic, Social and Cultural Rights (CESCR). General Comment 4: The right to adequate housing (Art. 11.1 of the Covenant). December 13, 1991, paragraph 1. Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) states, "[t]he States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to

The right to housing in Article 16 must be guaranteed without discrimination.⁴³ The Committee has previously implied the right to non-discrimination into the Articles of the ESC.⁴⁴ The Charter rights are to apply to all persons in the metropolitan territory of the member state (in accordance with Article 34(1) and the first two paragraphs of the Appendix to the ESC). Further, the preamble states that "the enjoyment of "the enjoyment of social rights should be secured without discrimination on grounds of race, colour, sex, religion, political opinion, national extraction or social origin" means. Moreover, this inclusion of "social rights" would imply that the ESC non-discrimination clause goes beyond the particularized rights in the ESC of 1961 to the full complement of social rights included in the international human rights instruments Greece has also ratified the International Covenant on the Elimination of All Forms of Racial Discrimination (1965),⁴⁵ where it has undertaken "to prohibit and eliminate racial discrimination in all of its forms and to guarantee the right of everyone … to equality before the law, notably in the enjoyment of the following rights: … (iii) the right to housing".⁴⁶

⁴⁶ See Article 5(e)(iii).

ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent." Further, the African Commission on Human and Peoples' Rights concluded that the right to adequate housing was implicitly recognised in rights to protection of family life and property: see *SERAC* \notin *CESR v Nigeria*, African Commission on Human Rights, Case No. 155/96, 30th Session at paragraphs 59 and 65.

⁴³ Complaint No. 6/1999, Syndicat national des Professions du tourisme v France

⁴⁴ See Complaint No. 6/1999, Syndicat national des Professions du tourisme v France, paragraph 24.

⁴⁵ See Article 5(e)(iii).

III. COMPLIANCE BY GREECE

Forced Evictions of Roma in Greece

The frequent forced evictions of Roma by, or with the acquiescence, of Greece authorities, contrary to Article 16 of the ESC, has been covered in widespread reports and extensive documentation concerning abuses of the housing rights of Roma including the submissions of the European Roma Rights Centre in this collective complaint.⁴⁷ Roma frequently suffer forced eviction, abusive police raids and destruction of property.⁴⁸ In a number of instances, the purpose and/or effect of forced evictions is to relocate Roma to racially segregated areas.⁴⁹ When such abuses take place, legal remedy is often not available to the victims. Few of the Roma have been provided restitution or compensation for gross violations of housing rights, and in particular forced evictions.⁵⁰

Research by European Roma Rights Center (ERRC) in Greece in the period 1997-2003 indicates a pattern and practice of regular forced evictions of Roma:⁵¹ forced evictions of Roma occur with alarming frequency in Greece; Roma are often harassed by Greek authorities as they conduct evictions and, on many occasions, the property of Roma is destroyed.⁵² Few evicted Roma have

⁴⁷ See, e.g., National Commission for Human Rights, "Ekthesi 2001," January, 2002; European Roma Rights Center/ Greek Helsinki Monitor, Cleaning Operations: Excluding Roma in Greece, Country Reports Series No. 12, April, 2003; Human Rights Watch World Report 2002: Greece ; Human Rights Watch World Report 2001: Greece ("[i]llegal evictions and police abuse against Roma continued unabated"); Greek Helsinki Monitor, Parallel Report on Greece's Compliance with the UN Convention on Economic, Cultural and Social Rights, September 2002; Council of Europe European Commission Against Racism and Intolerance, CRI (2000) 32, Second Report on Greece, adopted on December 10, 1999 and made public on June 27, 2000.

⁴⁸ See, e.g., Human Rights Watch World Report 2001: Greece

⁴⁹ See, <u>e.g.</u>, European Roma Rights Center/ Greek Helsinki Monitor, Cleaning Operations: Excluding Roma in Greece, Country Reports Series No. 12, April, 2003;

⁵⁰ Special Rapporteur Mr. M. Cherif Bassiouni, in his final report to the United Nations Commission on Human Rights on "The right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms", found, "15. Adequate, effective and prompt reparation shall be intended to promote justice by redressing violations of international human rights or humanitarian law. Reparation should be proportional to the gravity of the violations and the harm suffered. 16. In accordance with its domestic laws and international legal obligations, a State shall provide reparation to victims for its acts or omissions constituting violations of international human rights and humanitarian law norms. 17. In cases where the violation is not attributable to the State, the party responsible for the violation should provide reparation to the victim or to the State if the State has already provided reparation to the victim. [...] 21. In accordance with their domestic law and international human rights and humanitarian law the following forms of reparation: restitution, compensation, rehabilitation, and satisfaction and guarantees of non-repetition. 22. Restitution should, whenever possible, restore the victim to the original situation before the violations of international human rights or humanitarian law occurred. Restitution includes: restoration of liberty, legal rights, social status, family life and citizenship; return to one's place of residence; and restoration of employment and return of property.

⁵¹ Forced evictions of Roma are a focus of the joint ERRC/Greek Helsinki Monitor Country Report *Cleaning Operations: Excluding Roma in Greece*, April 2003, available on the ERRC's Internet website at: http://errc.org/publications/indices/greece.html.

been provided with alternative accommodation.⁵³ Moreover, in the response of the Government of Greece to the Complaint in this action, it has not responded to the illegal pattern and practice of forced evictions and lack of resettlement plans. Nor has it made any showing that the laws and policies of the Government of Greece comply with the applicable international laws (see further section III(C) below).

In addition, Greece has deficient legislation ensuring protection from housing rights abuses -including racial discrimination in the field of housing – and has had prima facie racially discriminatory housing legislation.⁵⁴ There is also evidence that by pursuing policies of racial segregation and forced eviction and failing to secure adequate living standards for a large number of Roma, Greece has fallen significantly short of its obligations under the ESC where Roma are concerned.

Due to the factors described above, as well as because of long-term, historic racial segregation of Roma, large numbers of Roma today in Greece live segregated from non-Roma, in violation of international human rights norms banning racial segregation.⁵⁵ Widespread discrimination against Roma, coupled with governmental policies that indirectly discriminate against Roma and/or the failure of public officials to act effectively to counter anti-Romani actions, prevent Roma from integrating into the majority population and, indeed, reinforce their segregation from majority society.⁵⁶ Roma frequently live in informal housing settlements that are outside the official ambit of local administration, providing a convenient excuse for local authorities that do not wish to assist Romani residents. Roma living in segregated, informal settlements are in practice not afforded the legal protection residents of formal housing, for example protection from forced evictions, and in many cases also do not have access in practise to public services such as electricity, heating and potable water, sewage and solid waste removal, or inclusion on urban grids for the purposes of public services such as public transportation or provision of adequate schooling.⁵⁷ This long-standing and deeply entrenched history of discrimination against the Roma

⁵⁵ The International Convention on the Elimination of All Forms of Racial Discrimination unequivocally bans segregation: Article 3 states: "[s]tates Parties particularly condemn racial segregation and apartheid and undertaken to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction."

⁵³ In the only known case of an eviction of a Roma in the courts, the court condemned the eviction on the ground that no alternative housing was offered by the municipality to the affected residents. (This case involving the Romani community in Nea Alikarnassos is described in the Collective Complaint in this action at footnote 21.) When a second eviction notice was initiated by the municipal authorities, the Ohmbudsman advised the municipality that if an alternative location was not provided, then this second eviction notice would probably be condemned by the court. <u>Id.</u> As described in Point II, evictions should not result in rendering individuals homeless.

⁵⁴ In its response to the Complaint in this case, the Greek government refers to a proposed law on antidiscrimination law in Greece. Observations of the Hellenic Government on the Substance of the Collective Complaint 15/2003 [hereinafter Observations of the Hellenic Government] at 5-7. However, there are many problems with the draft law, as discussed in the Response by the European Roma Rights Center to the "Observations of the Hellenic Government on the Substance of the Collective Complaint 15/2003[hereinafter "EERC Response"] at pages 3-4. Moreover, a recent report confirms the problems of discrimination in Greece. Hellenic Republic National Commission for Human Rights, Major Issues of Racial Discrimination in Greece—Proposals on the Modernisation of Greek Legislation and Practice (29 March 2004).

⁵⁶ The Committee on the Elimination of Racial Discrimination (CERD), which monitor's States' compliance with the ICERD stated, in its General Comment 19 on racial segregation and apartheid, that racial segregation can "arise without any initiative or direct involvement by the public authorities. It invites States parties to monitor all trends which can give rise to racial segregation, to work for the eradication of any negative consequences that ensue, and to describe any such action in their periodic reports." CERD. General Comment 19: Racial segregation and apartheid (Art. 3). August 18, 1995, ¶ 4.

⁵⁷ <u>See</u>, e.g., United States Department of State Country Reports on Human Rights Practices: Greece 2003 (February 25, 2004).

in Greece makes it even more likely that the Roma suffer from the absence of laws prohibiting forced evictions that are in conformity with international law.

Continuing Concerns over Decree For 'Wandering Nomads'

Until as recently as July 2003, when it was amended to remove some of its most obnoxious provisions, a 1983 Ministerial Decree entitled "Sanitary provision for the organised relocation of wandering nomads [hereinafter "1983 Decree"],"⁵⁸ prohibited Roma from living amongst the rest of the Greek population, rendering Roma susceptible to forced evictions, abusive police raids and destruction of property. Although the 1983 Decree was amended in July 2003, there are no indications that Greek authorities have acted to design and/or implement policies aimed at alleviating the suffering caused to countless Roma during the approximately 20 years in which the 1983 Decree was in force. Actions should include a thorough investigation of forced evictions carried out under the Decree and compensation or other remedies provided to those individuals and/or communities whose right to housing has been violated.

Moreover, the amendments to the law do not alleviate many of the problems that are the basis of the complaint by the European Roma Rights Center in this case. For example, there are many exceptions to whom this new law does not apply, such as farmers in agricultural areas, cattle breeders in the summer or winter grasslands, and travelers in general;⁵⁹ it seems that it will only apply to Roma.⁶⁰ This is particularly troubling given the history of application of the 1983 Decree in a discriminatory manner; as stated by the European Roma Right Center, "the EERC is unaware of a single instance in which the 1983 Decree was invoked in order to effect the relocation of non-Roma.⁶¹ It is even more problematic since there is a legal framework for the resettlement of other categories of people, such as those who are victims of earthquakes,⁶² but that already existing legal framework is not available to the Roma; there needs to be a policy that provides for adequate resettlement of the government to provide or ensure adequate housing. In addition, the law continues the criminal penalties and prosecution. Roma have been convicted for creating an illegal settlement, even though they were relocated in that location by the prefecture.⁶³

⁶¹ EERC Response at p. 3.

⁵⁸ Article 1 of the 1983 Ministerial Decree states: "[t]he unchecked, without permit, encampment of wandering nomads (*Athinganoi*, etc.) in whatever region is prohibited." According to Article 3(3), "Encampment is prohibited near archaeological sites, beaches, landscapes of natural beauty, visible by main highway points or areas which could affect the public health (springs supplying drinking water, etc.)." "Athinganoi" is the term used for Roma in Greek for administrative purposes.

⁵⁹ Official Gazette 973/B/15-07-2003, Amendment of the A5/696/25.4.83 Sanitary Provision respecting the organized settlement of itinerant persons [hereinafter "2003 Amendment"], at Article 6, section 3 (attached to Observations of the Hellenic Government).

⁶⁰ Even the title of the amended law continues to be problematic. It is labeled "Sanitary Provision respecting the organized settlement of itinerant persons." *Id.*

⁶² The law providing for the creation of encampments for persons suffering from natural disasters is discussed in the Observations of the Hellenic Government at p. 9.

⁶³ See European Roma Rights Center/ Greek Helsinki Monitor, Cleaning Operations: Excluding Roma in Greece, Country Reports Series No. 12, April, 2003; [need cite or delete]

Furthermore, the problems continue. As recently as this past month, the World Organization Against Torture (OMCT) "denounce[d] the continued failure of the Greek authorities to honour their commitment to Roma settlement in Spata…"⁶⁴ "This most recent failure of the Greek government to honour its commitments to the Roma community is part of a systemized failure to protect and provide for the Roma community….Over the past years, OMCT has frequently received information about attempted or actual forced evictions and forced resettlements of Roma communities by Greek authorities."⁶⁵

Future Forced Evictions under General Laws on Evictions

COHRE remains concerned that fored evictions of Roma will also occur under various Greek legislative and administrative provisions authorising eviction of person from property on certain conditions. It is the understanding of COHRE that these laws are not currently consistent with international legal standards on forced evictions. If the land is owned by the State a protocols for administrative evictions is to be drawn up and enforced by the bailiff. If the land is owned by a munipality, then a simialr protocol is drawn up by the relevant Mayor and the occupant has 30 days in which to challenge the protocol. However, it appears that municipalities can also initiate civil actions for evictions which can be more quickly enforced.⁶⁶ If the land is privately owned, and there is no dispute over ownership, the private owner must simply apply for an interim measure for possession over the property: enforcement of the order is carried out by a State official, the court bailiff.

COHRE has a number of concerns over the possibility that these laws will lead to future forced evictions of Roma in Greece. First, the laws appear not to reflect the guarantees implict in Article 16:

- 1. That there must be sufficient justification for the eviction in accordance with the provisions of international human rights instruments. This applies particularly in the case of public property in circumstances where the government has failed to undertake reasonable housing programs for the most marginalised sections of the population and such groups have been forced to afdopt self-help measures.
- 2. That the procedural protections, particularly of adequate informantion and adequate and reasonable notice and access to legal aid, are not reflected in the Greek eviction laws.
- 3. That persons who are evicted will not be rendered homeless.

Secondly, the systematic practice of forced evictions of Roma provokes the concern that these

general laws are, and will be, more likely to be used against Roma, on account of their race

and poverty. This concern is amplified by evidence of prejudial attitutudes of some

government officials towards Roma as set out in the collective complaint of the ERRC. While

⁶⁴ "Greece: A History of Failed Promises to the Roma," Press Release, February 18, 2004, available at <u>www.omtc.org</u>

⁶⁵ <u>Id</u>.

⁶⁶ Articles 1094 or 1108 of the Greek Civil Code. Municipalities can also file an application for interim measures: Articles 987 or 989 of the Greek Civil Code.

evictions in some case are unavoidable, COHRE is anxious that authorities are more likely to proceed to eviction of Roma, and less likely to devise appropriate alternative solutions to conflicts over land use or provide adequate resettlement, in comparison to non-Roma. The European Committee on Social Rights, in Complaint No. 6/1999, *Syndicat national des Professions du tourisme v France* made it clear that 'all forms of discrimination must be abolished in respect of the rights inthe Charter.⁶⁷ This would presumably require more than the simple abolition of direct forms of discrimination. It would mean ensuring that the Roma do not suffer from 'indirect' discrimination – in this case the differential and unjustifiable use of the general legal framework on evictions to the detriment of Roma.

IV. RECOMMENDATIONS

COHRE urges the European Committe on Social Rights to recommend that the Greek government take the following steps to ensure that the Roma in Greece ensure security of tenure and are protected against forced evictions.

First, the Government must provide adequate reparation for Roma that suffered loss during the period that the 1983 Ministerial Decree, entitled "Sanitary provision for the organised relcoation of wandering nomads," was used by public authorities to foricbly evict Roma.

Second, the Greek government must establish mechanisms to ensure that the Amendment of the A5/696/25.4.83 Sanitary Provision respecting the organzied settlement of itinerant persons or other provisions permitting forced evictions are not arbitrarily or indiscriminately applied to Roma.

⁶⁷ "The Committee points out that Article 1 para. 2 of the revised Charter requires those states which have accepted it to protect effectively the right of workers to earn their living in an occupation freely entered upon. This obligation requires *inter alia* the elimination of all forms of discrimination in employment whatever is the legal nature of the professional relationship." (paragraph 24).

Third, the Greek government must use all appropriate means to protect and promote the right to housing and guarantee protection against forced evictions including ensuring, in law and in practice, that:

- (d) Evictions do not result in individuals being rendered homeless or vulnerable to other human rights abuses;
- (e) Evictions only proceed where there is a justifiable reason for doing so, in accordance with international human rights law.
- (f) Security of tenure is guaranteed to Romani occupants of houses and land, ensuring, *inter alia*, a general protection from forced evictions;
- (g) Evictions conducted for discriminatory reasons or carried out in a discriminatory fashion are prohibited.
- (h) Due process in accordance with international standards is guaranteed in relation to any forced eviction, including (i) opportunity for genuine consultation; (ii) adequate and reasonable notice; (iii) full disclosure of information concerning the eviction, including purpose for which land or housing will be used; (iv) presence of government officials during eviction; (v) proper identification of those carrying out eviction; (vi) evictions not to proceed in bad weather; (viii) provision of legal remedies; adequate pecuniary and non-pecuniary civil compensation as well as comprehensive criminal and administrative redress in cases of illegal forced evictions; and (ix) provision of legal aid where possible for those seeking redress in courts.
- (i) Adequate alternative housing, resettlement or access to productive land is made available to those affected by evictions who are unable to provide for themselves.

V. CONCLUSION

For the foregoing reasons, COHRE respectfully requests that the European Committee on Social Rights determines that the Government of Greece is in violation of Article 16 of the European Social Charter and recommends that the Greek government be required to implement the provisions outlined in Section IV above.

Respectfully Submitted,

____[title]

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GREEK HELSINKI MONITOR (GHM) COORDINATED ORGANIZATIONS AND COMMUNITIES FOR ROMA HUMAN RIGHTS IN GREECE (SOKADRE)

MEMORANDUM ON GREEK CASE LAW ON PROSECUTION UNDER THE MINISTERIAL REGULATION ON ITINERANT ROMA AND ON EVICTIONS

October 2004

The European Committee of Social Rights in oral hearing requested submission of Greek case law in matters of relevance to the collective complaint European Roma Rights Center v. Greece.

The Greek Helsinki Monitor (GHM) and SOKADRE, during their continuous monitoring of the human rights situation of Roma in Greece, have never come across any case in which a state authority has been convicted for failure to implement the Ministerial Sanitary Regulation A5/696/1983 on itinerant Roma, or for the violation of one or more of its provisions. However, the named organisations have encountered several cases in which two types of irregular proceedings were held:

First, in all of them, <u>permanently settled</u> Roma have been prosecuted for the violation of this regulation, even though on its face the regulation concerns only <u>itinerant</u> Roma. In the Case of Glykeia (see Case 1), Roma were eventually able to secure acquittal since the judge accepted that they were not itinerant. GHM and SOKADRE are, however, concerned that many other Courts deem all Roma to be itinerant and convict settled Roma under the Decree.

Secondly, Roma were prosecuted for <u>having settled illegally</u> even though <u>there was clear</u> <u>evidence that they had settled in their locations following decisions of the local authorities</u> (see Cases 1, 2 and 4). In most of these cases, the Roma had settled in these places on the basis of Article 5 of the old regulation which allowed the prefectures "to temporarily settle Roma in locations … until normal infrastructure according to this regulation be organized."

In the indictments, Roma were charged with <u>being responsible for the absence in their</u> <u>settlements of infrastructure</u> meeting the standards of the sanitary regulation. However, <u>the</u> <u>responsibility for building the infrastructure lies with state authorities according to the same</u> <u>regulation</u>. The concurrence of the last two factors meant that <u>authorities have settled Roma in</u> <u>sub-standard locations and for years never develop local infrastructure</u>, while Roma could <u>subsequently be prosecuted for the absence of this same infrastructure</u>. Therefore, Roma are being threatened with prosecution and in some cases actually issued prison sentences on account of the Government's failure to fulfill its statutory responsibilities and obligations under the European Social Charter.

In addition, we submit two cases (Cases 5 and 6), detailing efforts by Greek authorities to hold local government officials accountable in instances of evident violations of Greek and/or international law in the context of forced evictions of Roma. As will be noted in the summaries below, these efforts have not met with success.

Documents related to six cases are appended herewith. A summary of the six cases follows below. The cases presented below are by no means the norm; as noted by the Greek government during oral presentations before the Committee on 11 October 2004, in most

instances, Roma occupying private land are simply expelled without any procedure whatsoever, as well as without the provision of alternate accommodation, in violation of Greece's international law obligations. In most instances, expulsions or other violations of the housing rights of Roma do not result in the opening of any form of procedures against local authorities.

1. Case of Glykeia (Nafplio, Peloponnesus)

On 2 December 1998, twenty-seven Roma were indicted for:

Between November 1998 and 17/6/1999, in the area Glykeia of Nafplio, they all intentionally violated the imperative sanitary regulation A5/696/1983 and, specifically, they settled in impromptu dwellings without permission from the competent authority and without the prerequisites laid down by law being present, as the necessary infrastructure work had not been carried out.

The case was heard before the One Member Misdemeanor Court of Nafplio, on 1 December 2003. The Court acquitted the defendants (ruling 3109/2003 – EXHIBIT 1) with the following reasoning:

In this case, it was proven that the defendants have been living in Glykeia of Nafplio at least since the year 1986 on the suggestion and following the decision of the then Prefecture Council... Hence the aforementioned defendants are not itinerants, but permanent residents of the area mentioned before. Hence, the defendants must be acquitted of the charges of violating article 1 para 1-2 of the sanitary regulation A5/696/24.4/11.5./1983 as amended through the ministerial decision ref no 23641/3-7-2003, as the objective grounds for the aforementioned offense do not exist.

This was not the first time that this Romani community had been tried for violating this Regulation. An earlier indictment included the exact same charges. The same Court on 21 June 1999, had acquitted the same defendants (case file number ABM 198/11 - EXHIBIT 2) on the grounds of necessity: Article 25 of the Criminal Code allows the Court the discretion to recognise the defence of necessity.

2. Case of Tziva (Arcadia, Peloponnesus)

On 14 May 2003, the One Member Misdemeanor Court of Tripoli convicted to various prison terms sixteen Roma for the offenses described in the 25 July 2002 indictment (EXHIBIT 3):

"They are charged for being responsible that in Tziva Arkadias, on 14 November 2001, with intention they violated an imperative sanitary regulation of the Ministry of Health, Welfare and Social Security, issued for the protection of public health. Specifically as members of an itinerant nomad group ("athiganoi" – [demeaning term for Roma]) they established themselves with their families without any control in impromptu shelters (tents) on private properties, without the permission of the competent authority."

These Roma in Tziva were not itinerant but had lived on the settlement since at least 1992, when the location was formally approved for a settlement by the prefecture. Even though funds were allocated for the infrastructure work at the time of settlement, actual construction work to develop the local infrastructure has never taken place.

3. Case of Tripoli (Arcadia, Peloponnesus)

On 19 June 2002, the One Member Misdemeanor Court of Tripoli convicted four Romani individuals to fifteen days of imprisonment for the offenses described in the 8 October 2001 indictment (EXHIBIT 4):

In Tripoli of Arcadia, on 12 February 2001, with intention they violated an imperative and prohibitive sanitary regulation of the Ministry of Health, Welfare and Social Security, issued for the protection of public health. Specifically being "athiganoi" [a demeaning term for Roma], they camped with their families in 57 Navarinou St., without having a specific decision of the Prefect or Arcadia and a related permission of the Police Authority in an area that was not assigned and did not have the necessary infrastructure for healthy living, with as a result, the creation of an unhealthy spot and the imminent danger for the health of the inhabitants.

The indictment did not mention that the land on which the Roma had been living for many years (rather than "*camping*" on it on 12 February 2001, as it is claimed) belonged to the Roma. It is for this reason that, on 29 May 2002, the One Member Misdemeanor Court of Tripoli further convicted these four and two additional Roma to forty days in prison for violation of the building code (unlicensed building of homes). Two of these individuals had previously been convicted to 15 days in prison for "*having established themselves with their families*" in the same place between 10 January 2000 and 21 August 2000. Yet, in the latter court file it is mentioned that this Romani family had bought the land in 1992 and that there was a previous eviction attempt in 1999.

4. Case of Nea Alikarnasos (Crete)

A local Amnesty International section filed a complaint with the prosecutor against the Mayor for non-removal of the garbage from a Romani settlement. The prosecutor indicted the Mayor but only under a different sanitary regulation not related to the sanitary regulation on itinerant Roma. But the prosecutor did not indict the Mayor (and/or perhaps the Prefect) for failure to have provided the infrastructure called for by Article 3 of the Ministerial Sanitary Regulation, even though the Roma had been settled there in 1984 on the basis of that regulation.⁶⁸ Moreover, the prosecutor on his own initiative prosecuted Roma for violation of Article 1 of the Ministerial Regulation.

At the first hearing, the One Member Misdemeanor Court of Heraklio convicted the Mayor of Nea Alikarnasos and twelve Romani individuals to three months of imprisonment for that (ruling 28155/2002 - EXHIBIT 5):

"in the settlement of Nea Alikarnasos of Heraklio in September 1996 they committed the following punishable acts:"

1. the first defendant Ioannis Paterakis, in his capacity as Mayor of Nea Alikarnasos in the area of which is the settlement of Gypsies did not issue, as he was obliged, the necessary orders and instructions to the competent Services of the Municipality to pick up the garbage of the settlement with as a result the creation of serious danger for public health and the turning of the settlement into a large garbage

⁶⁸ The local Amnesty International (AI) section in their deposition stated that the Roma had been settled in Nea Alikarnasos in 1984 by the then Prefect of Heraklio Ms. Athanasaki.

dump from the large quantities of garbage that was accumulated or thrown upon it; so that people lived on and around the garbage; even though he was obliged to do so and knew that the cleaning of the area was to be carried out in suitable time through methods and the sue of means such that no unhealthy situation be created.

2. the twelve other Gypsy defendants during the same time have been found to have established themselves without control in the aforementioned settlement of Nea Alikarnasos even though the settlement without control of itinerant nomads ("athiganoi" [demeaning term for Roma], etc.) without a related authorization is prohibited in any area."

However, on appeal, all the defendants were acquitted (ruling 654/2004 - EXHIBIT 6) – dated on 15 March 2004.

5. Case of Aspropyrgos (Attica)

On 14 July 2000, the municipality of Aspropyrgos razed to the ground several Roma dwellings claiming it was carrying out "cleaning operations." After a complaint to the Ombudsman by GHM, the former issued a finding (case 11828/2000) on 26 January 2001 (EXHIBIT 7), where *inter alia* it is stated that:

Therefore, in view of these provisions, the strongly probable enactment of material acts for the expulsion of Roma from the public lands in which they had resided for many years, without observance of the administrative expulsion procedure required by law, is manifestly illegal... Consequently, in view of the aforementioned seriously considered real occurrences, it is judged that there are sufficient indications of acts carried out which prima facie present all the necessary objective and subjective constitutive elements of a breach of duty (Criminal Code 259). Consequently, it is considered necessary in accordance with Article 4 Par.6 of the Law 2477/1997 to forward the case to the relevant Minister of Internal Affairs, to the General Secretary of the relevant region, as well as, the Public Prosecutor of Athens, so as to initiate an investigation, in view of all the aforementioned, on probable disciplinary and criminal responsibility of the officials of the Municipality of Aspropyrgos or other involved persons."

On 12 February 2001, the report was forwarded to the Minister of Internal Affairs, to the General Secretary of the Attica, as well as, the Public Prosecutor of Athens.

Neither the Minister nor the General Secretary launched any disciplinary investigation. However the Prosecutor did launch on 4 March 2001 a summary judicial investigation ("proanakrisi"). After two and half years, the Mayor of Aspropyrgos was eventually referred to trial before the First Three-Member Misdemeanor Court of Athens on 21 May 2004 for breach of duty (EXHIBIT 8).⁶⁹ The Mayor claimed he was "sick" on that day and the trial was postponed for 17 February 2005.

Further to his report on the particular case, the Ombudsman, on 8 March 2001, sent to the Prefect of Athens a comprehensive memorandum (Ref. No. 17724/00/2.2) on urgent Roma housing concerns in Greater Athens and on the Ministerial Regulation (EXHIBIT 9). Given that the memorandum remained unanswered, the Ombudsman, on 26 February 2002, sent to the General Secretary of the Region of Attica (to which Greater Athens and Aspropyrgos belong) a memorandum (Ref. No. 17274/00/2.3) on the same issues plus the Integrated Action Plan that was in the meantime adopted (EXHIBIT 10). It too remained unanswered.

⁶⁹ The indictment states:

George Liakos is charged for, in Aspropyrgos of Attica, on 14-7-2000, in his capacity as official, with intent breached the duty of his service aiming at harming someone else, and (more specifically) that, in his capacity of Mayor of Aspropyrgos of Attica, proceeded at the aforementioned time, to the eviction of 'athiganoi' from their settlement area, which was at the dwelling area 'Roma'... without having previously served them with protocols of administrative eviction... denying them the right to legally defend themselves for the annulment of the aforementioned eviction, specifically by filing the legal procedure of appeal against the protocols of eviction.

6. Case of Kalamaria (Greater Thessaloniki)

On September 4, 2002, the Mayor of Kalamaria, Mr Christodoulos Ekonomides, made the following statement to the state-run Macedonian Press Agency:

"We cannot let them [the Roma who live in the Phenikas settlement] stay on a plot of land, next to which people are living. With the help of the police, we are trying to get them to leave."

On the same day, twenty Roma families living in the area Foinikas of the municipality of Kalamaria (Greater Thessaloniki) were orally told by police officers to leave the area where they had settled. The following morning, at around 7:30 AM, two bulldozers, accompanied by two trucks, arrived at the settlement and one of the bulldozers started tearing down the sheds. Two police jeeps (allegedly belonging to police special forces) with eight black clad police officers, two police patrol cars with six police officers and a municipal police patrol car with three municipal police officers were standing by, while allegedly the owner of the land was also present.

The Roma were not presented with any eviction protocols and the demolition crew and the police left about one hour later and only after a TV crew from the ET-3 state TV station appeared and started filming the process. On September 11, 2002, GHM filed a complaint report before the Misdemeanors Prosecutor of Thessaloniki against the Mayor of Kalamaria, the police and other parties, charging that the eviction was illegal and that the Mayor's statement was in breach of the anti-racist Law 927/79.

On 9 June 2004, following a preliminary investigation –in which no Roma nor any GHM person were summoned-, the Prosecutor, through ruling 67/2004 (EXHIBIT 11), shelved the case. The prosecutor considered it an appropriate action since owners of the private land on which the Roma were settled asked the police to help evict them, rather than seeking – as the Greek law states - a court ordered eviction (see COHRE Observations). Moreover, the Prosecutor considered that the sheds were not buildings in the meaning of (and hence protected by) the General Building Code. The Mayor's statements, moreover, were not considered racist.

<u>Αριθμός: 3109 /2003</u>



ΠΡΑΚΤΙΚΑ ΚΑΙ ΑΠΟΦΑΣΗ

Του Μονομελούς Πλημμελειοδικείου Ναυπλίου

Συνεδρίαση της 1^{ης} Δεκεμβρίου 2003

Αικ/νη Κουλούρη 1) Γεώργιος Βασιλείου και Νίκης Καραγκούνης, γενν. 1964 στο Ναύπλιο. Παράβασ Δικ/νη Κουλούρη 2) Μαρία Ελευθερίου και Ζωής Καραγκούνη, γενν το 1971στη Σπάρτη. Παράβασ Πλημμελειοδίκης 3) Αντωνία Γεωργίου και Σοφίας, Μόσχου, γενν. 1952 στο Άργος. Υγειονομ 4) Κων/να Βασιλείου και Ελένης Καλαμιώτη, συζ. Ευθυμίου Μόσχου, γενν. 1963 στο Ναύπλιο. Διάταξης	Δικαστές κ.λ.π.	Πράξη
 δ) Φανή Δημητρίου και Χριστίνας Καραγκούνη αυζ. Νικολάου Καραγκούνη. δ) Νίκη Δημητρίου και Χραίτινας Καραγκούνη αυζ. Νικολάου Καραγκούνη. δ) Δήμητρα Περιούνδρου και Σορίας Καραγκούνη, γεν 1958 στο Ναύττλιο. β) Παναγιώτα Γερασίμου και Μαρίας Κρασγκούνη, γεν 1949 στην Ζάικιδα. 11) Πολυξένη Γεωργίου και Σορίας Κάλαμώτη, γεν 1949 στην Ζάικιδα. 11) Πολυξένη Γεωργίου και Δοραγκούνη, γεν 1949 στην Ζάικιδα. 12) Νικόλαος Ηλία και Πολυξένης Καραγκούνης, γεν 1949 στην Χάλικίδα. 13) Γερασιμούλα Μόσχου, συζ. Χρήστου του Ευθυμίου και της Κωνίνας , γεν. 1980 στο Άργος. 14) Πολυζένης Γεωργίου και Σορίας Μόσχου. 15) Ευτιγχία Μόσχου, συζ. Χρήστου του Ευθυμίου και της Κωνίνας , γεν. 1950 στο Άργος. 16) Αρούσιος Γεωργίου και Σορίας. 17) Γερασιμούλα Μόσχου, συζ. Χρήστου του Ευθυμίου και της Κωνίνας , γεν. 1950 στο Άργος. 16) Αρούσιος Γεωργίου και Σορίας. 17) Γερασιμούλα Γεωργίου και Σορίας. 18) Σοφία Γεωργίου και Σορίας Μόσχου, γεν. 1963 στη Σόρφες. 19) Γερασιμούλα Γεωργίου και Σορίας. 19) Σοφία Γεωργίου και Σορίας Μόσχου, γεν. 1963 στη Σόρφες. 19) Σοφία Γεωργίου και Ερότητης Γεμογιστούλου, γεν. 1963 στη Λογος. 19) Ευφροσίνη Βασιλείου και Ερότητας Γεωργοπούλου, γεν. 1970 στο Λαγος. 19) Σοφία Γεωργίου και Δραίας Καραγκούνη, γεν. 1932 στη Λακωνία. 20) Ελένη Γεωργίου και Μαρίας Καραγκούνη, γεν. 1933 στο Άργος. 21) Σοφία Καραγκούνη συς. Μυχατιλ του Βασιλείου και της Νάτηνο. 22) Παυλίνα Βασιλείου και Μαρίας Καραγκούνη, γεν. 1933 στο Άργος. 23) Παυλίνα Βασιλείου και Μαρίας Καραγκούνη, γεν. 1933 στο Άργος. 24) Ακατερίνη Πέτρου και Μαρίας Καραγκούνη, γεν. 1933 στο Άργος. 25) Αγήτη Ευθμίου και Ανταίνας Καραγκούνη, γεν. 1933 στο Άργος. 26) Φρότω Κωνίνου και Ελέτης Καραγκούνη, γεν. 1934 στο Μυκήνε	Αικ/νη Κουλούρη Πλημμελειοδίκης Σταυρούλα Στεφανάτου Αντεισαγγελέας (επειδή κωλύεται ο Εισαγγελέας) , Γεωργία Μανιάτη	η. η. ι. 7

ΕΚΘΕΣΗ ΠΡΑΚΤΙΚΩΝ ΚΑΙ ΑΠΟΦΑΣΗ



Στη σημερινή συνεδρίαση του Δικαστηρίου, που έγινε δημόσια στο ακροατήριο, ο κλητήρας του ακροατηρίου, με εντολή της Πλημ/κη εκφώνησε τα ονόματα των κατηγορουμένων όπου και εμφανίστηκαν $01^{o_{\varsigma}} -2^{\eta} - 3^{\eta} - 4^{\eta} - 6^{\eta} - 7^{\eta} - 11^{\eta} - 12^{o_{\varsigma}} - 13^{\eta} - 14^{o_{\varsigma}} - 15^{\eta} - 16^{o_{\varsigma}} - 17^{\eta} - 18^{\eta} - 20\eta - 24^{\eta}$ και όταν ρωτήθηκαν από την Πλημ/κη για την ταυτότητα τους κλπ. είπαν ότι ονομάζονται όπως παραπάνω αναφέρεται και ότι διορίζουν συνήγορο υπεράσπισης τους τον παρόντα στο ακροατήριο δικηγόρο κ. Σπυρίδων ΚΛΟΥΔΑ ενώ οι κατ/νοι: $5^{\eta} - 8^{\eta} - 9^{\eta} - 10o_{\varsigma} - 19^{\eta} - 21^{\eta} - 23^{\eta} - 26^{\eta} - 27^{\eta}$ δεν εμφανίστηκαν αν και κλήθηκαν νόμιμα και εμπρόθεσμα. Η υπόθεση εκδικάζεται σαν να ήταν παρόντες και οι κατ/νοι $5^{\eta} - 8^{\eta} - 9^{\eta} - 10o_{\varsigma} - 19^{\eta}$.

Η υπόθεση εκδικάζεται σαν να ηταν παροντες και στ και το τ $21^{n}-22^{n}-23^{n}-25^{n}-26^{n}-27^{n}$.

Στο σημείο αυτό εμφανίστηκε ο δικηγόρος του Δικηγορικού Συλλόγου Αθηνών Σπυρίδων Κλούδα, ο οποίος δήλωσε στο Δικαστήριο, ότι με τις από 15-11-2003 εξουσιοδοτήσεις, διορίστηκε από τις κατηγορούμενες Σοφία Καραγκούνη και Παυλίνα Καραγκούνη ειδικός πληρεξούσιος, αντιπρόσωπος και αντίκλητος και ζήτησε όπως του επιτραπεί να εκπροσωπήσει τις παραπάνω κατηγορούμενες στην παρούσα δίκη, σύμφωνα με το άρθρο 340 Κ.Π.Δ.

Στο σημείο αυτό αναγνώστηκαν οι από 15-11-2003 εξουσιοδοτήσεις.

Η Εισαγγελέας έλαβε το λόγο και πρότεινε να επιτραπεί να παραστεί ως εκπρόσωπος των παραπάνω κατηγορουμένων ο δικηγόρος Σπυρίδων Κλουδάς.



The then positionen the annetiens kannyoportiens and tor nongetouses Snengopo zous Enepistera koorbai.

ΓΙΑ ΤΟΥΣ ΛΟΓΟΥΣ ΑΥΤΟΥΣ

Δικάζοντας τις κατηγορούμενες Σοφία Καραγκούνη και Παυλίνα Καραγκούνη ως να ήταν παρούσες.

Δέχεται την Εισαγγελική πρόταση.

Επιτρέπει την εκπροσώπηση των απολειπομένων κατηγορούμενων από τον πληρεξούσιο δικηγόρο Σπυρίδων Κλουδά.

Κρίθηκε, αποφασίστηκε και δημοσιεύτηκε αμέσως στο ακροατήριο.

Στο Ναύττλιο την 1-12-2003

Η Πλημ/κης Hern

Η Γραμματέας

Η Πλημ/κης παράγγειλε στους παρόντες κατηγορούμενους και στον πληρεξούσιο δικηγόρο να ακούσουν με προσοχή την κατηγορία και την σχετική μ' αυτήν συζήτηση στο ακροατήριο. Επίσης τους πληροφόρησε ότι έχουν δικαίωμα να εκθέσουν τους ισχυρισμούς τους και να υποβάλουν τις παρατηρήσεις τους μετά από την εξέταση κάθε μάρτυρα και την έρευνα κάθε αποδεικτικού μέσου.

Η Εισαγγελέας έλαβε τον λόγο και ανέφερε με συνοπτική ακρίβεια την κατηγορία και πρότεινε να αναγνωστούν τα έγγραφα που αναφέρονται στο τέλος του κατηγορητηρίου.



Κατόπιν η Πλημ/κης ζήτησε από τους κατηγορούμενους γενικές πληροφορίες για την πράξη για την οποία κατηγορούνται και τους έκανε γνωστό ότι θ' απολογηθούν μετά το τέλος της αποδεικτικής διαδικασίας. Οι κατηγορούμενοι έδωσαν τις πληροφορίες που του ζητήθηκαν και δήλωσαν ότι κάλεσαν ένα μάρτυρα υπεράσπισης.

Το όνομα του μάρτυρα αυτού εκφώνησε η Πλημ/κης και βρέθηκε παρών ο Παναγιώτης ΔΗΜΗΤΡΑΣ.

Μετά αναγνώσθηκαν στο ακροατήριο τα έγγραφα που αναφέρονται στο τέλος του κατηγορητηρίου: α) Το υπ΄αριθμό πρωτοκόλλου 3021/8/80α έγγραφο ΑΤ Ναυπλίου και 2) Το υπ΄αριθμό πρωτοκόλλου 6787 έγγραφο Αγροτικής Φυλακής Τίρυνθας και 3. Το υπ΄αριθμό πρωτοκόλλου 6406/5-11-1996 έγγραφο της Αγροτικής Φυλακής Τίρυνθας.

Στο σημείο αυτό προσήλθε ο μάρτυρας υπεράσπισης που ρωτήθηκε από την Πλημ/κη για την ταυτότητα του κατ-απάντησε ότι ονομάζεται Παναγιώτης ΔΗΜΗΤΡΑΣ του Ηλία και της Αγγελικής, γεννήθηκε στην Αθήνα το έτος 1953, Έλληνας και Χριστιανός Ορθόδοξος, γνωρίζει τους κατηγορούμενους και δεν συγγενεύει με αυτούς. Κατόπιν ορκίσθηκε στο Ιερό Ευαγγέλιο κατά το άρθρο 218 Κωδ. Ποιν. Δικ. και εξεταζόμενος κατέθεσε ότι: « Οσον αφορά τα δικαιώματα των τσιγγάνων αυτά έχουν αλλάξει. Η διάταξη άλλαξε, αφορά μόνο τους πλανόδιους. Εδώ όλοι οι κατηγορούμενοι που κατηγορούνται σήμερα σε αυτή την δικογραφία δεν είναι πλανόδιοι, είναι μόνιμοι κάτοικοι Δηλαδή δεν εμπίπτουν στην κατηγορία, στον Νόμο. Είναι μόνιμοι κάτοικοι όχι πλανόδιοι. Οι ίδιοι οι άνθρωποι μένουν εκεί στην περιοχή για πολλά χρόνια. Η Νομαρχιακή Αυτοδιοίκηση τους είπε, τους υπόδειξε να μείνουν εκεί. Από τους κατοίκους πενήντα πέντε [55] άτομα μένουν για πάντα εκεί στην Γλυκειά –Ναυπλίου. Η εγκατάσταση των τσιγγάνων στην Γλυκειά έγινε καθ΄υπόδειξη και όχι αυθαίρετα.»

Στη συνέχεια η Πλημ/κης κάλεσε τους κατηγορούμενους σε απολογ

orta A



Ο1°ς κατηγορούμενος απολογούμενος είπε: « Εδώ και 25 χρόνια κατοικώ στην Γλυκειά -Ναυπλίου. Εκεί γεννήθηκα, εκεί μεγάλωσα. Εδώ στην Γλυκειά έχουμε φυτέψει δένδρα, έχουμε φτιάξει αρκετά πράγματα. Έχουμε νερό, μας έφεραν. Μας έφτιαξαν τουαλέτες, όχι πολύ καλές αλλά υπήρχαν. Στην περιοχή μας υπήρχαν σκουπίδια, παλιά γίνονταν εκεί κάποια έργα.»

Η 2^η κατηγορούμενη απολογούμενη είπε: « Τώρα είμαι κρατούμενη όμως πριν ήμουν μόνιμη κάτοικος στην Γλυκειά-Ναυπλίου.

Η 3^η κατηγορούμενη απολογούμενη είπε: « Μένω τριάντα [30] χρόνια στην Γλυκεία -Ναυπλίου. Εκεί στην περιοχή έχει ποντίκια και αρκετή βρωμιά. Από μία [1] βρύση πλενόμαστε όλοι. Δεν ενδιαφέρθηκε κανένας για εμάς στα σοβαρά.»

<u>Η 4^η κατηγορούμενη</u> απολογούμενη είπε: « Συμφωνώ με αυτά που είπαν οι προηγούμενοι κατ/νοι. Μένω τριάντα [30] χρόνια στην Γλυκεία -Ναυπλίου. Εκεί στην περιοχή έχει ποντίκια και αρκετή βρωμιά. Από μία [1] βρύση πλενόμαστε όλοι. Δεν ενδιαφέρθηκε κανένας για εμάς στα σοβαρά.»

Η 6^η κατηγορούμενη απολογούμενη είπε: « Συμφωνώ με αυτά που είπαν οι προηγούμενοι κατ/νοι. Μένω τριάντα [30] χρόνια στην Γλυκεία -Ναυπλίου. Εκεί στην περιοχή έχει ποντίκια και αρκετή βρωμιά. Από μία [1] βρύση πλενόμαστε όλοι. Δεν ενδιαφέρθηκε κανένας για εμάς στα σοβαρά.»

Η 7^η κατηγορούμενη απολογούμενη είπε: « Συμφωνώ με αυτά που είπαν οι προηγούμενοι κατ/νοι. Μένω τριάντα [30] χρόνια στην Γλυκεία -Ναυπλίου. Εκεί στην περιοχή έχει ποντίκια και αρκετή βρωμιά. Από μία [1] βρύση πλενόμαστε όλοι. Δεν ενδιαφέρθηκε κανένας για εμάς στα σοβαρά.»



Η 11[¶] κατηγορούμενη απολογούμενη είπε: « Συμφωνώ με αυτά που είπαν οι προηγούμενοι κατ/νοι. Μένω τριάντα [30] χρόνια στην Γλυκεία -Ναυπλίου. Εκεί στην περιοχή έχει ποντίκια και αρκετή βρωμιά. Από μία [1] βρύση πλενόμαστε όλοι. Δεν ενδιαφέρθηκε κανένας για εμάς στα σοβαρά.»

<u>Ο 12ος κατηγορούμενος</u> απολογούμενος είπε: « Συμφωνώ με αυτά που είπαν οι προηγούμενοι κατ/νοι. Μένω τριάντα [30] χρόνια στην Γλυκεία - Ναυπλίου. Εκεί στην περιοχή έχει ποντίκια και αρκετή βρωμιά. Από μία [1] βρύση πλενόμαστε όλοι. Δεν ενδιαφέρθηκε κανένας για εμάς στα σοβαρά.»

Η 13^η κατηγορούμενη απολογούμενη είπε: « Συμφωνώ με αυτά που είπαν οι προηγούμενοι κατ/νοι. Μένω τριάντα [30] χρόνια στην Γλυκεία -Ναυπλίου. Εκεί στην περιοχή έχει ποντίκια και αρκετή βρωμιά. Από μία [1] βρύση πλενόμαστε όλοι. Δεν ενδιαφέρθηκε κανένας για εμάς στα σοβαρά.»

<u>Ο 14ος κατηγορούμενος</u> απολογούμενη είπε: « Συμφωνώ με αυτά που είπαν οι προηγούμενοι κατ/νοι. Μένω τριάντα [30] χρόνια στην Γλυκεία -Ναυπλίου. Εκεί στην περιοχή έχει ποντίκια και αρκετή βρωμιά. Από μία [1] βρύση πλενόμαστε όλοι. Δεν ενδιαφέρθηκε κανένας για εμάς στα σοβαρά.»

Η 15^η κατηγορούμενη απολογούμενη είπε: « Συμφωνώ με αυτά που είπαν οι προηγούμενοι κατ/νοι. Μένω τριάντα [30] χρόνια στην Γλυκεία -Ναυπλίου. Εκεί στην περιοχή έχει ποντίκια και αρκετή βρωμιά. Από μία [1] βρύση πλενόμαστε όλοι. Δεν ενδιαφέρθηκε κανένας για εμάς στα σοβαρά.»



<u>Ο 16ος κατηγορούμενος</u> απολογούμενος είπε: « Συμφωνώ με αυτά που είπαν οι προηγούμενοι κατ/νοι. Μένω τριάντα [30] χρόνια στην Γλυκεία - Ναυπλίου. Εκεί στην περιοχή έχει ποντίκια και αρκετή βρωμιά. Από μία [1] βρύση πλενόμαστε όλοι. Δεν ενδιαφέρθηκε κανένας για εμάς στα σοβαρά.»

Η 17^η κατηγορούμενη απολογούμενη είπε: « Συμφωνώ με αυτά που είπαν οι προηγούμενοι κατ/νοι. Μένω τριάντα [30] χρόνια στην Γλυκεία -Ναυπλίου. Εκεί στην περιοχή έχει ποντίκια και αρκετή βρωμιά. Από μία [1] βρύση πλενόμαστε όλοι. Δεν ενδιαφέρθηκε κανένας για εμάς στα σοβαρά.»

Η 18^η κατηγορούμενη απολογούμενη είπε: « Συμφωνώ με αυτά που είπαν οι προηγούμενοι κατ/νοι. Μένω τριάντα [30] χρόνια στην Γλυκεία -Ναυπλίου. Εκεί στην περιοχή έχει ποντίκια και αρκετή βρωμιά. Από μία [1] βρύση πλενόμαστε όλοι. Δεν ενδιαφέρθηκε κανένας για εμάς στα σοβαρά.»

Η 20⁴ κατηγορούμενη απολογούμενη είπε: « Συμφωνώ με αυτά που είπαν οι προηγούμενοι κατ/νοι. Μένω τριάντα [30] χρόνια στην Γλυκεία -Ναυπλίου. Εκεί στην περιοχή έχει ποντίκια και αρκετή βρωμιά. Από μία [1] βρύση πλενόμαστε όλοι. Δεν ενδιαφέρθηκε κανένας για εμάς στα σοβαρά.»

Η 24^η κατηγορούμενη απολογούμενη είπε: « Συμφωνώ με αυτά που είπαν οι προηγούμενοι κατ/νοι. Μένω τριάντα [30] χρόνια στην Γλυκεία -Ναυπλίου. Εκεί στην περιοχή έχει ποντίκια και αρκετή βρωμιά. Από μία [1] βρύση πλενόμαστε όλοι. Δεν ενδιαφέρθηκε κανένας για εμάς στα σοβαρά.»



Στη συνέχεια η Πλημ/κης έδωσε το λόγο στον δικηγόρο Σπυρίδων Κλουδά ως νόμιμου εκπρόσωπου των απολειπομένων κατ/νων: Σοφίας Καραγκούνη και Παυλίνας Καραγκούνη ο οποίος δήλωσε τα εξής: « Οι κατηγορούμενοι δεν πληρούν την αντικειμενική υπόσταση. Δεν εμπίπτουν στην κατηγορία, στον Νόμο. Είναι νόμιμοι και όχι πλανόδιοι.»

Η Πλημ/κης ρώτησε την Εισαγγελέα, τους κατηγορούμενους και τον πληρεξούσιο δικηγόρο αν έχουν να εξετάσουν ή να διασαφηνίσουν κάτι συμπληρωματικά και σε αρνητική τους απάντηση κήρυξε τη λήξη της αποδεικτικής διαδικασίας.

Η Εισαγγελέας έλαβε το λόγο και πάλι και αφού ανέπτυξε την κατηγορία πρότεινε την αθώωση των κατηγορουμένων.

Ο συνήγορος των κατηγορούμενων ζήτησε την αθώωση των πελατών του.

Στη συνέχεια η Πλημ/κης, με την παρουσία και της Γραμματέα, εξέδωσε την παρακάτω απόφαση, την οποία δημοσίευσε σε δημόσια συνεδρίαση.

Οι κατηγορούμενοι 5ⁿ, 10ος και 26ⁿ όπως πρακύπτει από τα από 1. 10-10-2003, **2.11**-10-2003 και **3.**16-10-2003 τρία [3] αποδεικτικά επίδοσης των **1.**Αστ/κα Νίκου Λέκκα, που υπηρετεί στον ΑΣ Ν.Κίου **2.** Αστ/κα Γεωργίου Δορμπάρη, που υπηρετεί στο ΑΤ Ναυπλίου και **3.**Αρχ/κα Σπύρου Μουλινού που υπηρετεί στο ΑΤ Κέρκυρας, κλήθηκαν νόμιμα και εμπρόθεσμα για τη σημερινή δίκη. Επομένως εφόσον δεν εμφανίστηκαν πρέπει να δικαστούν σαν να ήταν παρόντες [άρθρο 340 παρ.3 ΚΠΔ]

Από τα έγγραφα που αναγνώστηκαν στο ακροατήριο, την κατάθεση του μάρτυρα υπεράσπισης, την απολογία των παρόντων κατηγορούμενων και από όλη την υπόλοιπη συζήτηση της υπόθεσης αποδείχτηκε ότι:



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Δικάζοντας με παρόντες τους κατηγορούμενους: $1^{\circ}-2^{\eta}-3^{\eta}-4^{\eta}-6^{\eta}-7^{\eta}-11^{\eta}-12^{\circ}$ $13^{\eta}-14^{\circ}-15^{\eta}-16^{\circ}-17^{\eta}-18^{\eta}-20\eta-24^{\eta}$ και 21^{η} -23^η και με απόντες τους κατηγορούμενους: $5^{\eta}-8^{\eta}-9^{\eta}-100-19^{\eta}-25^{\eta}-26^{\eta}-27^{\eta}$.

Κηρύσσει αυτούς αθώους του ότι: Κατά το χρονικό διάστημα από τέλος Νοεμβρίου 1998 έως 17-6-1999 στη θέση «Γλυκειά» Ναυπλίου.

Άπαντες οι κατηγορούμενοι με πρόθεση παρέβησαν επιτακτική υγειονομική διάταξη δηλαδή την υπ΄αριθμό Α5/696/1983 υγειονομική διάταξη και συγκεκριμένα εγκαταστάθηκαν σε πρόχειρα στεγάσματα χωρίς άδεια της αρμόδιας αρχής και χωρίς τη συνδρομή των νόμιμων προϋποθέσεων αφού δεν υπάρχουν τα απαραίτητα έργα υποδομής στο χώρο εγκαταστάσεως [ύδρευση –αποχωρητήρια].

Η ΓΡΑΜΜΑΤΕΑΣ Η ΠΛΗΜ/ΚΗΣ Kklem ΘΕΩΡΗΘΗΚΕ Για τη νόμιμη σήμανση και την έκδοσή KPIEEZ ANTIPAOO 10 A του κατά τη σειρά της παραγγελίας. 6- 09904 та Гоанцатейас 0.0 -6-Ναύπλιο 2 05 ATH REOPHA MANIATH REOPTIA

Στο Ναύπλιο την 1/12/2003

Κρίθηκε, αποφασίστηκε και δημοσιεύτηκε αμέσως στο ακροατήριο.

ΕΙΣΑΓΓΕΛΙΑ ΠΡΩΤΟΔΙΚΩΝ ΝΑΥΠΛΙΟΥ A.B.M. E5198 # A.B.Q. ETIPS149 ΠΡΑΞΕΙΣ hapables yevorofineis Suarafus ΚΑΤΗΓΟΡΟΥΜΕΝΟ 1) Bupplion Breyeron uca Niller MAPAFKOVWHIL, Jev. 1964 GU Nampo, A.T. N-P30074 J.A. Kaenziov J. 2) Vapia Gendspion uca Luis MAPAFKOVWH Jev. 19F1 GM N2) Vapia napu Fulppion uses Logias HOLKOT, KN. 1PS2 610 Agos A 3 Aren now your Show yANAMIOTH 64. riding AY ł N. 91963 50 ABerro [T.A. bergin 1 chang impion all Applice, MAPAFICONNE WV. Gin Ivon A.T D-09/SII/T.A. Heldow DURINDION DOLL KNIELISS VAPATUOYN'H 627. BOD LAPATUOYNH. Natural KI LI WARX pixedov you Logian UAPATIANNH Navahier SOLGHEOU LOL HADION UNPATIANNIL. DIAD Twahing does Bapbaron AGNTEPH, UN. TPGT 7. 17-84032P 'A TO Mar TOLOWCOLDARON VANAHIETHS. xunde NAV or use Lobian MURKOY SALL 36 à une Montéries 1 ATH A DY ALA Asikadla Gr. YOUGTON UN HOULION MOIXOV 11 m They here way son Appening MARKOV, MN-1963 - A ÉDOSS (P-2495P3 7. A. Walkion) HOLKOY GUT. SLOWGION FEEPFONOYAOK 200 WUN Apla 4plaid2 Logia, f.v. 1954 Gra Suppor use The ISSE Maintion Ruppior nou upinn 160 PROMOYAON NGUD A-7 6m 201 Verro o LN. 1463 Repeterention Ruppion nou Logian MOLKOY, gen. Nownyw (12- 841747 Navasion) 600

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ΠΡΑΞΗ: Παράβαση της Α5/696/83 Υγειονομικής Διάταξης

ΚΑΤΗΓΟΡΟΥΜΕΝΟΙ : 1) Νικόλαος Ηρακλή Καλύβας

- 2) Γεράσιμος Ηρακλή Καλύβας 3) Ιωάννης Σπύρου Μαρκόπουλος
 - 3) Ιωάννης Σπορού Μαρκοπουλος 4) Ιωάννης Γεωργίου Καραχάλιος -

φ) Γεώργιος Ανδρέα Καραχάλιος

6) Ευστράτιος Γεωργίου Μαρκόπουλος

-7) Ευάγγελος Κων/νου Καραχάλιος

8) Σταμάτης Γεωργιου Καραγιάννης

9) Σταμάτης Ευαγγέλου Καραχάλιος

10) Γεράσιμος Λεωνίδα Αναστασόπουλος

11) Παναγιώτης Ιωάννη Καραχάλιος

12) Παναγιώτα χα Λεωνίδα Αναστασοπούλου

13) Περικλής Γερασίμου Αναστασόπουλος

14) Πέτρος Γεωργίου Καραγκούνης

15) Σπύρος Παναγιώτη Καραχάλιος

16) Δημήτριος Παναγιώτη Ρούπας

κάτοικοι Τζίβα Αρκαδίας

Κατηγορούνται ως υπαίτιοι του ότι στον Τζίβα Αρκαδίας, στις 14 Νοεμβρίου 2001.

Με πρόθεση παρέβηκαν επιτακτική και απαγορευτική υγειονομική διάταξη του Υπουργείου υγείας, Πρόνοιας και Κοινωνικών Ασφαλίσεων, που εκδόθηκε για την προστασία της δημόσιας υγείας. Συγκεκριμένα ως μέλη πλανόδιας νομάδας (αθίγγανοι) εγκαταστάθηκαν ανεξέλεγκτα μαζί με τις οικογένειές τους εντός προχείρων στεγάστρων (σκηνών) μέσα σε ιδιωτικούς χώρους, χωρίς να έχουν σχετικές άδειες της αρμόδιας αρχής.

Η πράξη τους αυτή προβλέπεται και τιμωρείται από τις διατάξεις των άρθρων 12, 26 παρ. Ι^α και 27 παρ. Ι του Ποινικού Κώδικα και άρθρων Ι και 3 του Α.Ν. 2520 /40, όπως το άρθρο 3 αντικ. με άρθρο μόνο του Ν. 290 /43 κυρ. με 303/ 46 πράζη του Υπουργικού Συμβουλίου, σε συνδ. με

άρθρα 1 παρ. 1 και 6 παρ. 2 της Α5/696/83 ΑΙΒ/8577/83 Υγ/κής Δ/ζης και άρθρου 11 παρ. 10 του Ν. 2307/95.

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Γραμαμ	πέας Τ.Σ. Πολ. Σ	υλλόγου	Τζίβα, 👘
Δήμου Τεγέας	· ·		

ЕГГРАФА :

Νικόλαος Φιστόπουλος Αντεισαγγελέας Πρωτοδικών

Τρίπολη 25 Ιογλίου 2002 Ο ΕΙΣΑΙ ΓΕΛΕΑΣ

1. Το από 14-11-01 του Πολ/κού Συλλόνου Τεγέας

AKPOATHPIO

MONO MEAOYE MAHMMEAEIOAIKEIOY TPINOAHE

ΠΡΑΞΕΙΣ : Παράβαση της Α5/696/83 υγ/κής δ/ξης Παράβαση της 3/96 αστ/κής δ/ξης

 KATHFOPOYMENO:I :	1) Χριστίνα Ηρακ.Καραχάλιου 	<u>.</u>
ja	3) Γρηγόριος Κων.Καραχάλιος	
	4) Κων/νος Γρηγ.Καραχάλιος	
KATOIKO:	ματ. Τρίπολης (Ναυαρίνου 57)	•

Κατηγορούνται ως υπαίτιο ι του ότι:

Στην Τρίπολη Αρκαδίας στις 12 Φεβρουαρίου 2001

1) Με πρόθεση παρέβημαν επιταμτική και απαγορευτική υγειονομική διάταξη του Υπουργείου Υγείας Πρόνοιας και Κοινωνικών Ασφαλίσεων που εκδόθηκε προς προστασία της δημόσιας υγείας.Συγκεκριμένα όντες αθίγγανοι, κατασκήνωσαν με τις οικογένειές τους στην οδό Ναυαρίνου 57, χωρίς να είναι εφοδιασμένοι με ειδική απόφαση του Νομάρχη Αρκαδίας και σχετική άδεια της Αστυνομικής Αρχής σε χώρο που δεν ήταν καθορισμένος και δεν διέθετε τα απαραίτητα έργα υποδομής για την υγιεινή διαβίωση, με αποτέλεσμα να δημιουργείται ανθυγιεινή εστία και να υπάρχει άμεσως κίνδυνος για την υγεία των περιοίκων.

2) Με πρόθεση παρέβημαν τα μέτρα για την τήρηση της μοινής ησυχίας του Αρχηγού της Ελληνιμής Αστυνομίας. Συγμεμριμένα έθεσαν σε λειτουργία δύο βενζινομίνητες ηλεμτρογεννήτριες παραγωγής ηλεμτριμού ρεύματος, οι οποίες με τη λειτουργία τους παράγουν ισχυρό θόρυβο, διαταράσσοντας έτσι την ησυχία των περιοίμων.

Για παράβαση των άρθρων 12,26 παρ.1α,27 παρ.1 του Π.Κ. και άρθρου 3 του A.N.2520/40 όπως το άρθρο 3 αντικ.με άρθρο μόνο του N.290/43 κυρ.με την 303/46 π.Υ.Σ. σε συνδ.με την A5/696/83 υγ/κή δ/ξη και άρθρο 11 παρ.10 του N.2307/95 και άρθρου 2 παρ.2 της 3/96 αστ/κής δ/ξης.

MAPTYPEZ

Τρίπολη 8 Οκτωβρίου 2001

H-EIZAITEAEAE 1. Θωμάς Ελευθ. Γπιόπας 2. Γεωργία Βυτινάρου-Γκιόκα ματ. Τρίπολης (Ναυαρίνου, 59) Elizartika A. English Louis and Alle Recteduct

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Πλημμελειοδίκης Αντιεισαγγελέας (επ και οι αρμόδιοι αναπλ	ειδή κωλύεται Ο Εισογγελέας) ληρωτές του			·

Η συνεδρίαση έγινε δημοσία στο ακροστήριο του Δικαστηρίου τούτου.

ο ο ο ποίος δεν εμφανίστηκε Ν

Η υπόθεση εκδικάζεται σαν να ήταν οικατηγορούμενος παρών. 🕻 🛸

Στο σημείο αυτό εμφανίστηκε υ ρηνατής δήλωσε ότι παρίσταται ως πολιτικώς ενάγων κατά του εναγομένου κατηγορουμένου, ότι ζητεί να του του δαπάνη. Ερίσης κατέθεσε το Τριπλάτυπο γραμμάτιο του Δημ. Ταμείου Ηρακλείος από το οποίο προκύπτει ότι πληρώθηκε το ανάλογο δικαστικό ένσημο και ότι διορίζει πληρεξούσιο σικηγόρο του τον

Κατόπιν έλαβε το λόγο Εισαγγελέας. Νοποίο με συνοπτική ακρίβεια απάγγειλε, την κατηγορία και, έδωσε στην Πρόεδρο κατάλογο των μαρτύρων που κλήτευσε για να υποστηρίξουν την κατηγορία, ή θα επικαλεσθεί τα έγγραφα που αναφέρονται στο τέλος του κατηγορητηρίου.

Ο Πρόεδρος εκφώνησε τα ονόματα των μαρτύρων και βρέθηκαν. Ο τη ότι της ζ

Κατόπιν ο Πρόεδρος, αυού είπε στους μάρτυρες ν' αποχωρήσουν από το ακροστή με το άρθρο 350 Κ.Π.Δ., κόλεσε τον πρώτο μάρτυρα, ο οποίος ρωτήθηκε για τα στοιχεία το και είπε ότι ονομάζεται το έτος	αυτότητας του γεννήθηκε
και ασκεί το επάγγελμα τ	ορούμενο δεν ας Χριστιανός

K.A. EP 2018/4/2019

ΓΙΑ ΤΟΥΣ ΛΟΓΟΥΣ ΑΥΤΟΥΣ

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Κρίθηκε αποφασίστηκε και δημοσιεύθηκε στο ακροατήριο

Πλημ/κης

έ Γραμμοτέας

Ο πληρεξούσιος του πολιτικώς ενάγοντος ζήτησε να γίνει δεκτή η πολιτική αγωγή.

Μετά από αυτά το Δικαστήριο σε διάσκεψη στην οποία παραβρέθηκε και φΓραμματέας έλαβε την παρακάτω απόφαση, την οποία δημοσίευσε, στο ακροατήριο.

Επείδή η πράξη για την οποία κηρίχτηκε ένοχος α κατηγορούμενος προβλέπεται από τις διατάξεις των όρθρων: 12,14,26/14,27/1,53,57 P Forp 1 τις AS [996] 154 45 Yyza 2/24 60000 με μη 11/19 H 2327/195 το καρίτοση το αμ 3 AV 2520/42 σρ 95/1,2 του 6131/164 AJ 2520 και τιμωρείται σύμφωνα με τις διατάξεις αυτές.

Το Δικαστήριο, αφού έλαβε υπόψη τα παρακάτω στοιχεία: 1) την βαρύτητα του εγκλήματος που διαπράχτηκε και 2) την προσθήτικότητα του κιατηγορούμενου. Ειδικότερα για τη βαρύτητα έλαβε υπόψη του: α) τη βλάβη που προκάλεσε το έγκλημα στον παθόντα, β) το είδος του δόλου και το **βαθμό** της αμέλεκας ταθ κατηγορούμενα), γιη φύση, το είδος και το αντικείμενο του εγκλήματος καθώς και τις περιστάσεις, κάτω από τις οποίες έγινε, για την προσωπικότητα δε του κατηγορημένου.⁴α) τα αίτια από τα οποία κινήθηκο όλκατηγορούμενος για να διαπράξει το παραπάνω έγκλημα, β) το σκοπό που επεδίωξε, γ) το χαρακτήρα του δ) τη διαγωγή του πριν και μετά το έγκλημα και ε) την οικογενειακή και την οικονομική του ζκατάσταση, κρίνει ότ. πρέπει να του επιβληθεί η ποινή που αναφέρεται στο διατακτικό.

Εξάλλου από την έρευνα του χαρακτήρα του ματαδικασμένου και από τις λοιπές περιστάσεις, το Δικαστήριο κρίνει ότι η χρηματική ποινή είναι αρκετή για να αποτρέψει από την διάπραξη και άλλων εγκλημάτων. Για το λόγο αυτό πρέπει να μετατραπεί η φυλάκιση σε χρηματική ποινή. Η κάθε μέρα φυλάκισης, σύμφωνα και με την οικονομική κατάσταση του καταδικασμένου πρέπει να υπολογιστεί σε 4.40 €.

22	Mar	04	20:29	ORFAN		SAMPSON		1028997	77	p.4
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Κατόπιν έλαβε το λόγο η Εισαγγελέας, η οποίο ανέπτυξε την κατηγορία και πρότεινε την ενοχή του κατηγορούμενται γ

Κατόπιν το Δικαστήριο, σε διάσκεψη στην οποία παρευρέθηκε και **η Γρ**αμματέας εξέδωσε την παρακάτω απόφαση, την οποία δημοσίευσε σε δημόσια συνεδρίαση

και γνωστοποιήθηκε σ' αυτόν κατάλογος των κλειθέντων από την Εισσγγελέα μαρτύρων κατηγορίας (αρθρ. 326 Κ.Π.Α.). Εφόσον δεν εμφανίστηκε πρέπει να δικαστεί σαν να ήταν παρών (άρθρο 340 παρ 3).

Απ' ολη την σχετική με την απόδειξη κυρία διαδικασία, τις καταθέσεις των μαρτόρων, τα έγγραφα που αγαγνώστηκ<mark>αν στο ακροατήριο και α</mark>π' όλη τη ουζήτηση της υπόθεσης αποδείχτηκε ότι:

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ΓΙΑ ΤΟΥΣ ΛΟΓΟΥΣ ΑΥΤΟΥΣ

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Μετατρέπει την ποινή της φυλάκισης σε χρηματική και προσδιορίζει το ποσό που αναλογεί για κάθε μέρα σε 4,40 €.

> Κρίθηκε αποφασίστηκε και δημοσιεύτηκε στο ακροατήριο HPÓKIELO 11-12-2002

Πλημ/κης Aug dauge-es (um /u.) TOUCTONIS

θ Γραμματέα

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Γεωργίος Γρην. Σταματοκής

ΠΡΩΤΟΔΙΚΕΙΟ ΗΡΑΚΛΕΙΟΥ

Κατ' έφεση αθωωτική

APIOMOE 654

ΠΡΑΚΤΙΚΑ ΚΑΙ ΑΠΟΦΑΣΗ ΤΟΥ Β΄ ΤΡΙΜΕΛΟΥΣ ΔΙΚΑΣΤΗΡΙΟΥ ΠΛΗΜΜΕΛΕΙΟΔΙΚΩΝ ΗΡΑΚΛΕΙΟΥ

Συνεδρίαση της 15-3-2004

ΣΥΝΘΕΣΗ ΔΙΚΑΣΤΗΡΙΟΥ	ΕΚΚΑΛΟΥΝΤΕΣ	ПРАЕН
Κλεονίκη Χίλιου Προεδρεύουσα Πλημμελειοδίκης (επειδή κωλύονται ο Πρόεδρος και οι αρχαιότεροι Δικαστές) Ευσεβία Νεονάκη Πλημμελειοδίκης Άννα Τζουτζουράκη Ειρηνοδίκης (που ορίστηκε με την υπ' αρ. 108/2004 πράξη Προέδρου επειδή κωλύονται οι τακτικοί Δικαστές) Νικόλαος Μαρκάκης Αντεισαγγελέας (επειδή κωλύεται ο Εισαγγελέας) Αικατερίνη Βελημβασάκη Γραμματέας Δικ. υπάλληλος	 Ιωάννης Πατεράκης του Αντωνίου Δημήτριος Καραχάλιος του Χρήστου Ευάγγελος Σεραφειμόπουλος του Παρασκευά Αντώνιος Κατσαρής του Βασιλείου Ηρακλής Καλαμιώτης του Ιωάννη Βασίλειος Βασιλείου του Ευαγγέλου Γεώργιος Μήτρου του Αντωνίου Νεκτάριος Κατσαρής του Βασιλείου Προκόπιος Νικολάου του Προκοπίου Νικόλαος Λιατίφης του Θεοδώρου Δημήτριος Μήτρου του Περικλή κάτοικοι Νέας Αλικαρνασσού 	Παράβαση Υγειονο- μικής Διατάξεως Κατ' έφεση της υπ' αρ. 28155/2002 απο- φάσεως του Μονομε- λούς Πλημμελειοδι- κείου Ηρακλείου

ΕΚΘΕΣΗ ΠΡΑΚΤΙΚΩΝ ΚΑΙ ΑΠΟΦΑΣΗ

Η συνεδρίαση έγινε δημόσια στο ακροατήριο του Δικαστηρίου αυτού σήμερα.

Ο κλητήρας του ακροατηρίου με εντολή της Προέδρου εκφώνησε τα ονόματα των εκκαλούντων οι οποίοι εμφανίστηκαν και ρωτήθηκαν από την Πρόεδρο για την ταυτότητά τους κ.λ.π. και είπαν ότι ονομάζονται όπως παραπάνω αναφέρεται. Ο πρώτος εκκαλών είπε ότι διορίζει συνήγορο υπεράσπισής του τον παρόντα δικηγόρο Ηρακλείου Νικόλαο Πατερακή και οι λοιποί τον επίσης παρόντα δικηγόρο Ηρακλείου δικηγόρο.

Η Πρόεδρος είπε στους εκκαλούντες να προσέξουν τις κατηγορίες και τη συζήτηση γύρω από αυτές. Τους είπε ακόμη ότι έχουν δικαίωμα να αντιτάξουν τους ισχυρισμούς τους και να υποβάλουν τις παρατηρήσεις τους μετά την εξέταση κάθε μάρτυρα και την έρευνα κάθε αποδεικτικού μέσου.

Το λόγο έλαβε ο Εισαγγελέας και είπε ότι η προκείμενη υπόθεση εισάγεται ύστερα από εφέσεις κατά της υπ' αρ. 28155/2002 αποφάσεως του Μ/λούς Πλημ/κείου Ηρακλείου, οι οποίες εμπρόθεσμα και νομότυπα και πρότεινε να γίνουν τυπικά δεκτές.

Το Δικαστήριο σε μυστική διάσκεψη παρούσης και της Γραμματέως κατάρτισε και μέσω της Προέδρου δημοσίευσε σε δημόσια συνεδρίαση την με αριθμό 654 ε.ε. απόφασή του που έχει ως εξής:

Σκέφτηκε σύμφωνα με το νόμο

Όπως προκύπτει από τα από 9-4-2003, 7-3-2003, 7-3-2003, 7-3-2003 και 18-10-2003 αποδεικτικά επίδοσης στους πρώτο, δεύτερο, τρίτο, έκτο και έβδομο των εγκαλούντων αντίστοιχα, της εφεσιβαλλόμενης υπ' αρ. 28155/2002 απόφασης του Μ/λούς Πλημ/κείου Ηρακλείου και από τις εκθέσεις εφέσεως κατά αυτής που άσκησαν αυτοί με αρ. πρωτ./ ημερομηνία 538/10-4-2003, 367/7-3-2003, 374/11-3-2003, 376/11-3-2003 και 1660/22-10-2003, οι κρινόμενες εφέσεις ασκήθηκαν εμπρόθεσμα (άρθρο 473 Κ.Π.Δ.) και νομότυπα (άρθρα 474, 489 §1 και 498 Κ.Π.Δ.) επομένως, πρέπει να γίνουν τυπικά δεκτές και να εξεταστούν κατ' ουσία. Όσον αφορά στους λοιπούς των εκκαλούντων, από τα έγγραφα της δικογραφίας δεν προκύπτει ότι επεδόθη η εφεσιβαλλόμενη απόφαση του Μ/λούς Πλημ/κείου Ηρακλείου σε αυτούς, συνεπώς δεν άρχισε η προθεσμία της άσκησης της εφέσεως. Επομένως αυτές θεωρούνται ως εμπροθέσμως ασκηθείσες και πρέπει να γίνουν τυπικά δεκτές και να εξεταστούν κατ' ουσία.

Για τους λόγους αυτούς

Δικάζο<u>ντας</u> παρόντων των εκκαλούντων 1) Ιωάννη Πατεράκη του Αντωνίου, 2) Δημητρίου Καραχάλιου του Χρήστου, 3) Ευάγγελου Σεραφειμόπουλου του Παρασκευά, 4) Αντωνίου Κατσαρή του Βασιλείου, 5) Ηρακλή Καλαμιώτη του Ιωάννη, 6) Βασιλείου Βασιλείου του Ευαγγέλου, 7) Γεωργίου Μήτρου του Αντωνίου, 8) Νεκταρίου Κατσαρή του Βασιλείου, 9) Προκοπίου Νικολάου του Προκοπίου, 10) Νικολάου Λιατίφη του Θεοδώρου και 11) Δημητρίου Μήτρου του Περικλή, κατοίκων Νέας Αλικαρνασσού Ηρακλείου

Δέχεται τυπικά τις υπ' αρ. 538/10-4-2003, 367/7-3-2003, 374/11-3-2003, 4-7-2003, 3-7-2003, 376/1-3-2003, 1660/22-10-2003, 16/8-1-2003, 5/7-1-2003, 6/8-1-2003, 21/13-1-2003 εφέσεις των παραπάνω κατά της υπ' αρ. 28155/2002 αποφάσεως του Μ/λούς Πλημ/κείου Ηρακλείου και εξαφανίζει αυτή σε όλες

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τις διατάξεις.

Κρίθηκε, αποφασίστηκε και δημοσιεύτηκε στο ακροατήριο σε δημόσια συνεδρίαση.

Ηράκλειο 15-3-2004

Η Προεδρεύουσα

Ο Εισαγγελέας αφού έλαβε το λόγο ανέπτυξε την περί εφέσεως έκθεση συμφώνως με το κατηγορητήριο και το κοινοποιηθέν κλητήριο θέσπισμα και είπε ότι για την υποστήριξη της κατηγορίας κάλεσε μάρτυρες αυτούς που αναφέρονται μετά το κατηγορητήριο. Επίσης πρότεινε να διαβαστούν τα σχετικά με το κατηγορητήριο έγγραφα.

Τα ονόματα των μαρτύρων αυτών εκφώνησε με εντολή της Προέδρου ο κλητήρας του ακροατηρίου και βρέθηκαν παρόντες οι τρεις πρώτοι και απών ο τέταρτος.

Κατόπιν η Πρόεδρος ζήτησε από τους εκκαλούντες γενικές πληροφορίες για την πράξη για την οποία κατηγορούνται υπενθυμίζοντας συγχρόνως σ' αυτούς ότι θα απολογηθούν μετά το τέλος της αποδεικτικής διαδικασίας.

Οι εκκαλούντες έδωσαν τις πληροφορίες που τους ζητήθηκαν και ο πρώτος εξ αυτών δήλωσε ότι **κάλεσε** δύο μάρτυρες υπεράσπισης.

Έπειτα εκφωνήθηκαν τα ονόματα των μαρτύρων υπεράσπισης που κλητεύτηκαν και ήταν παρόντες.

Αφού αποχώρησαν από το ακροατήριο σύμφωνα με το άρθρο 350 του Κώδικα Ποινικής Δικονομίας οι υπόλοιποι μάρτυρες παρέμεινε ο πρώτος μάρτυρας που ρωτήθηκε από την Πρόεδρο για την ταυτότητά του και απάντησε ότι ονομάζεται **Γεώργιος Σκουλάς του Γεωργίου,** γεννήθηκε στο Ρουκάνι και κατοικεί στο Ηράκλειο, είναι ετών 44, κατ' επάγγελμα υπάλληλος ΙΚΑ, Έλληνας και Χριστιανός Ορθόδοξος, γνωρίζει απλά τους εκκαλούντες και δεν συγγενεύει μ' αυτούς. Στη συνέχεια ορκίστηκε στο Ιερό Ευαγγέλιο σύμφωνα με το άρθρο 218 του Κώδικα Ποινικής Δικονομίας και εξεταζόμενος κατέθεσε ότι: «Είμαι υπάλληλος στο ΙΚΑ και ανήκω στην Ομάδα Διεθνούς Αμνηστίας και Κοινωνικής Αλληλεγγύης. Δική μου ήταν η αναφορά. Ο πρώτος κατηγορούμενος είχε ζητήσει διοικητική αποβολή δύο φορές και τις δύο είχε απορριφθεί. Υπήρχαν τόνοι σκουπιδιών, λάσπες. Η αναφορά ήταν για τους ανθρώπους που είναι κοινωνικά αποκλεισμένοι και για την εικόνα της πόλης. Για παράδειγμα είχαμε κρούσμα πολιομυελίτιδας (του Κατσαρή) και άλλα δύο κρούσματα. Οι ευθύνες βαραίνουν την τοπική αυτοδιοίκηση και τους εμπλεκόμενους φορείς. Ο δήμαρχος έλεγε κάποια στιγμή για μετεγκατάσταση των τσιγγάνων και το άφηνε στο μέλλον για να υπάρχει πίεση. Η εγκατάσταση των τσιγγάνων εκεί ήταν με απόφαση της Νομαρχίας. Είχε δοθεί γραπτή άδεια από την Αθανασάκη, τη Νομάρχη Ηρακλείου. Η εικόνα που υπήρχε ήταν ότι υπήρχαν σκουπίδια σε διάφορα σημεία αλλά και διάσπαρτα σε διάφορα σημεία. Οι σωροί ήταν τέσσερα – πέντε μέτρα, από την πλευρά της Ε.Ο. από τον καταυλισμό. Δεν είχα οριστεί κάδοι. Μετά την αναφορά ορίστηκαν κάδοι. Ο δήμαρχος δεν είχε φροντίσει να ορίσει σημεία. Δεν υπήρχε δόλος, αλλά ήταν θύμα μιας αντίληψης διάχυτη στην κοινωνία μας για αυτούς τους ανθρώπους. Η παρέμβασή μας είχε αποτέλεσμα. Υπήρχε ένας σωρός από σκουπίδια. Αν ήταν όρυγμα ή όχι δεν μπορώ να πω.»

Προσήλθε άλλος μάρτυρας που ρωτήθηκε από την Πρόεδρο για την ταυτότητά του κ.λ.π. και απάντησε ότι ονομάζεται Λεωνίδας Δρανδάκης του Γεωργίου, γεννήθηκε στην Αθήνα και κατοικεί στο Ηράκλειο, είναι ετών 43, κατ' επάγγελμα πολιτικός μηχανικός, Έλληνας και Χριστιανός Ορθόδοξος, γνωρίζει απλά τους εκκαλούντες και δεν συγγενεύει μ' αυτούς. Κατόπιν ορκίστηκε στο ιερό Ευαγγέλιο σύμφωνα με το άρθρο 218 του Κώδικα Ποινικής Δικονομίας και εξεταζόμενος κατέθεσε ότι: «Έκανα την καταγγελία μαζί με τον Σκουλά. Είμαι πολιτικός μηχανικός και μέλος της Διεθνούς Αμνηστίας. Παρακολουθούσαμε τον καταυλισμό. Βρισκόταν σε ένα σκουπιδότοπο. Καθένας πετούσε πράγματα, πίσσες... Τα σκουπίδια ήταν παντού, γύρω – γύρω. Υποχρέωση να καθαρίσει είχε ο Δήμος. Δεν υπήρχαν κάδοι. Ο Δήμος είχε τη νοοτροπία ότι έπρεπε να μετεγκατασταθεί ο καταυλισμός. Έπρεπε να μαζεύονται τα σκουπίδια. Μετά την καταγγελία μπήκαν κάδοι. Άρχισε η αποκομιδή, μετά άρχισε σταδιακά να χαλαρώνει και ξανάγινε καταγγελία. Η αποκομιδή γίνεται περιστασιακά γίνεται μέχρι και σήμερα. Ο κ. Πατεράκης δεν είναι δήμαρχος τώρα. Τώρα εμείς κάνουμε παρέμβαση για να γίνει μετεγκατάσταση. Δόλος δεν υπήρχε. Ο Δήμος είχε υποχρέωση να τα μαζεύει τα σκουπίδια. Του είχε επισημανθεί του δημάρχου η υποχρέωση. Δεν έπαιρνε μέτρα. Κάδοι πριν το '96 υπήρχαν πάνω στο δρόμο. Πιθανόν να έσπασαν, να χάθηκαν. Και τώρα όλος ο γύρω - γύρω χώρος είναι ένας απέραντος σκουπιδότοπος, με μπάζα, άχρηστα μηχανήματα, μάλιστα είναι και της νομαρχίας. Νόμιμα είχαν εγκατασταθεί εκεί οι τσιγγάνοι. Τους μάζεψε η αστυνομία και του πήγε εκεί. Είναι ένας από τους εκατόν είκοσι καταγεγραμμένους χώρους.»

Προσήλθε άλλος μάρτυρας που ρωτήθηκε από την Πρόεδρο για την ταυτότητά του κ.λ.π. και απάντησε ότι ονομάζεται Νικόλαος Καμπάνης του Εμμανουήλ, γεννήθηκε στο καστέλι Πεδιάδος και κατοικεί στο Ηράκλειο, είναι ετών 54, κατ' επάγγελμα Επόπτης Δημόσιας Υγείας, Έλληνας και Χριστιανός Ορθόδοξος, γνωρίζει απλά τους εκκαλούντος και δεν συγγενεύει μ' αυτούς. Κατόπιν ορκ**ί**στηκε στο ιερό Ευαγγέ-

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λιο σύμφωνα με το άρθρο 218 του Κώδικα Ποινικής Δικονομίας και εξεταζόμενος κατέθεσε ότι: «Ήμουν και είμαι επόπτης υγείας. Γίνονταν πολλοί έλεγχοι. Είμαι υπεύθυνος της περιοχής. Τότε υπαγόμασταν στο Υπουργείο Υγείας, τώρα στη Νομαρχία. Ήταν παράνομος ο νόμος εγκατάστασής τους. Το 1996 κάναμε μία επιχείρηση – σκούπα για να μαζέψουμε τα σκουπίδια. Συνεργαστήκαμε με τον κ. Πατεράκη, με τη Διεύθυνση Τεχνικών Υπηρεσιών και διήρκησε μία εβδομάδα. Δεν ξέρω αν έγινε πριν ή μετά την καταγγελία. Γύρω – γύρω υπήρχαν σκουπίδια, ποντίκια μέχρι και το αεροδρόμιο. Τα σκουπίδια έπρεπε να τα μαζέψει ο Δήμος Αλικαρνασσού. Θεωρούσε ότι ήταν παράνομος ο καταυλισμός και είχε και δίκιο. Δύσκολο να απαντήσω σε αυτό. Μπήκαν κάδοι. Καθαρίστηκε ο χώρος. Μετά από λίγο καιρό ήταν το ίδιο. Ήταν περιφέρεια του Δήμου.»

Στο σημείο αυτό διαβάστηκαν τα πρακτικά της πρωτοβάθμιας δίκης, καθώς και τα έγγραφα που αναφέρονται στο κατηγορητήριο δηλαδή τα:

1. Η από 27-2-97 κατάθεση Άννας Παπαδοκωστάκη - δημοσιογράφου

2. Η από 2-8-97 κατάθεση Κατσαρού Σάββα – αστ/κα

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καθώς και τα έγγραφα που προσκομίσθηκαν από τους συνηγόρους υπεράσπισης των εκκαλούντων να διαβαστούν.

Προσήλθε ο μάρτυρας υπεράσπισης που ρωτήθηκε από την Πρόεδρο για την ταυτότητά του κ.λ.π. και απάντησε ότι ονομάζεται Εμμανουήλ Γραμματικάκης του Ιωάννη, γεννήθηκε στο Ηράκλειο και κατοικεί στη Νέα Αλικαρνασσό, είναι ετών 49, κατ' επάγγελμα εργοδηγός, Έλληνας και Χριστιανός Ορθόδοξος, γνωρίζει απλά τους εκκαλούντες και δεν συγγενεύει μ' αυτούς. Κατόπιν ορκίστηκε στο ιερό Ευαγγέλιο σύμφωνα με το άρθρο 218 του Κώδικα Ποινικής Δικονομίας και εξεταζόμενος κατέθεσε ότι: «Ο Δήμος πρόσφερε και προσφέρει υπηρεσίες καθαριότητας στην περιοχή αυτή. Πάντα τα μάζευε τα σκουπίδια. Και σήμερα υπάρχει πρόβλημα. Δεν μπαίνουν μέσα στους κάδους τα σκουπίδια. Τρεις φορές την εβδομάδα, Τρίτη – Πέμπτη και Σάββατο μαζεύονται. Και στην Αλικαρνασσό περνάει μέρα παρά μέρα το απορριμματοφόρο. Πολλές φορές και άλλοι, με φορτηγό, πάνε και πετάνε σκουπίδια εκεί. Το Σεπτέμβριο του '96 τα μάζευε ο Δήμος τα σκουπίδια. Έχουν υπογράψει ότι παρέλαβαν τους κάδους. Ο χώρος είναι δημοτική περιουσία. Καλώς ή κακώς οι άνθρωποι αυτοί βρίσκονται πολλά χρόνια εκεί. Οι κάδοι δυστυχώς μετακινούνται, σπάνε, φεύγουν. Δεν έχουν τουαλέτες. Είναι αρκετές οικογένειες, περίπου εκατόν πενήντα.»

Προσήλθε άλλος μάρτυρας υπεράσπισης που ρωτήθηκε από την Πρόεδρο για την ταυτότητά του κ.λ.π. και απάντησε ότι ονομάζεται Αντώνιος Σκουρέλλος του Δημητρίου, γεννήθηκε στη Ν. Αλικαρνασσό και κατοικεί ομοίως, είναι ετών 53, κατ' επάγγελμα χειριστής μηχανημάτων, Έλληνας και Χριστιανός Ορθόδοξος, γνωρίζει απλά τους εκκαλούντες και δεν συγγενεύει μ' αυτούς. Κατόπιν ορκίστηκε στο ιερό

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Ευαγγέλιο σύμφωνα με το άρθρο 218 του Κώδικα Ποινικής Δικονομίας και εξεταζόμενος κατέθεσε ότι: «Ο Δήμος ασχολείται διαρκώς με αυτούς τους καταυλισμούς, αυτόν και των Σφαγείων. Στην αυλή μου μαζεύονται σκουπίδια και τα μαζεύω εγώ. Πολλά σκουπίδια τα δημιουργούν και αυτοί, μέσα στα σπίτια τους. Έχω πάει άπειρες φορές. Υπάρχει πρόβλημα. Όχι ποτέ δεν γινόταν αυτό, να μην μαζεύονται τα σκουπίδια ως μέσο πίεσης. Όλοι οι δήμαρχοι με στέλνουν εκεί πάνω. Πάνε και πολλοί άλλοι και ρίχνουν μπάζα εκεί.»

Έπειτα η Πρόεδρος κάλεσε τους εκκαλούντες να απολογηθούν.

Προσήλθε ο πρώτος κατηγορούμενος, ο οποίος αρνήθηκε την πράξη για την οποία κατηγορείται και είπε: «Τα θέματα που αφορούν τους τσιγγάνους είναι ευαίσθητα θέματα. Από το '95 έσκυψα σε αυτά. Συντόνισα την προσπάθεια στον καταυλισμό. Υπήρχαν τόνοι σκουπιδιών. Κάναμε τεράστια προσπάθεια να τα μαζέψουμε. Δεν είναι ευσταθές ότι δεν τα μαζεύαμε ως μέσο πίεσης. Έγιναν μυσκτονίες και πριν και μετά τον Σεπτέμβριο. Έγιναν τρεις εν τω βάθει εξορμήσεις με εργολάβο. Ξανά όμως, όταν δεν υπάρχει συνείδηση από τους εκεί εγκατεστημένους έγινε η ίδια κατάσταση. Εξαφάνιζαν τους κάδους. Έγινε σύσκεψη και τους κάλεσα. Κάλεσα τους υπεύθυνους, είναι δύο φάρες – φυλές. Ελάτε για κάδους, σακούλες. Βεβαίως και υπήρχε τακτική αποκομιδή. Δεν φτάνει η προσπάθεια χρειάζεται και συνείδηση. Έγινε τεράστια προσπάθεια να βρεθεί ο κατάλληλος χώρος. Για αυτές τις συνθήκες αγωνίστηκα. Πρέπει να αναπτυχθεί συνείδηση και να πάνε αυτοί οι άνθρωποι σε κατάλληλους χώρους. Έχω τη συνείδησή μου ήσυχη. Υπήρχαν και κάδοι και σκουπίδια. Εξαφανίζονταν οι κάδοι. Πετούσαν τα σκουπίδια όπου βρίσκανε. Ήταν 128 οικογένειες καταγεγραμμένες, περίπου πεντακόσια άτομα. Πάνε και ασυνείδητοι και πετάνε αντικείμενα, π.χ. ένα στρώμα που δεν χρειάζεται πια... Η δυσκολία στον καθαρισμό ήταν και από τους ίδιους και από τους άλλους που πετούν πράγματα εκεί. Ο καταυλισμός είναι εκατό τοις εκατό παράνομος. Η ιστορία είναι από το '84. Η κα Αθανασάκη τους πήρε από το Γιόφυρο μετά τις πλημμύρες και τους πήγε εκεί.»

Προσήλθε ο δεύτερος εκκαλών, ο οποίος αρνήθηκε την πράξη για την οποία κατηγορείται και είπε: «Ήταν απόφαση της αστυνομίας να πάμε εκεί. Ήμασταν διάσπαρτοι. Υπήρχε σιωπηρή συμφωνία, ανοχή σε συνεννόηση αστυνομίας, Νομαρχίας, και κοινότητας Αλικαρνασσού, από το '83 – '84. Ποτέ δε ζητήσαμε να οικειοποιηθούμε την περιοχή. Το '96 που ήταν νέος ο κ. Δήμαρχος τότε στη δημαρχία υπήρχαν κάποιες αντιδικίες, αλλά μετά κατάλαβε το πρόβλημα και είχαμε καλή συνεργασία.»

Οι λοιποί εκκαλούντες προσερχόμενοι με τη σειρά για να απολογηθούν, είπαν ότι δεν επιθυμούν να προσθέσουν τίποτα περισσότερο σε αυτά που είπε ο δεύτερος εκκαλών.

Μετά την απολογία των εκκαλούντων η Πρόεδρος ρώτησε τον Εισαγγελέα και τους διαδίκους αν χρειά-

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ζονται συμπληρωματική εξέταση ή διασαφήνιση, σε αρνητική τους δε απάντηση κήρυξε τη λήξη της αποδεικτικής διαδικασίας.

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Ακολούθως, ο λόγος δόθηκε στον Εισαγγελέα ο οποίος πρότεινε την απαλλαγή των εκκαλούντων.

Οι συνήγοροι των εκκαλούντων αφού έλαβαν το λόγο και ανέπτυξαν την υπεράσπιση ζήτησαν την απαλλαγή των πελατών τους.

Αμέσως μετά οι εκκαλούντες ρωτήθηκαν από την Πρόεδρο αν έχουν να προσθέσουν κάτι υπέρ του εαυτού τους και απάντησαν αποφατικά.

Έπειτα η Πρόεδρος κήρυξε τη λήξη της συζήτησης.

Το Δικαστήριο σε μυστική διάσκεψη παρούσης και της Γραμματέως κατάρτισε και μέσω της Προέδρου δημοσίευσε σε δημόσια συνεδρίαση την με αριθμό 654 ε.ε. απόφασή του που έχει ως έξής:

Σκέφτηκε σύμφωνα με το νόμο

Από όλη τη σχετική με την απόδειξη κύρια διαδικασία, τα έγγραφα που αναγνώστηκαν, τις καταθέσεις στο ακροατήριο των μαρτύρων κατηγορίας και υπεράσπισης που εξετάστηκαν, τις απολογίες των εκκαλούντων και απ' όλη τη συζήτηση της υπόθεσης, το Δικαστήριο δεν πείστηκε για την ενοχή των εκκαλούντων για την αξιόποινη πράξη που τους αποδίδεται με το κατηγορητήριο και για αυτό το λόγο πρέπει να κηρυχθούν αθώοι. Από την ίδια γενικά διαδικασία το Δικαστήριο δεν πείστηκε ότι ο μηνυτής από δόλο ή βαριά αμέλεια του κατάγγειλε τους εκκαλούντες για αυτό και πρέπει να απαλλαγεί από την πληρωμή των δικαστικών εξόδων, τα οποία βαρύνουν το Δημόσιο.

Για τους λόγους αυτούς

Δικάζοντας παρόντων των εκκαλούντων 1) Ιωάννη Πατεράκη του Αντωνίου, 2) Δημητρίου Καραχάλιου του Χρήστου, 3) Ευάγγελου Σεραφειμόπουλου του Παρασκευά, 4) Αντωνίου Κατσαρή του Βασιλείου, 5) Ηρακλή Καλαμιώτη του Ιωάννη, 6) Βασιλείου Βασιλείου του Ευαγγέλου, 7) Γεωργίου Μήτρου του Αντωνίου, 8) Νεκταρίου Κατσαρή του Βασιλείου, 9) Προκοπίου Νικολάου του Προκοπίου, 10) Νικολάου Λιατίφη του Θεοδώρου και 11) Δημητρίου Μήτρου του Περικλή, κατοίκων Νέας.Αλικαρνασσού Ηρακλείου

Κηρύσσει αυτούς αθώους του ότι στον καταυλισμό της Νέας Αλικαρνασσού Ηρακλείου, κατά το μήνα Σεπτέμβριο του 1996, τέλεσαν τις παρακάτω αξιόποινες πράξεις:

1) Ο πρώτος κατηγορούμενος Ιωάννης Πατεράκης, υπό την ιδιότητά του ως Δήμαρχος του δήμου Νέας Αλικαρνασσού στην περιφέρεια του οποίου βρίσκεται ο καταυλισμός των τσιγγάνων, δεν έδωσε όπως είχε υποχρέωση τις απαιτούμενες εντολές και οδηγίες στις αρμόδιες υπηρεσίες του Δήμου για την αποκομιδή των απορριμμάτων του καταυλισμού με αποτέλεσμα να δημιουργείται σοβαρός κίνδυνος για τη δημόσια υγεία και να έχει μεταβληθεί ο καταυλισμός σε ένα τεράστιο σκουπιδότοπο από τις μεγάλες ποσότητες απορριμμάτων που συγκεντρώθηκαν ή πετάχτηκαν, να ζουν οι άνθρωποι πάνω και γύρω από τα σκουπίδια, καίτοι είχε υποχρέωση προς τούτο και εγνώριζε ότι η καθαριότητα του χώρου θα εκτελείται σε κατάλληλο χώρο και διά μεθόδων και μέσων τέτοιων, ώστε να μην προκαλούνται ανθυγιεινές καταστάσεις.

2) Οι λοιποί κατηγορούμενοι τσιγγάνοι κατά τον παραπάνω χρόνο κατελήφθησαν να έχουν εγκατασταθεί ανεξέλεγκτα στον παραπάνω καταυλισμό της Νέας Αλικαρνασσού καίτοι απαγορεύεται η ανεξέλεγκτη εγκατάσταση πλανοδίων νομάδων (αθίγγανοι κ.λ.π.) χωρίς σχετική άδεια, σε οποιαδήποτε περιοχή.

Απαλλάσσει το μηνυτή από την πληρωμή των δικαστικών εξόδων και τελών τα οποία βαρύνουν το Δημόσιο.

Κρίθηκε, αποφασίστηκε και δημοσιεύτηκε στο ακροατήριο σε δημόσια συνεδρίαση.

Ηράκλειο 15-3-2004

Η Προες

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REPORT ON THE FINDINGS (In accordance with article 4 par. 6 of Act 2477/1997) CASE NO 11828/2000

Athens, 26 January 2001

On the 17th of July, 2000 the Greek Ombudsman received by way of the "*Greek Helsinki Monitor*" a complaint from Mr. Georgios Panagiotopoulos, Mr. Dionysios Halilopoulos and Mr. Konstantine Kalogeropoulos (see enc.1). Their complaint concerned the legality of actions taken by services of the Municipality of Aspropyrgos, which resulted in the expulsion of Roma from their encampment ground and the demolition of their makeshift homes in Aspropyrgos. The complainants claimed that the demolished sheds, situated next to the municipality's rubbish dump, constituted the only homes they, their families and fellow Roma have known for a number of years.

Specifically, the complainants claim that on the morning of the 14th of July, 2000 a team from the technical services department of the Municipaliy of Aspropyrgos, equipped with a bulldozer, and assisted by police officers from the local police station, demolished, in the presence of the Mayor Mr. G. Liako, the small makeshift homes and sheds of the Roma camp. Until then the camp had been situated within the prefectural administration of the Municipality of Aspropyrgos on lands owned by the Municipality. According to the complainants, only eight sheds escaped demolition, sheds which at the time were occupied by aged persons or people with health problems who could not be moved immediately. However, these occupants also received a verbal three-day notice to depart from the area.

Members of the non-governmental organization "Greek Helsinki Monitor" made strong objections to the Municipality and the local police commissioner, arguing that the destroyed dwellings comprised the only standing homes many large Roma families had. In response to these protests Deputy Mayor Mr. Bazigos replied that no homes were demolished, but trash was cleared from the area. This assertion was reiterated at every contact, verbal or written, that the Ombudsman has had with the Municipality of Aspropyrgos.

In the days immediately following this event contact with the mayor or the deputy mayors became impossible, because despite the Ombudsman's efforts to communicate with them by telephone, they avoided discussing the matter. For this reason on the 25th of July, 2000 an urgent letter (ref.no11128/00/2.1) was sent via fax to the municipality (see enc. 2). In this letter the Ombudsman's telephone queries were repeated, placing specific emphasis on the following issue: was the formal procedure required by law observed during the implementation of the municipality's initiative to remove the Roma from the public lands and to destroy their makeshift homes? The provisions of Legislative Decree 31/1968, of Legislative Decree 263/1968 and of Law 2307/1995, require that prior to any action, a decision be made by the Municipal Council and an official notification of the order to vacate the land be issued to the individuals who willfully occupy it. The purpose of these provisions, apparently, is to safeguard the right of these individuals to defend themselves utilizing every possible means of appeal available to them. Lastly, the Ombudsman's letter categorically pointed out the possibility that the aforementioned material actions carried out by the services of the Municipality could constitute an offense punishable by law.

In response to his letter the Ombudsman received a document (ref. no 17390/4.8.2000) from the Mayor of Aspropyrgos (see enc.3). Also enclosed were a written complaint from concerned citizens that had previously been submitted regarding the encampment in of Roma in the area and attributing to them the amassing of garbage (see enc.4), and the pertinent forwarding document from the Prefecture of Attica to the Municipality of Aspropyrgos (see enc.5). In his response, the Mayor of Aspropyrgos persists in maintaining that the actions taken were legal, indirectly contending that there was never an expulsion of Roma from the area or a demolition of their sheds but simply, "a removal of garbage left behind by passing gypsies". The removal, according to the Mayor, was lawfully carried out by the municipal services, in compliance with the relevant provisions of the Municipal Code (Presidential Decree 410/1995).

In view of the indirect refusal of the Mayor to accept the facts presented by the complainants and his insistent characterization of the event not as expulsion of persons from their settlement but as "removal of garbage", the Ombudsman sought additional verification of the real facts. With his letter to the complainants (ref. no 11128/00/2.2/5.9.2000) the Ombudsman requested that they submit further evidence which could authenticate the truth of their claims (see enc.6). Simultaneously, with his letter to the Mayor of Aspropyrgos (ref. no. 11828/00/2.3/11.9.2000) the Ombudsman informed him that he was gathering data pertaining to the truth of the claims made by all sides (see enc.7). The Mayor was also asked to state unambiguously whether he persists in his contention that, at the time of the events, there was no demolition of habitable dwellings.

Following the Ombudsman's call, the complainants responded to his request by submitting a series of photographs depicting the encampment area before and after the municipality's "garbage removal" enterprise (see enc.8&9). Members of the nongovernmental organization "Doctors of the World" (Medicins du Monde) had taken photographs depicting the area before the municipality's undertaking. They were taken in the context of their daily presence in the camp during the previous year for the purpose of developing medical and social welfare programs for this vulnerable community. Members of the non-governmental organization "Greek Helsinki Monitor" took photographs depicting the area after the municipality's undertaking in response to the Ombudsman's request to the complainants. In addition, two representatives from these non-governmental organizations, Mrs. Elpida Euthemiatou and Mrs. Christina Rouggeri, declared that they were ready to attest, under oath if necessary, to the truth of the statements made by the complainants. (See the Medicins du Monde document ref. no 839/M.N./19.9.2000 addressed to the Greek Ombudsman, enc.10)

In contrast to the complainants' response, and despite the repeated reminders of the Ombudsman, the mayor and other officials of the Municipality of Asrpopyrgos avoided responding to the last aforementioned letter of the Ombudsman. (They maintained their silence until a few days before the writing of the present report.) The Ombudsman, in view of this prolonged silence, sent another letter (ref. no 11128/2.4/6.11.2000) which repeated his initial request to the Mayor of Aspropyrgos(see enc. 11). Furthermore, in accordance with the provisions of Article 4 of Law 2477/1997, the Ombudsman set a deadline of the 20th of November, 2000 by which the mayor had to comply. The mayor was also informed that the complainants had responded positively to the Ombudsman's request and had produced critical photographic material as evidence.

Once again the Mayor of Aspropyrgos did not reply during the prescribed period. Thus, the Ombudsman brought up again his request with a new letter (ref. no 11128/00/2.5/14.12.2000). In this letter the Mayor was advised of the provisions of Law 2477/1997, according to which the refusal of a public functionary to co-operate with the Ombudsman during an investigation constitutes a disciplinary offense of breach of duty. A new deadline, 29th of December 2000, was set for him to reply (see enc.12).

On the 19th of December 2000, the Ombudsman received a telephone call from Deputy Mayor Mr. Meletiou, who declared complete ignorance of the municipality's failure to co-operate with the Ombudsman up until then. He requested that copies of all the pending letters be sent to him. This request resulted in dispatching anew copies all of the aforementioned Ombudsman's letters together with a covering letter (ref. no. 11128/00/2.6/19.12.2000, see enc.13). It must be pointed out, though, that prior to the deputy mayor's contacting the Ombudsman, a document had been issued from the Prefecture of Attica to the Municipality of Aspropyrgos (ref. no 9101/7.12.000). In this document the municipality is asked to provide a briefing about the case and to comply with the Ombudsman's requests (see enc.14). After that, senior investigator Mr. Andreas Takis received a telephone call from the mayor who stated that the municipality's viewpoint about this case had already been definitely formulated and disclosed in the ref. no 17390/4.8.2000 document and that nothing had changed since then. Mr. Takis requested that this statement be sent to the Ombudsman in writing. Finally, the Mayor's letter (ref. no 396/9.1.2001) reached the Ombudsman (see enc.15).

The Greek Ombudsman, after careful consideration of all the documents and other data (i.e., photographic material, verbal testimonies, etc...) which had been collected during the investigation of this case, is strongly convinced that the following is true:

1. The material actions carried out by a team from the technical services department of the Municipality of Aspropyrgos on the morning of July 14, 2000 in the area next to the rubbish dump of Ano Liosia included, besides the incidental removal of garbage, the demolition of makeshift sheds. Persons belonging to the vulnerable community of Roma inhabited these sheds at the time. The fact that some of the occupants were not present in their sheds at the time of the municipality's operation does not alter the fact that these sheds were residences. The absence of the occupants can be explained in many ways. For example, they may have been absent because they were working or because they were hiding in fear at the sight of police officers. (Some members of this community come from countries such as Albania or the former Yugoslavia and do not possess a legal permit to stay in the country). Furthermore, these dwellings do not lose their status as residences just because they do not meet the current common perception of what constitutes a proper residence, even if this perception is shared by the majority of Greek citizens. Finally, even if some of the dismantled tin homes had been in fact abandoned or were being used as impromptu lodgings for "gypsies passing through", still most comprised the

only permanent home for a large number of many-member families for many years.

- 2. It follows, then, that the almost certain demolition of the Roma residences was not simply intended to prevent possession of land owned by the Municipality of Aspropyrgos by members of the Roma community, but actually constituted the material act par excellence for the realization of this intention. In this instance, then, it does not appear to be relevant if this expulsion may have served other purposes as well.
- 3. The material acts that have resulted in the expulsion of Roma are not supported by any official administrative expulsion order requiring them to depart from the specific area. As has been already established, the Municipality of Aspropyrgos has not produced such a document, and it does not appear anywhere that such a relevant decision was ever made by the Municipal Council.

The provisions of Article 2, Par.1 of Law 263/1968 state that, "against any individual who willfully takes possession of any public land is issued ...an administrative expulsion order legally served to the subject(s) to whom is directed". Furthermore, Article 1, par.12 of the Law 2307/1995 states that, "the administrative expulsion order referred to in article 2 of Law 263 /1968, dealing with municipal and communal lands, is issued by the Mayor or the president of the village council, following a decision by the municipal or the village council". Therefore, in view of these provisions, the strongly probable enactment of material acts for the expulsion of Roma from the public lands in which they had resided for many years, without observance of the administrative expulsion procedure required by law, is manifestly illegal.

The persistence of the municipal authority in characterizing the whole event as "removal of garbage" and their later references to the relevant provisions from the Municipal Code which prescribe their specific responsibilities, in conjunction with their equally persistent refusal to acknowledge that people's dwellings were demolished lead to the conjecture that at least the public servants who occupy the highest positions of the municipal authority were aware of the illegal nature of these material actions or, in any case, considered that the administrative procedure required by law preventing the occupation of public lands does not necessarily apply to "gypsies". The observance of the relevant provisions is not an obligation that belongs in the general duties of public functionaries but specific public duty of the municipal officials. In any case, the staff of the municipal authority had complete knowledge of the hardship which the Roma would have experienced with the demolition of their dwellings, the destruction of the household goods which they contained, and their forcible removal from the place which until then had been their home. In addition, although the illegal initiative of the Municipality of Aspropyrgos had as a purpose, in the final analysis, to reclaim this area, the fact that the chosen means for the realization of this purpose was exactly the demolition of the Roma homes and the destruction of their household contents, so that they would be forced to depart from the area, leads to the conclusion that the damage inflicted on the Roma was in part on the goal of the municipal authority. Consequently, in view of the aforementioned seriously considered real occurrences, it is judged that there are sufficient indications

of acts carried out which prima facie present all the necessary objective and subjective constitutive elements of a breach of duty (Criminal Code 259).

Consequently, it is considered necessary in accordance with Article 4 Par.6 of the Law 2477/1997 to forward the case to the relevant Minister of Internal Affairs, to the General Secretary of the relevant prefecture, as well as, the Public Prosecutor of Athens, so as to initiate an investigation, in view of all the aforementioned, on probable disciplinary and criminal responsibility of the officials of the Municipality of Aspropyrgos or other involved persons.

Yiorgos Kaminis Assistant Professor of Constitutional Law of University of Athens Deputy Ombudsman for Human Rights

Handling and Information: Mr. Andreas Ch. Takis, senior investigator in the Human Rights Department.

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Athens, 8 March, 2001 Ref. No: 17724/00/2.2

> Information: Andreas Takis Tel.: 72 89 620

To Prefect of Athens Ms. Eleni Besbea Kifisias 125-127 115 29 ATHENS

Dear Ms Besbea,

Further to the collaboration of the Greek Ombudsman investigators with your social-political advisor Mr. Kotsopoulo, I would like to bring to your attention the continually inflated and heightened problems, which the unhindered establishment of Roma settlements within the administrative boundaries of the Athens Prefectural District (of the Prefectural Authority Athens-Piraeus), has created. This is in combination with the inability or reluctance showed by the embroiled state and local government authorities to perform the competencies bestowed on them by law.

As you, in all likelihood, are aware of, within the confines of your administrative district already exist at least three Roma encampments, whose population has not ceased increase. To be exact, the Roma encampments referred to here are: a) the Roma settlement behind the Mint in Halandri, which consists of about 42-46 families; b) the settlement in the "Pefkakia" area in Agia Paraskevi, which consists of 14-15 families and c) the settlement in the non-build areas behind the Olympic Stadium in Marousi, which includes approximately 20 families. For the first two settlements the original nucleus of Roma nomads dates back at least fifteen years, while the latter settlement is a lot more recent. A common characteristic in the first two cases is the fact that the encampments took place in non-build lands owned not only by the state or the municipality but also by private individuals, who were justifiably alarmed about the fate of their properties. However, the utilization by these individuals of legal means aiming at the eviction the Roma from the lands they had encroached upon, did not have any real practical effect. All attempts to execute the large number of compulsory (unfavorable for the Roma) judicial decisions have failed. The reasons for this failure lie in the inability or the reluctance of the local police force to enforce them, or yet, the selective intervention of local government representatives intended to stifle possible violent clashes. Similar end awaited, of course, the repeated eviction or demolition orders, which were not executed because of the, absurd, inability of the Municipality or the Prefecture to form a demolition took it upon itself to supply electricity and water to the settlement, a course of action, team! Occasionally, as for example in the case of Halandri, the municipal authority took it upon itself to supply electricity and water to the settlement, a course of action, which justifiably enraged the private property owners in the area.

At all events, the (real or pretextual) weakness of the administration to enforce the existing law, for so many years, and the stand of the municipal authorities, which the private property owners openly denounce as harbouring the land transgressors and guiding them for their own selfish purposes, has created the reasonable belief, for all concerned, that despite the illegal nature of the Roma camp in the area its presence there is not really threatened. Based on this belief, many of the Roma who first settled in the area abandoned their nomadic way of life and transformed their original tents and temporary sheds into stable buildings. All the more so, many Roma, particularly in the Halandri case, registered in the municipal role thus officially constituting themselves permanent residents of the district. Moreover, given the Roma social practice of marriage at a young age, today, in the municipal role appears registered a second generation of Roma.

Furthermore, these camps, due to their perceived permanent status, have been transformed into gravity poles for other Roma families seeking refuge. The latter, have been turned away from other regions of Attica (i.e., recently from the area of Aspropyrgos) or the rest of Greece (e.g. from many regions of Peloponnisos) where the authorities are a lot more forceful and or, the local society a lot less tolerant. Thus in Halandri for example, the last few years the original nucleus of the Roma registered in the municipal role, despite the strong upward birthrate trend, has been limited to less than half of the total population living in the Roma municipality.

The aforementioned problems were created by the unhindered violation of the law by the Roma transgressors, the inexcusable, for many years, inertia of a large number of matter and area competent authorities, and the disrepute of the rule of law, caused by the virtual loss, for some of our fellow citizens, not only of their material properties but also of their right to effective judicial protection. Unfortunately, these dangers coexist with other equally important problems, namely: a) the social degradation and the absolute marginalization of our fellow Roma citizens, who subsist under humiliating, in every respect, conditions, b) the consolidation of a feeling of constant insecurity for all that live nears, c) the hanging over us, inevitable signs of racial aversion, d) the unavoidable discredit of the state and finally, e) the danger taking of the law into one's hands.

On several occasions, the Greek Ombudsman has pointed out, in writing, that in order to take off the edge and possibly stifle the aforementioned dangers, it is of dire necessity to immediately bring into action the competent public bodies, so that they can be in a position to provide a clear and binding timetable for the materialization of definite measures. This idea has already been communicated with the opportunity provided by the successive meetings, convened on the Ombudsman's initiative, between the relevant administrative public bodies, including that of the Athens Prefectural Administration. This timetable for action must be able to restore the lost credibility of the state and the local governments in the eyes of the private property owners, the Roma and their neighbors. The simple, in whichever manner, relocation of the existing settlements, on no account can exhaust these measures.

Even if, the private property owners of the encroached upon by the Roma lands, or the neighbors of the settlements, are reasonably interested in the removal of the Roma, the involved public bodies -whether that is the central administration or the local government- are, obviously, further accountable. On the one hand, the imperative of public weal requires that they must solve the problem and not simply transfer it into another region. On the other hand, they have the duty to respect and protect the dignity and the constitutional rights of the Roma. They also must consider the reasonable expectation which has been created in the Roma, that the administration is going to take care of them and that, at all events, they are not going to be simply turned away. This reasonable belief has arisen not only in view of the de facto permanent nature of the Roma presence in the area but, and primarily, by the omissions of the state and the positive actions of public bodies, such as municipal and representatives of the central administration (i.e., the Office of Quality of Life of the Political Office of the Prime Minister, the representative of the Joint-Ministerial Organ for Roma issues etc.). Consequently, the Greek Ombudsman, in agreement with recent judicial decisions, maintains that, the violent expulsion of these persons from the lands they now occupy, can only be permitted on the condition that their removal is preceded by the implementation, from the administration, of measures which would ensure their proper relocation in another suitable space, where they will reside permanently under conditions which meet the basic health and human dignity standards of living. For this reason, precisely, the prompt activation of the relevant public bodies is compelled. They must be steered towards planning and materializing measures for the peaceful relocation of the existing, within the Athens Prefectural administration Roma camps, to suitable grounds with proper infrastructure.

This is essentially the goal of the informal co-ordinating committee, which, as mentioned earlier, was formed on the Ombudsman's initiative. In the committee participate the Ministry of Internal Affairs, the Ministries of the Environment, Urban Planning and Public Works, Labour, Public Order, the Political Office of the Prime Minister, the Athens Prefectural Administration and the Municipality of Halandri. The issue at hand is the relocation of the Halandri Roma settlement. Despite the actions of the committee and of its individual members its endeavors are still confronted by hard to solve problems. Prominent among them is the problem of finding suitable for purchasing lands, from the municipality of Halandri, where infrastructure works can be carried out for the installation of prefabricated homes. (There have been already two failed attempts of invitations for demonstration of interest in the process of acquiring the necessary lands.) Still though, even if this endeavor succeeds it would only apply to the Roma who are already registered in the municipality of Halandri. The more general problem concerning the other Roma living in the region, including of course those of Agia Paraskevi and Marousi, will remain heightened. Consequently the extent and the intensity of the problem require that, without fail, the pursuit and the planning of every possible solution must be at a level higher than any part of municipal authority, possibly even higher than that of the single Attica Basin Prefectural Administration.

The most significant reason for the Ombudsman's address to you is that, in accordance with the law in effect, the authority which has jurisdiction over the systematic handling of the issue of temporary establishment of nomadic populations is the Prefectural Local Authority. For this reason, I submit to you, in their totality, the relevant for this case in-effect provisions of the ref. no A5/696/25.4-11.5.83 common ministerial decision of the Minister of Internal Affairs and the Minister of Health entitled "Sanitary Provision for the organized relocation of wandering nomads" (Government Gazette B' 243).

"Article 1

- 1. The unchecked, without permit, encampment of wandering nomads (gypsies' etc.) in whatever region is prohibited.
- 2. The temporary encampment of the aforementioned in makeshift sheds (tents etc.) is permitted, in especially designated areas, provided that there is a prior relevant decision of the Prefect and a permit, granted in conformance with that decision, by the police authority, as long as the preconditions of article 3 are met.

Article 3

- 1. The designations of appropriate areas are made by the competent Prefectural public services (Health Authority, Department of Urban Planning and Urban Enforcement, Technical Service of Municipalities and Communities), in collaboration with whichever other public service or authority the Prefect appoints, which will select and suggest the area(s) for the settlements.
- 2. The final approval for the designation of the encampment areas is given with the Prefect's decision, after a consultatory response of the Prefectural Council on the proposal submitted by the Committee, formed for specifically this purpose on the Prefect's order. The Committee's members are representatives from the Health Authority, the TSMC, the Department of Urban Planning and Urban Enforcement, the Ministry of Agriculture, the Police Authorities, the Local Municipal & Community Union of the municipality or community in which the encampment is going to be established, and depending on the case, if it is called for, from Tourism or other public service and authority.

Article 3

- 1. The lands for the organized encampments of wandering nomads which are going to be designated, in accordance with the article 2 of the present decision, must be outside the inhabited areas and in good distance from the approved urban plan or the last consecutive houses.
- 2. The accommodation capacity of every ground, in regards to the number of temporary sheds and persons, is determined by the Prefect's decision and it is ruled by the prevalent view of sanitary and humane living.
- 3. The encampment is prohibited near archaeological sites, beaches, landscapes of natural beauty, visible by main highways points or areas which could affect the public health (springs supplying drinking water, etc.)
- 4. The grounds of the organized encampment must have the necessary infrastructure which would allow for a healthy living, such as facilities for drinking water, sanitary toilets, containers for garbage collection and disposal and preferably, facilities for individual cleaning in commonly used baths and laundry facilities. The details regarding the health facilities are determined for each specific case by the Heath Authority on the basis of the in-effect provisions and ruled by the idea of protection of the health of the encamped as well as that of the general public.
- 5. The toilets, baths, laundry installations, and possibly refreshment rooms and other makeshift buildings will conform to the in-effect provisions of General Constructions Regulation.

Article 4

- 1. The organization and the supervision of the operation of the approved areas of encampment is carried out by the Prefecture, which is able to transfer its jurisdiction and responsibility to interested local governments or other legal persons.
- 3. The expenses procured for the operation of the encampment can be covered through the imposition of retributive tax decided upon by the decision of the Prefect.
- 4. On a proposal of the Health Department, the necessary infrastructure works in the encampment areas of the wandering nomads (water supply, washrooms etc.) are incorporated in one of the programs of the Prefectural Revenue Office, and in particular, in the program for "Small sanitary Works" of the Ministry of Health and Social Welfare".

The above mentioned provisions, according to the Ombudsman's opinion, are applicable in their totality with the exception of par. 1 of article 3, which specifies that "the lands for the organized encampments of the wandering nomads which are going to be designated, in accordance with the article 2 of the present decision, must be outside the inhabited areas and in good distance from the approved urban plan or the last consecutive houses". In view of the delays that would most certainly occur until the interested parties are definitely established in typical domiciles, the application of this provision entails forms of social exclusion which directly infringe upon the principle of absolute protection of human dignity (article 2 par.1 of the Constitution) and perpetuate distinctions based on racial criteria (article 4 par.1 &5 of the Constitution). Particularly purposeful appears to be, in this case, the dispersion of these persons, within inhabited areas, in groups of blood related nuclear families, so as to, on the one hand, respect up to a certain degree, the traditional Roma perception of residence, and on the other, to avoid as much as possible, the creation of racially segregated residential units, which favour certain antisocial behaviors and incite oppositions from neighbors. Besides, the planning at the Prefectural level allows for a lot more flexibility on such matters.

In view of the above, the Greek Ombudsman considers necessary that the services of Athens Prefectural Administration must immediately proceed with the necessary preparatory activities for the application of the aforementioned provisions in the case of the Roma settlements in Halandri, Agia Paraskevi and Marousi, with goal the issuing by the Prefect of the anticipated deed for the permanent establishment of the Roma. Concretely:

1. It is advisable, taking advantage of the opportunity provided by aforementioned common ministerial decision (article 2, par.1) to assign an expert team to carry out an inspection of the areas of the existing Roma establishment, in the previously mentioned areas, aiming at the most detailed recording of the members of the relevant groups, so that the relocation plan would be done on the basis of the real number of eligible people. Furthermore, this registration will allow the selection of those persons who really need

public assistance, since, as it is rumored, certain interested for assistance Roma already possess real estate which they could develop for housing.

2. Simultaneously, the same or other team of experts which is going to be formed on the basis of that provision will seek to discover available spaces within the confines of your administrative prefecture, or, alternatively, within the confines of neighboring local governments and in agreement with them. To begin with, such spaces may already belong to the greek public or the a' and b' degree local governments. It is also advisable to include in the search privately owned lands, which then could perhaps be bought, for the purpose of Roma relocation from the Prefectural Administration.

It is, at all events, necessary that the teams of experts entrusted with recording the number of interested Roma and searching for suitable spaces to come to contact in advance, with members of non-governmental organizations. In particular, the members of "Doctors of the World" (Medicins du Monde), who, in the context of developing medical and social welfare programs have an almost daily presence in the camps and are very active in both the registering of the Roma population and the searching for lands suitable for their relocation. (You should at least consider the possibility of their informal participation in these teams.) Towards the same direction, the participation of local municipal staff who already have experience handling the problem could also be of valuable assistance. Further collaboration with the Roma themselves could be positive considering not only that they have their own association but also, in the final analysis, the whole endeavor concerns their future.

However, besides all the above-mentioned activities, the Athens Prefectural Administration must, somehow, come into contact with both: on the one hand, the Ministry of Internal Affairs which has jurisdiction over the handling of money allocated for financing the reestablishment measures and the social incorporation of Roma. (Within the framework of the Minister's of Internal Affairs presidency of the Joint-Ministerial Organ.) On the other hand, the Athens Prefectural Administration must contact the Public Mortgage Corporation in whose jurisdiction falls the financing and the allocation of lands which belong to the State as a legal entity. I remind you that the Prefecture maintained correspondence with the PMC pertaining to the allocation of lands for the relocation of Roma living in Agia Paraskevi, with unknown, to us, outcome. It is imperative that this avenue of communication is promptly revived.

Lastly, it is also considered necessary the immediate start of the collaboration of Athens Prefectural Administration (for the total number of encampments within its jurisdiction) with the aforementioned committee. This committee created on an Ombudsman's initiative has the participation of all involved Ministries, Local Authorities, and the office of the Prime Minister and is aiming at confronting, in particular, the problems of the Roma living in Halandri. The collaboration with this committee is necessary considering that its members are exactly those persons who are entrusted with handling the Roma issues. Your advisor, Mr. Kotsopoulos, who represents the Athens Prefectural Administration in the committee, has all the relevant data and is in a position to provide you a complete briefing.

In view of the above, I would like to underline once again the seriousness of the problems which emerged in regards to the Roma residing in your prefecture. The acuteness of these problems is even more intensified by the fact that these problems have become known to international organizations such as the Council of Europe, The Organization For the Security and Cooperation in Europe, and very recently, of the International Olympic Committee. The president of IOC is reported to have made – written-austere comments regarding the eventuality of violent expulsion of Roma from the areas about to be developed in the framework of the Olympic games 2004. For this reason, I request that you inform me, as soon as possible, about the courses of action you are planning to take in regards to the issues discussed here and the relevant proposals of the Greek Ombudsman. I would also like to communicate to me, if it exists, any long-standing correspondence of the Prefect of Athens with the Public Mortgage Corporation related to the relocation of the encamped within your prefecture Roma.

Thank you for your cooperation.

Sincerely,

Yiorgos Kaminis

Assistant Professor of Constitutional Law of Athens University Deputy Ombudsman for Human Rights

C.c.

- Ministry of Internal Affairs Vas. Sofias 15 106 74 ATHENS
- General Secretary of the Prefecture of Attica Evaggelistrias 2 105 63 ATHENS
- President of The Prefectural Administration Athens-Pireaus Mr. D. Katrivano Stadiou 31 105 59 ATHENS
- 4. Prefect of East Attica 17 kil.L. Marathona 153 44 Palini
- 5. Prefect of West Attica Persefonis & Hatzidaki 192 00 ELEFSINA
- Mayor of Halandri Zalokosta 4 152 33 HALANDRI
- 7. Mayor of Agia Paraskevi

Masogeion 463 153 43 AG. PARASKEVI

- Mayor of Marousi Dem. Ralli 37 151 24 MAROUSI
- Political Office of the Prime Minister Office for Quality of Life Issues (Attention Mr. Aggelidi & Mr. Stamou) Parliament Building 100 21 ATHENS
- Political Office of Ministry of Internal Affairs (Attention Mr. Papaspiropoulos) Stadiou 27 & Dragatsaniou 105 59 ATHENS
- 11. Political Office of Minister of Work & Social Welfare (Attention Ms Athanasatou) Piraeus 40 101 82 ATHENS
- 12. Political Office of the Ministry of the Environment, Urban Planning and Public Works (Attention Mr. Katsimpardi) Amaliados 17 115 23 ATHENS
- 13. Political Office of Deputy Minister of Social Welfare (Attention Mr. Beziraki) Aristotelous 17 101 87 ATHENS
- 14. Office of the General Secretary of Public Order P. Kanellopoulou 4 101 77 ATHENS
- 15. Director of Police Headquarters of East Attica Pentelis 10 153 43 ATHENS
- 16. Directorate of urban planning of the Ministry of the Environment, Urban Planning and Public Works (Attention Mr. Antonopoulou) Mesogeion & Trikalon 115 26 ATHENS
- 17. Doctors of the World

(Attention Ms. Efthimiatou) Alexandra Ave.207 115 23 ATHENS

- Ms. Ioanna Pollani Antifalou 23A 115 28 ATHENS
- 19. Mr. Efthimio Tsiatouha Polidorou 38 157 72 ZOGRAFOU
- 20. Mr. Athanasio Papadodima Thiras 90 185 41 PIRAEUS
- 21. Conservation Society of Pefkakia / Agia Paraskevi "Anaggenisis" Archimidous 1 142 32 N. IONIA
- 22. Association of native of Halkida Roma "Elpida" c/o Greek Helsinki Monitor P.O.Box. 60820 153 04 GLYKA NERA

THE GREEK OMBUDSMAN INDEPENDENT ADMINISTRATIVE AUTHORITY

Deputy Greek Ombudsman

Athens, 26 February 2002 Ref. No. 17274/00/2.3

> Senior Investigator: Andreas Takis Telephone: 72 89 620 Fax: 72 29 129

To the General Secretary of the Prefecture of Attica **Evaggelistrias 2** 105 63 ATHENS

Dear Sir,

As you are already aware, from the large number of documents which I have occasionally forwarded to you, the office of the Greek Ombudsman has received, thus far, a significant number of complaints concerning the problems created by the unhindered establishment and relocation of Roma encampments within the area of Attica. These complaints have come from the Roma themselves, from non-governmental organizations interested in the Social Welfare and Protection of vulnerable communities, and from neighbors living near the Roma encampments. Specifically the complaints made referred to the Roma settlements in the following municipalities: in Halandri (behind the Mint), Agia Paraskevi (the settlement in the "Pefkakia" area), Philothei (behind the Olympic Stadium), Aspropyrgos (the settlement in "Nea Zoe"), in Zephere and Spata. These settlements of course do not comprise the entirety of Roma encampments existing in Attica.

The fact, however, that a large number of citizens' complaints have been submitted to the Ombudsman concerning the issue of Roma settlements indicate, precisely, the severity of the problems generated by the residence of the Roma there, in regards to both, the health and dignity of the Roma themselves, as well as, the property, security and peace of all that live nears. You, I am certain, are aware of these problems from long ago. Moreover, the Ombudsman himself, in his letter to the Prefect of Athens (ref. no. 17724/00/2.2/18.3.2001) concerning the encampments existing within the administrative boundaries of the Prefectural District of Athens, emphasized, but unfortunately without effect, that:

"The aforementioned problems were created by the unhindered violation of the law by the Roma transgressors, the inexcusable, for many years, inertia of a large number of matter and area competent authorities, and the disrepute of the rule of law, caused by the virtual loss, for some of our fellow citizens, not only of their material properties but also of their right to effective judicial protection. Unfortunately, these dangers coexist with other equally important problems, namely: a) the social degradation and the absolute marginalization of our fellow Roma citizens, who subsist under humiliating, in every respect, conditions, b) the consolidation of a feeling of constant insecurity for all that live nears, c) the hanging over us, inevitable signs of racial aversion, d) the unavoidable discredit of the state and finally, e) the danger taking of the law into one's hands".

It must also be pointed out, as it was ascertained by the occasional on-the-scene investigations carried out by the Ombudsman's investigators and by collaboration with police authorities, that some of these encampments, and particularly the one in Aspropyrgos, (where the prolonged and almost total marginalization of the local population, in conjunction with the unhindered infiltration of the settlement by foreign Roma, especially of Albanian citizenship) tend to become transformed into semi-wholesale centers of handling and trafficking hard drugs. This may have disastrous and irreversible consequences on any prospect of their social integration.

The issue of course, for the time being, is not to find or assign ethical and legal blame [to those responsible] for the creation, and above all, for the perpetuation and the heightening of the unacceptable, in every respect, position of the Roma in our country and especially in the capital city itself and its suburbs at the dawn of the new millennium. Not that such an action is unnecessary. Rather, more pressing and requiring immediate confrontation is the issue of the endangerment of public order and security, of social cohesion and, particularly, of our national dignity as a society governed with respect to its citizens and the rule of law. This danger is so immediate and has reached such proportions that it requires the prompt implementation of measures for defusing the existing situation and for the short-term restoration of conditions of dignified living and peaceful coexistence with all that lives nears for these vulnerable communities. It would be redundant to remind you, by way of placing additional emphasis on the urgency of the matter, that the current condition of the Greek Roma has attracted the attention of international organizations in view especially of the hosting of the Olympic games in Athens.

The Greek Ombudsman does not ignore, on the contrary, acknowledges and welcomes as particularly positive the measures for the establishment of an expert Joint-Ministerial Organ on Roma issues. Similarly positive is the legislative provision for supplying housing loans to Roma, as well as the personal interest of the Prime Minister and of the members of his Political Office. Noteworthy also is the sensitivity shown by some municipalities of the capital city and of the Prefecture of Attica. However, as you are very well aware, the materialization of the aforementioned measures is still significantly delayed. (For example, the ministerial decision necessary for supplying housing loans has not yet been issued, nor has there been an accurate registration of all the possible beneficiaries). In any case, these measures are expected to have relatively small impact on defusing the problems that have being accumulated from long ago. Furthermore, as far as the particular interest and the sensitivity expressed by several sides in regards to the problems the Roma face, these are disclosed on occasion and in view of certain concrete local problems. As such, there are not adequate for the systematic confrontation of this explosive issue. Moreover, the effectiveness of any type of measure or of expression of sincere interest, thus far, appear to have been subverted by the inertia, or even by the direct opposition of the local government authorities, which are responsible either by law (as it is the case of prefectutral local government), or by the circumstances (as in the case of the municipalities), to materialize them. It is, thus, characteristic that the aforementioned letter of the Ombudsman addressed to the Prefect of Athens, in which detailed reference is made to concrete problems in correlation with the specific measures provided by law for their confrontation, still remains unanswered. Furthermore, as you are aware, the initiative of the Ombudsman to forward to the competent prosecutor, and to you as well, the file of the case concerning the illegal demolition of the Roma dwellings by the Mayor of Aspropyrgos in the summer of 2000, did not prevent the same mayor from repeating the illegal demolition the following summer, with the same, insulting to human dignity, pretext of "cleaning up garbage". Characteristic also is the inability of the mayor of Halandri to persuade the local municipal council of the necessity of re-locating the existing, in private lands and in desolate condition, Roma encampment behind the Mint. (See minutes from the October 18, 2001 meeting of the Municipal Council of Halandri). The result of this failure is, once again, the endangerment with breakdown of the, approximately three year long, common attempt of the Municipality, of the Greek Ombudsman and the other public authorities to find a solution to this unresolved issue.

In view of all the above, (and prompted to that direction by the Office of Quality of Life of the Political Office of the Prime Minister and by the special adviser of the Ministry of Internal Affairs and Decentralization on Roma issues) the Greek Ombudsman, has placed all its hopes for the effective resolution of the problems on the substantially funded initiative "Complete Action Program". The program involves the undertaking by the relevant municipalities of the country of specific courses of actions, which unfold under the auspices of the competent Prefectural General Secretaries. I make no secret of the fact that, together with hopes, the Greek Ombudsman, has serious doubts about the potential of this effort to provide, in the foreseeable future, substantial solutions to the existing problems. It is of course self evident that solving the wider problem of the Roma social standing in our country, which in itself is a product of centuries old marginalization practices, constitutes a long term political goal, the realization of which has only just began. The explosive dimensions though which these problems have acquired in certain areas, first among which is the problem of temporary settlement and housing, strongly suggests the need for implementing, in parallel, immediate and short term relief measures. It is thus, reasonable to consider that, the informal time limit of 5 or more years within which the "Complete Action Program" is expected to materialize (in view especially of the well known delays of action of the public administration in our country), appears pessimistically long.

Consequently, I call upon you to please take the necessary actions so that the services you oversee inform me, as soon as possible, [first] of the participation proposals of the aforementioned municipalities of your Prefecture in the "*Complete Action Program*" and [second] the timetable within which these proposals are expected to be approved and to materialize. Furthermore, please explore, within the framework of your competencies as the commissioner of the functioning of the first and second tiers of local government which belong within your Prefecture, what measures they [i.e., local governments], and particularly the municipalities mentioned above, are willing to take in regards to the immediate confrontation of the problems of settlement and housing of the Roma who belong to their administrative district and to keep me accordingly informed.

My colleagues and myself are always at your disposal for any further clarification or collaboration.

Yours sincerely,

Yorgos Kaminis Assistant Professor of Cosntitutional Law at the University of Athens Deputy Ombudsman for Human Rights Handling and Information: Mr. Andreas Ch. Takis, senior investigator in the Human Rights Department.

Copies:

- Ministry of Internal Affairs Vas. Sofias 15 106 74 ATHENS
- President of The Prefectural Administration Athens-Pireaus Stadiou 31 105 59 ATHENS
- Prefect of Athens Kifisias 125-127 115 59 ATHENS
- 4. Prefect of East Attica 17 kil.L. Marathona 153 44 Palini
- 5. Prefect of West Attica Persefonis & Hatzidaki 192 00 ELEFSINA
- Mayor of Halandri Zalokosta 4 152 33 HALANDRI
- Mayor of Agia Paraskevi Masogeion 463 153 43 AG. PARASKEVI
- Mayor of Marousi Dem. Ralli 37 151 24 MAROUSI
- Mayor of Aspropyrgos Democratias Ave 18 193 00 ASPROPYRGOS
- 10. Political Office of the Prime Minister Office for Quality of Life Issues (Attention Mr. Aggelidi & Mr. Stamou) Parliament Building 100 21 ATHENS
- 11. Political Office of Ministry of Internal Affairs

(Attention Mr. Papaspiropoulos) Stadiou 27 & Dragatsaniou 105 59 ATHENS

- 12. Political Office of Minister of Work & Social Welfare Piraeus 40 101 82 ATHENS
- 13. Political Office of the Ministry of the Environment, Urban Planning and Public Works Amaliados 17 115 23 ATHENS
- 14. Political Office of Deputy Minister of Social Welfare Aristotelous 17 101 87 ATHENS
- 15. Office of the General Secretary of Public Order P. Kanellopoulou 4 101 77 ATHENS
- 16. Director of Police Headquarters of Attica Alexandras Ave. 173 115 23 ATHENS
- 17. Directorate of urban planning of the Ministry of the Environment, Urban Planning and Public Works Mesogeion & Trikalon 115 26 ATHENS
- 18. Doctors of the World (Attention Ms. Efthimiatou) Alexandra Ave.207 115 23 ATHENS
- 19. Ms. Ioanna Pollani Antifilou 23A 115 28 ATHENS
- 20. Mr. Efthimio Tsiatouha Polidorou 38 157 72 ZOGRAFOU
- 21. Mr. Athanasio Papadodima Thiras 90 185 41 PIRAEUS
- 22. Mrs. Aggeliki Maouni

Kallinikou 6, Pl. Koliatsou 112 54 ATHENS

- 23. Conservation Society of Pefkakia / Agia Paraskevi "Anaggenisis" Archimidous 1 142 32 N. IONIA
- 24. Association of native of Halkida Roma "Elpida" C/o Greek Helsinki Monitor P.O.Box. 60820 153 04 GLYKA NERA

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ΔΙΑΤΑΞΗ

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osos Gp. Augerrion 78 Enerody 1020000000 FOT-7-04 Ο Εισαγγελέας Πλημμελειοδικών Θεσσαλονίκης

Αφού λάβαμε υπόψη: α) την από 11-9-2002 μηνυτήρια αναφορά του Θεόδωρου Αλεξανδρίδη του Χρήστου, κατοίκου Ιλισίων Αθηνών κατά του: 1) Δημάρχου Καλαμαριάς, Χριστόδουλου Οικονομίδη του Ιωάννη, κατοίκου Θεσσαλονίκης, 2) τυχόν εμπλεκομένων αστυνομικών και 3) κατά παντός άλλου υπευθύνου και β) την δικογραφία που σχηματίσθηκε, κατόπιν σχετικής παραγγελίας μας, μετά την διενέργεια προκαταρκτικής εξέτασης από την Πταισματοδίκη του ΤΕ Τμήματος Θεσσαλονίκης, εκθέτουμε τα ακόλουθα:

Σύμφωνα με τις προβλέψεις των διατάξεων του άρθρου 47 παρ.2 του Κ.Π.Δ. σε συνδυασμό με την παράγραφο 1 του ίδιου άρθρου όπως αυτό αντικαταστάθηκε από το άρθρο 6 του N.3160/2003 «1. Ο εισαγγελέας εξετάζει την έγκληση που έλαβε και αν κρίνει ότι αυτή δεν στηρίζεται στο νόμο ή είναι ανεπίδεκτη δικαστικής εκτίμησης ή είναι προφανώς αβάσιμη στην ουσία της, την απορρίπτει με αιτιολογημένη διάταξή του, η οποία επιδίδεται στον εγκαλούντα. 2. Αν ενεργήθηκαν προκαταρκτική εξέταση ή ανακριτικές πράξεις, κατά το άρθρο 243 παρ.2 ή ένορκη διοικητική εξέταση και ο εισαγγελέας κρίνει ότι δεν προκύπτουν επαρκείς ενδείζεις για την κίνηση της ποινικής δίωξης, ενεργεί όπως στην προηγουμενη παραγραφού του νόμο όταν τα πραγματικά περιστατικά που ιστορούνται σ'αυτή, δεν αποτελούν αξιόποινη πράξη (βλ. Μπουρόπουλου Ερμ. Κ.Π.Δ, Ζησιάδη Ποιν.Δικ.εκδ. 1976 σελ. 373 επ.), όταν ελλείπει κάποιο στοιχείο ή εξωτερικός όρος του αξιοποίνου, όταν υπάρχει λόγος που εξαλείφει το αξιόποινο (παραγραφή, αμνηστία, πάροδος προθεσμίας εγκλήσεως, παραίτηση από το δικαίωμα της εγκλήσεως.). Περαιτέρω, ουσιαστικά αβάσιμη καθιστά την έγκληση η έλλειψη των στοιχείων που απαρτίζουν τη νομοτυπική μορφή (αντικειμενική και υποκειμενική υπόσταση) της καταμαρτυρούμενης πράξης (Κ.Σταμάτη, η προκαταρκτική εξέταση στην ποινική διαδικασία και οι αρχές της νομιμότητας, εκδ.1984, σελ.262).

Στην προκειμένη περίπτωση, ο μηνυτής, ως υπεύθυνος του Προγράμματος Ρομά του Ελληνικού Παρατηρητηρίου των Συμφωνιών του Ελσίνκι (ΕΠΣΕ), οργάνωσης που εδρεύει στο Μεταξουργείο Αθηνών, καταγγέλλει ότι στις 4-9-2002, σε επίσκεψη που πραγματοποίησε σε καταυλισμό είκοσι (20) οικογενειών αθιγγάνων (Ρομά) αλβανικής υπηκοότητας, εντός ιδιωτικής έκτασης στην τοποθεσία «Φοίνικα» του Δήμου Καλαμαριάς, πλησίον του αμαξοστοιχίου του ΟΑΣΘ, όπου είχαν εγκατασταθεί προ μηνός, διαπίστωσε ότι πολλές οικογένειες συγκέντρωναν τις οικοσκευές τους για να αποχωρήσουν, αφού σύμφωνα με μαρτυρίες τους, τους επισκέφθηκαν αστυνομικά όργανα που αξίωσαν την απογώρησή τους καθώς ο ιδιοκτήτης της έκτασης υπέβαλε έγκληση. Ο μηνυτής καταγγέλλει ότι την επομένη ημέρα, στις 5-9-2002, περί ώρα 7:30 το πρωί, δύο γαιοπροωθητές συνοδευόμενοι από δύο φορτηγά οχήματα, προχώρησαν σε επιχωμάτωση μέρους της έκτασης και σε κατεδάφιση τεσσάρων παραπηγμάτων αντίστοιχων οικογενειών και ότι σύμφωνα με μαρτυρίες των αθιγγάνων, όλα αυτά γινόταν υπό την διακριτική παρακολούθηση αστυνομικών της ΕΛ.ΑΣ και της δημοτικής αστυνομίας, οι οποίοι αποχώρησαν μία ώρα μετά την έναρξη της επιχείρησης. Κατόπιν τούτων, ζητά την ποινική δίωξη των υπευθύνων, καθώς διατείνεται ότι η αποβολή των οικογενειών των αθιγγάνων είναι παράνομη και ως τέτοια συνιστά ποινικό αδίκημα και παράβαση του Ν.927/1979 για την κατάργηση κάθε μορφής φυλετικών διακρίσεων.

Στην προκειμένη περίπτωση, από το σύνολο των στοιχείων της δικογραφίας και ειδικότερα, τα έγγραφα και τις καταθέσεις των μαρτύρων σε συνδυασμό μεταξύ τους, προέκυψαν τα ακόλουθα πραγματικά περιστατικά: Μετά την νόμιμη αποβολή οικογενειών αθιγγάνων στις 25-7-2002, με τη συνδρομή συνεργείων της Νομαρχίας Θεσσαλονίκης, από έκταση πλησίον του Σούπερ Μάρκετ «Makro», είκοσι (20) περίπου οικογένειες αθιγγάνων (Ρομά) αλβανικής υπηκοόητας εγκαταστάθηκαν με τις οικοσκευές τους, σε έκταση, πλησίον του αμαξοστασίου του ΟΑΣΘ, στην περιοχή «Φοίνικα» του δήμου Καλαμαριάς. Οι οικογένειες των Ρομά, διασκορπίστηκαν στην περιοχή, καταλαμβάνοντας συθαιρέτως τμήματα οικοπέδων ιδιοκτησίας, Ναούμ Μπαμπατάκα, Γεωργίου Καραβασίλη, αλλά και δημόσια έκταση. Από τις καταθέσεις των μαρτύρων και ενόψει του ότι η οριοθέτηση μεταξύ των οικοπέδων δεν ήταν εμφανής, δεν προκύπτει με βεβαιότητα, σε ποιο εκ των δύο ιδιωτικών οικοπέδων είχαν στηθεί τρία έως τέσσερα πρόχειρα παραπήγματα από ξύλα και νάυλον. Μέσα στα όρια του οικοπέδου του Ναούμ Μπαμπατάκα, υπήρχε πινακίδα μεσιτικής εταιρίας που είχε αναλάβει την διαμεσολάβηση για την ενοικίαση ή πώληση της έκτασης σε τρίτους. Δεδομένο είναι επίσης, ότι και ο Γεώργιος Καραβασίλης ενδιαφερόταν κατά τον επίδικο χρόνο για την εκμετάλλευση του οικοπέδου του, αφού μετά από λίγο, πώλησε το εξ'αδιαιρέτου μερίδιό του στον ιδιοκτήτη όμορου ακινήτου, Ηρακλή Αθανασίου του Δημητρίου. Όπως είναι φυσικό, οι ιδιοκτήτες, στην προσπάθειά τους να προστατεύσουν τις ιδιοκτησίες τους προασπιζόμενοι τα συμφέροντά τους, έναντι της αυθαίρετης κατάληψης των Ρομά, απευθύνθηκαν στις αρμόδιες υπηρεσίες και την αστυνομία. Πάντως, από κανένα στοιχείο της δικογραφίας δεν προκύπτει ότι προέβησαν σε αυθαίρετες ή παράνομες ενέργειες. Η περιοχή του Φοίνικα αστυνομεύεται από το Α΄ Αστυνομικό Τμήμα, το οποίο δια των οργάνων του και κατόπιν εντολής του διευθυντή της Υποδ/νοης Αστυνομίας, επιλήφθηκε ως κατά τόπο αρμόδιο, της καταγγελίας των ιδιοκτητών των καταληφθέντων εκτάσεων. Είναι απόρροια της αρχής της νομιμότητας και της ασφάλειας των πολιτών σε ένα ευνομούμενο κράτος δικαίου, οι αστυνομικές αρχές να επιλαμβάνονται κάθε καταγγελίας και ως εκ τούτου είναι υποχρεωμένες να διαπιστώνουν τυχόν διάπραξη αξιόποινων πράξεων από πλευράς οιουδήποτε, όπως και να διαφυλάσσουν την ειρήνη μεταξύ των σχέσεων των πολιτών, αποτρέποντας διενέξεις και απομακρύνοντας τον κίνδυνο συμπλοκών. Υπό αυτή την έννοια, τόσο οι συστάσεις που έγιναν προς τις οικογένειες των Ρομά να αποχωρήσουν από την έκταση στην οποία είχαν αυθαιρέτως εγκατασταθεί, όσο και η παρουσία των αστυνομικών οργάνων κατά την οικειοθελή αποχώρησή τους από το σημείο στις 4 και 5-9-2002, δεν συνιστά σε καμία περίπτωση παράνομη πράξη. Το ίδιο βέβαια ισχύει και για την τυχόν εκεί παρουσία οργάνων της δημοτικής αστυνομίας. Το γεγονός ότι οι Ρομά αποχώρησαν οικειοθελώς και χωρίς την άσκηση παραμικρής βίας, επιβεβαιώνεται από τις καταθέσεις όλων των μαρτύρων, αλλά και από την ίδια την μηνυτήρια αναφορά. Κατά τον ίδιο τρόπο, από το συνδυασμό των καταθέσεων των μαρτύρων αλλά και από το περιεχόμενο της μηνυτήριας αναφοράς, προκύπτει ότι οι δύο γαιοπροωθητήρες και τα φορτηγά οχήματα χρησιμοποιήθηκαν για την επιχωμάτωση μέρους της ιδιωτικής εκτάσεως, όταν ήδη οι οικογένειες είχαν αποχωρήσει από το σημείο. (βλ. 2η σελ. μηνυτ. αναφοράς, καθώς και καταθέσεις Αθανάσιου Μήτσου και Ν.Μπαμπατάκα). Πέραν τούτου, από κανένα στοιχείο της δικογραφίας δεν προκύπτει ότι εντός της επίδικης εκτάσεως είχαν ανεγερθεί οικοδομικές κατασκευές, δηλαδή κτίσματα κατά την έννοια του Γ.Ο.Κ., ούτε προκύπτει αν κατεδαφίστηκαν ή παρασύρθηκαν τυχόν εναπομείναντα μετά την αποχώρηση των αθιγγάνων παραπήγματα. Τέλος, ακόμη και αν δεχθούμε ότι ο μηνυόμενος δήμαρχος της περιοχής Καλαμαριάς, προέβη σε δηλώσεις για την αναγκαιότητα της απομάκρυνσης αυθαίρετων καταυλισμών αθιγγάνων, από μόνο του το γεγονός αυτό αφενός δεν αποτελεί παράνομη συμπεριφορά και αφετέρου δεν συνιστά φυλετική διάκριση, καθόσον ο ίδιος είναι εγγυητής και προασπιστής των συμφερόντων όλων των κατοίκων της περιοχής και της προστασίας του περιβάλλοντος

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και των συνθηκών υγιεινής διαβίωσης των περιοίκων, αλλά και των ίδιων των κατιγγάνων. Βεβαίως, η διαβίωση ομάδας πολιτών όπως αυτή των αθιγγάνων κάτω από συνθήκες εξαθλίωσης, αποτελεί αναμφισβήτητο κοινωνικό πρόβλημα, η επίλυση του οποίου πρέπει να αποτελεί μέριμνα του κράτους, πλην όμως δεν δικαιολογεί την ανοχή τέλεσης παράνομων πράξεων και πολύ περισσότερο δεν επιτρέπει την, σε βάρος άλλων εννόμων αγαθών, αυθαίρετη στάθμιση και αδράνεια από πλευράς των θεσμικών του κράτους οργάνων.

Κατόπιν όλων των ανωτέρω και δεόρμένου ότι δεν προέκυναν καθόλου ενδείξεις για την άσκηση ποινικής δίωξης σε βάρος οιουδήποτε, θα πρέπει ή κρινόμενη μηνυτήρια αναφορά να απορριφθεί ως νόμω αστήρικτη.

Για τους λόγους αυτούς

Απορρίπτουμε την από 11-9-2002 μηνυτήρια αναφορά του Θεόδωρου -Αλεξανδρίδη του Χρήστου, κατοίκου Ιλισίων Αθηνών κατά του: 1) Δημάρχου Καλαμαριάς, Χριστόδουλου Οικονομίδη του Ιωάννη, κατοίκου Θεσσαλονίκης, 2) τυχόν εμπλεκομένων αστυνομικών και 3) κατά παντός άλλου υπευθύνου και

Παραγγέλλουμε την επίδοση της παρούσας στον ανωτέρω μηνυτή.



ΠΙΣΤΟ ΦΩΤΟΑΝΤΙΓΡΑΦΟ ΥΠΗΡΕΣΙΑΚΟ 2 1 014 2004 Βεσ/νίκη Γραμματέας

Θεοσαλονίκη, 9-6-2004 Η ΕΙΣΑΓΓΕΛΕΑΣ

Ευαγγελίε Αθ. Καο

ΜΑΡΙΑ ΚΛΕΙΔΑΡΑ