

**COMMENTS OF THE
GOVERNEMENT OF GREECE
ON THE REPORT OF
THE COMMISSIONER FOR HUMAN RIGHTS**

As historically it has been shown, ensuring respect for human rights, as well as for democratic norms and the rule of law, entails a permanent effort and vigilance not only on the part of the governments but also of the civil society and the relative international institutions. This is valid, we believe, particularly in periods of serious economic crises, like the current one, when the states must ensure respect for human rights in an environment of increasing social tensions, widespread disappointment, and erosion of social rights and social cohesion.

In this spirit, we welcomed the visit to Greece of the Commissioner for Human Rights of the Council of Europe, Mr Muižnieks, at the end of January, which was primarily focused on combating racism and hate crimes, issues of global concern.

We were pleased to see that the Commissioner in his report on the visit commends a number of significant measures taken by the Greek Government in the field of combating racism and hate crimes, such as the establishment of the post of the antiracism prosecutor in Athens, of 70 anti-racist units and the hotline for reporting racist incidents, as well as the reform of the asylum system.

At the same time, we take note of his remark that the effective function of these measures presupposes the availability of adequate resources. Furthermore we fully share the importance the Commissioner attaches to the effective function of a complaints mechanism relating to racist behavior and hate crimes, covering all law enforcement officials. The proposals contained in the Commissioner's report will be thoroughly and carefully considered by the competent authorities.

Concerning the Commissioner's suggestion that we speed up the construction of a mosque in Athens, we are in a position to inform that, following instructions by the Prime Minister, a tender for its construction was issued some days ago.

We share the concern of the Commissioner, expressed in the report, for the considerable increase of racist attacks over the last period. Fortunately, however, racist attitudes remain a marginal phenomenon in the Greek society. Its culture of hospitality and openness remains strong and vivid. Huge problems currently facing the Greek society due to the economic crisis, combined with the problems arising from the continued influx of thousands of illegal immigrants, have not blurred the society's judgment.

The handling of the extremist organization mentioned in the report, which, however, has legally found its way in the Hellenic Parliament, is a complexity in itself for obvious reasons related to the function of a democratic polity. As such, solutions and treatment cannot be products of emotional responses which could backfire or bring about more unwanted results. They should, instead, be the outcome of prudence,

both incorporating the conventional political and democratic wisdom, as well as functioning within the Greek constitutional order and the rules of the Hellenic Parliament. This is what almost the entirety of the political spectrum in Greece wishes and has embarked upon. In relation to this, let us remember that the Parliamentary Assembly of the Council of Europe declined to exclude a member of this organization from the Assembly's plenary session of last January.

The parliamentary strength given by the voters to this organization does not – as many researches have shown – indicate a rise of racism in society. Moreover, it does not indicate any kind of political or social adherence or attachment to racist ideologies. The parliamentary strength given to this organization is basically an expression of popular disappointment and protest against harsh, albeit inevitable, austerity measures, as well as increasing unemployment following consecutive years of economic recession.

It is in the light of the above observations, we believe, that we should evaluate statements, mentioned in the report, which were made by members of the political leadership of the country, statements regarded by the report as stigmatizing the migrants. The Prime Minister and the Minister of Citizen Protection have never expressed views implying a racist or xenophobic attitude to migrants. Such an attitude is foreign to their political culture and, in general, to the Government's approach. At the same time, words or phrases taken out of their very context risk to produce false impressions, generate unfair criticism and blur the overall picture. The Prime Minister's statement about the "recuperation" of the city centers from illegal immigrants should simply be seen as an expression of the Government's firm will to effectively enforce the rule of law in the centre of the capital. This will help establishing conditions for an uneventful coexistence between the Greek people and the immigrants, a development which would greatly benefit the latter, as well. Besides, it will deprive any self-styled "protectors of the law" of the tools they use in order to impose their ugly theories and practices. At this point, let me add that what more than clearly manifests and epitomizes the Prime Minister's views on the issue is, among other things, his very presence and words during a recent ceremony in Thessaloniki, commemorating Greek Jews and their past suffering. In a nutshell, racism is an enemy of all of us and we are all on the same page on this. Similarly, the use of the terms "invasion" or "bomb" by the Minister of Citizen Protection in referring to the huge presence of hundreds of thousands of illegal immigrants in the country should better be seen as only a dramatic depiction of the country's reality. On this occasion, it is worth noticing that these illegal immigrants do not really plan to settle in Greece, which they actually see only as a temporary transit passage towards their final destination elsewhere in Europe. The choice of Greece as a first entry point is made due to its proximity to areas of provenance and its unique geographical configuration and position as the main gateway to the European Union. However, these people's itineraries and ambitions are terminated in Greece where they end up despite their own will and in huge numbers, an element which exacerbates an already difficult situation. We commented on the above statements not in order to defend the Government but in order to avoid the risk of getting these statements out of context and proportion.

In concluding our introductory comments, we wish to express our appreciation to the Commissioner for his visit to Greece, which gave a unique opportunity to members of the Government, high judicial officials, representatives of independent institutions, local authorities, and NGOs to exchange views with him and draw on his vast knowledge and experience in the field of human rights.

With regard to some of the observations made by the Commissioner in his report, we would like to provide the following information and comments, prepared by the competent Ministries:

Paras.14-20

The actions of the Greek Police are guided by the fundamental provision of the Constitution that “Respect and protection of the dignity of the human being constitute the primary obligations of the State”, and the principle of the rule of law. In determining the action of the Police, special attention is given to ensuring respect for human rights and averting any manifestation of racist or xenophobic behavior. To this end special orders have been issued to all police authorities to intensify the measures for the protection of the rights of foreigners, as well for sensitizing the police personnel with regard to their obligation to immediately respond in cases of illegal behavior towards foreigners, stressing their duty to act according to the principles of equality and respect to every person, regardless of his/her race, nationality or religious affiliation.

The Ministry of Citizen Protection proceeded to the creation, all over Greece, of services to counter racial violence (2 Sections and 68 Offices), on the basis of the provisions of Presidential Degree 132/2012. The purpose of the said services is the complete prevention of acts or incitement to acts against persons of different race, colour, religion, descent, national or ethnic origin. Other actions undertaken so far by the Hellenic Police to combat racist phenomena include the following: creation of a network for the registration of alleged incidents of racist violence, establishment of criteria for ascertaining the existence of a racist motive, accompanied with specific instructions for the investigation of such motive, coordination with local and non-governmental entities, training of police staff.

Para. 66

With respect to the prosecution of racist acts, we would like to note that the legislative framework has been further strengthened. Pursuant to art. 66 of Law 4139/2013 (OG A’74/20.3.2013) on ‘addictive substances and other provisions’, the second section of case d of par. 3 of article 79 of the Penal Code is substituted as follows: ‘Committing an act triggered by hatred based on race, colour, religion, descent, national or ethnic origin, sexual orientation or gender identity of the victim is an aggravating circumstance and the sentence cannot be suspended’.

Para. 70

In relation to the training of legal professionals on existing anti-racism law and practice, the General Secretariat of Transparency and Human Rights of the Ministry of Justice, Transparency and Human Rights is planning to propose the inclusion of a relevant specific topic in the programme of studies of the National School of Judges.

Para. 72

A draft law ‘on combating certain forms and expressions of racism and xenophobia by means of criminal law’ was deposited by one of the three parties supporting the Government before Parliament, on 21.3.2013. The draft law is supported by the Ministry of Justice, Transparency and Human Rights.

Para. 78

Under the 1975 Constitution, the interpretation of Article 29 according to the principle of *effet utile* is not possible, as the intention of the constitutional legislator, going back in time to the fall of the dictatorship and the collapse of the military junta in Greece, was to avoid any legislative or judicial intervention to the free functioning of political parties, as it also follows from the Minutes of the Greek Parliament.

Para. 86

Greece introduced, through Law 4055/2012, provisions on the just satisfaction of the parties on account of excessive length of proceedings before administrative courts and on the request to speed up the proceedings (articles 53-60).

Para. 96

The Public Prosecutor by the Supreme Court, Mr I. Tentes, issued circular 3802/4-12/18.9.2012 to the heads of the Public Prosecutors' Offices of the Courts of Appeal of Greece. Pursuant to this circular all persons who commit the offence of usurpation of authority and conduct controls shall be arrested by police officers and brought before the prosecutorial authorities. In case of involvement of MPs, they shall be arrested in *flagrante delicto*, if they have committed a felony. If the MPs have committed a misdemeanor, the prosecutorial authorities shall carry out any investigative act necessary to ascertain the crime, with the exception of the investigative acts which insult the role of the MP. If the aforementioned crimes are committed by Greek citizens and foreigners, they shall be immediately be arrested in *flagrante delicto*.

Para. 113

With respect to the ratification of the Optional Protocol to the Convention against Torture (OPCAT), we would like to note that the process of submission before Parliament of the relevant ratification law has already been initiated.

Para. 138

Regarding issues of asylum, in the first place, it should be noted that a new and independent Asylum Service was created by Law 3907/2011.

Furthermore, a number of efforts have been made in order to address the problem of pending cases (both at first and second instance) and improve the quality of asylum procedures. As listed below, these include:

- Adoption of Presidential Decree No 114/2010 / Improvement of the quality of asylum procedures applied by the Hellenic Police.
- Participation of a representative of the UNHCR in first instance interviews, with the right to express his/her views on the case under consideration
- Cooperation with the UNHCR in the field of staff training. 12 such training seminars have been taken place so far.
- Use of trained interpreters of the NGO "Metadrasi" (physical presence, teleconference)
- Establishment of independent Appeals Committees

- Adoption of a program for the handling of cases in second instance
- Upgrading of an information application on countries of origin
- Cooperation with the European Asylum Support Office (EASO). Deployment of Asylum Support Teams.

Para. 140

Foreigners detained in the premises of the Aliens Police Directorate in Athens (24, P. Ralli str., Tavros) have the possibility, if they so wish, to submit asylum applications to the Political Asylum Department through the Department of the Guards of the detention facility. At the same time, the asylum application is transmitted also to the Deportation Department in order to suspend the expulsion/return procedure.

Concerning the submission of initial asylum applications by non-detained foreigners, it should be noted that the Political Asylum Department of the Aliens Police Directorate in Athens accepts - on a daily basis and without any restriction as to their number- asylum applications submitted by persons belonging to vulnerable groups. Initial applications by foreigners not belonging to vulnerable groups can be submitted every Saturday.

More specifically, it should be noted that the Political Asylum Department fully operates from Monday to Friday, from 07.30-15.30, and Saturdays from 08.00-13.00. In addition to the above daily working hours' schedule (07.30-15.30), the Interview Office (responsible for the examination of first instance asylum applications) remains open until late in the afternoon (14.00-20.00) from Monday to Friday.

Overall, the asylum applications (initial applications and initial applications of persons belonging to vulnerable groups) received on a daily basis reaches averagely the number of 50-60.

Para. 142

One of the key principles of the policy of the Ministry of Public Order and Citizen Protection and of the Hellenic Police Headquarters is the establishment of new standards, as to the conditions of Centers, which serve the purpose of ensuring the reception and detention of illegally entering or residing immigrants in our country, with full respect for human rights. The long-term detentions under reference are mainly a result of the delays which occur due to the lack of cooperation of the embassies of the home countries of detainees.

The creation of pre-departure detention Centers of foreigners has contributed, among others:

- a) to significantly increase the number of persons awaiting departure from the country (it has positively influenced the efforts of prevention and apprehension made daily by the Border Guard Stations and Immigration Services inside the country),
- b) to achieve a uniform and orderly operation of the detention centers, with full respect for the human rights of those detained,
- c) not to detain foreigners illegally entering or staying in our country in police stations, but in detention centers with facilities that meet the standards for a lengthy detention,

- d) to ensure that persons under detention have access to a yard and that they may carry out other relevant activities,
- e) to have exact records in the detention registers and the registers for the transfer of persons under detention,
- f) to have appropriate facilities (toilets, showers), which serve directly the needs of persons under detention without delay,
- g) to ensure a continuous and uninterrupted presence of doctors to provide the necessary health care and psychosocial diagnosis and support by medical, nursing and other professional staff of public or non-governmental organizations or other organizations and agencies.

Last March, an “Internal Regulation of Operation of Security Services of Immigration Detention Facilities” was established to achieve a uniform and smooth operation of these centers and in order to regulate in the most convenient manner the needs arising from the detention of migrants.

Additionally, it has been decided to reopen the detention centers of Chios and Samos islands. Transitional units of First Reception will operate in these centres. The contractual works of maintenance and repair of these facilities have been completed, and the centres will reopen depending on the volume of migration flows.

.Para. 144:

On the contrary, with regard to the health problems affecting migrant detainees, the respective investigations of the competent health authorities have shown that these are not related to the detention but are chronic infectious diseases (tuberculosis, syphilis, skin diseases, etc.).

Additionally, to address those problems, in the detention facilities, patients under detention are provided with the necessary medical care, including by NGOs with which we have perfect cooperation, while serious cases are transferred for treatment to Hospitals or other appropriate medical institutions.

Para. 145

The important issue of the treatment of persons belonging to vulnerable groups (for example women, single-parent families) and especially minor refugees (by implementing the provisions of Law 3907/2011 by which the Greek legislation was adjusted to the provisions of EU Directive 2008/115/EC), is a subject of particular concern for our Services, in the framework of the social role and mission they perform, so that the required protection is always being provided, with care and sensitivity.

Special attention is being given to the training of police officers on human rights and vulnerable groups. For this purpose, training seminars are being conducted annually, co-financed by the External Borders Fund and Return Fund.

Paras. 146-147

Penal Law 220/2007, incorporating EU Directive 9/2003, is applicable to unaccompanied minors, which provides for the specific information of the competent prosecutors, irrespective of whether the said

minors have submitted an application for asylum. The prosecutor is designated as temporary legal guardian. Following that, in coordination with non-governmental organizations and social services, a permanent legal guardian is designated, who usually is a social worker. If the designated guardian does not fulfil his/her duties, he/she can be replaced by order of the Prosecutor. In cooperation with non-governmental organizations and the Ministry of Health, the said minors are transferred to special accommodation structures for minors. In some cases, nevertheless, minors abandon arbitrarily the above structures after some time.

The determination of the age of the unaccompanied foreign minors is made by the doctors who work in the detention centres of immigrants, in cooperation with non-governmental organizations and following a proper interview with specialized police staff. In any case, measures are being taken to meet the best interests of the minors.

Para. 148

Greece acknowledges that the system of guardianship has not yet reached the level of effective operation intended due to the large numbers of unaccompanied children entering Greece every year and the massive influx of migrants that Greece has to handle.

Paras. 149-150

Greece continues the implementation of the measures, approved by the EU, which relate to the establishment of a new Asylum Service, and of First Reception Centers, the reinforcement of its policies in the area of voluntary and forced return of migrants, the implementation of a more rational system of international protection, primarily for ensuring conditions of migrants' reception which comply with human rights and human dignity.

Recently (last January), the Greek Ministry of Citizen Protection presented, during the informal meeting of EU Ministers of Justice and Internal Affairs, its Revised Action Plan on Asylum and Migration Management. The action plan is based on the following principles: a. Operation of an effective First Reception Service, b. Operation of a new, independent Asylum Service, c. Overall management of the pending asylum cases –backlog- by forming a special task force and expediting all the remaining appeals case files within 2013. d. An improved and effective Returns policy based on IOM Voluntary Repatriation Programmes with Reintegration Measures and on forced returns in implementation of Readmission Agreements with third countries. e. An effective Integrated Border Management according to European models and in the framework of the Schengen Acquis by reinforcing the country's external borders which constitute Europe's south-eastern external borders..

Within this framework, the Revised Action Plan on Asylum and Migration Management has been agreed, having taken into account comments by the UNHCR, NGOs, EU Member States and the European Commission.

Para. 151

Less restrictive/coercive than detention measures are already implemented through the First Reception Service established by Law 3907/2011, which establishes procedures for newly arrested illegal aliens

(identification, citizenship verification, registration, medical check-up, information about their rights, care for vulnerable groups etc.)

The existing immigrants enjoying “a status of tolerance”, who fall within the scope of the Return Directive, are detained , until the return process has been completed (issuance of travel documents, consultation with the authorities of their country, international organizations e.t.c.)

Paras. 152-153

Detention is normally taking place in special facilities and separately from common criminal law prisoners.

Every apprehended migrant is being given an “information sheet”, by which they are informed about their rights (in a language they understand), on detention and the asylum procedure.

The relevant and competent national, international and non-governmental organizations and bodies can visit the facilities in which migrants under removal are being detained.

The detained migrants are being systematically informed about the internal regulation of the detention facility, as well as about their rights and obligations, including their right to communicate with the above mentioned Organizations. Therefore, in every detention facility, relevant informative documents are being posted in a conspicuous position.

The presence of a lawyer is provided for in every part of both penal and administrative procedure, according to the provisions of our national legislation.

Detained migrants are being visited by relatives and friends, as well as by representatives of diplomatic and consular Authorities of their country of origin.

Designated representatives of the Greek Council of Refugees are granted access in every detention facility every day, communicate with the illegal migrants and provide them with legal assistance, in order to ensure their access to the asylum procedure and their legal representation throughout the procedure of the asylum request examination.

The above-mentioned procedure is also being applied to representatives of international organizations (UNHCR etc.), as well as of other non-governmental organizations that deal with migration issue.

The presence of an interpreter is also provided for and effort is being made to cover the needs of interpretation in every Service involved, by interpreters appointed by the Greek State or provided by non-governmental organizations.

In the annual programs of 2009-2010-2011-2012 of the European Return Fund, actions for employing interpreters to inform the detainees in a language they understand, have been, are being and will continue to be implemented.

At the same time, scientific personnel (psychologists, social workers, interpreters) have been employed by the Hellenic Police in order to cover the huge needs which arise daily.

It is noted that the procedures of removal are subject to independent monitoring conducted by the Greek Ombudsman, which cooperates, for this purpose, with International Organizations and non- governmental organizations.

All the above mentioned actions are being implemented in accordance with the international obligations of our country and the best practices that are applied by other countries, to serve the purpose of the security of the detainees and the personnel.