

# COMMENTAIRES DU GOUVERNEMENT CONCERNANT LE RAPPORT SUR LA GRÈCE

## ANNEXE

### **L'annexe qui suit ne fait pas partie de l'analyse et des propositions de l'ECRI concernant la situation en Grèce**

L'ECRI rappelle que l'analyse figurant dans son rapport sur la Grèce est basée sur la situation au 2 avril 2009. C'est pourquoi tout développement ultérieur n'est pas pris en compte.

Conformément à sa procédure pays-par-pays, l'ECRI a engagé un dialogue confidentiel avec les autorités grecques concernant le rapport. Certaines remarques des autorités ont été prises en compte par l'ECRI et y ont été intégrées.

Les autorités grecques ont également demandé à ce que les points de vue suivants soient reproduits en annexe du rapport de l'ECRI.

### **COMMENTS BY THE GREEK GOVERNMENT ON ECRI'S REPORT CONCERNING GREECE**

The Greek authorities wish to express their full support to ECRI's valuable work in combating racism and intolerance in Europe. In carrying out its mandate, ECRI is expected to adopt a co-operative approach based on mutual understanding and sincerity with the States involved. In this spirit of constructive cooperation, we would like to make the following comments concerning incidents of discrimination and / or of negative behavior on behalf of the Greek society towards either some vulnerable social groups or individuals.

With regard to the ratification of Protocol No.12 to the European Convention of Human Rights (**paras.1-3**), we emphasize the relatively small number of ratifications of this instrument, as well as the lack of relevant case-law of the European Court of Human Rights. We also fear that the above Protocol would lead to a further burdening of the Court's workload. This comment reflects a general concern, which has also been expressed by a number of governmental and other experts in the framework of Council of Europe intergovernmental committees or on the occasion of events related to the ratification of Protocol No.12 (see, for instance, "Non-Discrimination: a Human Right", Council of Europe Publishing, 2006, proceedings of a seminar to mark the entry into force of Protocol No.12, held in Strasbourg on 11 October, 2005, during which some speakers discussed the implications of the entry into force of the above Protocol on the Court's case-load). Greece's stance on the ratification of Protocol No.12 should not be misinterpreted, but rather read in light of the above position.

The description of the Equal Treatment Committee as a “non-independent body” (**para.36**) is unacceptable. This Committee is comprised of Judges, Academics and Lawyers, who are all of high scientific qualification and professional experience in fields that are related to the Committee’s mission and ensure an adequate guaranty of independence. The fact that this Committee sits at the Ministry of Justice should not question the independence of its function. The independence of a Committee must be judged on the grounds of its rulings rather than on the premises where its meetings take place. Besides, it should be bore in mind that the Equal Treatment Committee examines complaints between individuals. Complaints against public authorities fall under the competence of the Greek Ombudsman and the Labour Inspectorate, according to Law 3304/2005.

As concerns employment (**para.44**), we believe that there has been a misunderstanding between the Programme for the Subsidy of 500 Roma Free-Lance Professionals and the amount of subsidy (20.000 €) granted within the scope of the Programme to each beneficiary. In fact, 1340 and 2860 individuals have benefited from Programmes providing for vocational and employment training respectively.

With reference to migrant workers (**para.49**), the following must be mentioned: Regarding low-salaried migrants, who are employed in the agricultural sector, the National General Collective Labour Agreement is applied, in accordance with the Greek legislation, which covers all workers and which defines the minimum wages. Reference must also be made to the Integrated Action Programme on the smooth adjustment and social inclusion of third-countries’ nationals that legally reside in Greece – Programme “Hestia”. The said programme covers the period 2007-2013 and is divided in six (6) operational sub-programmes, including both the awareness-raising of the public opinion and the limitation of phenomena of marginalization, racism and xenophobia, as well as the provision of counseling support to third countries’ nationals; also, the facilitation of their access to employment, education, health, housing and cultural services, as well as to other public facilities. The actions of the “Hestia” Programme are targeted, without any exceptions, on all third-countries’ nationals who legally reside in Greece.

With regard to the housing loan scheme established by the Greek authorities for Roma (**paras.69-73**), out of a total of 7.331 successful beneficiaries at the time of the country visit, a total of 5.896 families had processed with the disbursal of the funds granted. Taking into consideration that the disbursal of the loans granted is processed upon full responsibility of the beneficiaries (once they have already found a home of their choice), the number of the beneficiary families who at the time of the report had made use of the loan may not be confused with possible lack of progress on the grounds of the actual benefit awarded by the State. To this end the term used (received) while referring to the number of the beneficiaries who, further to have been awarded with a right to a loan, had additionally made

use of their loan (disburse) is not considered accurate as to the implementation structure of the housing loans scheme. Also, in the context of the ongoing project for the establishment of a transit camp in Messini, financed by the Ministry of Interior, the Prefecture of Messinia and the Municipalities of Kalamata and Messini, 66 houses have already been built, whereas more houses are under the way upon extending the scale of the project held.

General reference is made (**para.72**) on the implication of irregularities whilst targeting or identifying intended beneficiaries whereas in doing so, the indicated<sup>1</sup> amendment of the legal framework in force is not duly taken into consideration. It should be noted thus that the housing loans scheme has explicitly one target group (Greek Roma of inadequate housing standards regardless of religion). Eligibility criteria are explicitly defined in a restrictive and compulsory manner under articles 2, 3 and 4a of the 33165/23-06-2006 Joint Ministerial Decision. These are further evaluated upon successful evidence of official administrative documents and certificates and mean to assess the need to housing support. Further on, the implementation procedure of the housing loans scheme as established (establishment of evaluation Committees at local level with Roma and local authorities' social workers participation) provides for the protection from possible discrimination by avoiding establishing further pre-requisites on ethnic origin. Additionally, considering the factual burden of proof on Roma origin, it is noted that any allegations made so far unofficially for non-Roma beneficiaries have failed to provide with data that would enable any possible investigation whereas, allegations on eligible beneficiaries (exercise of the rule of law before the court) proved to be unsubstantiated. These been said, "misuse" of the loans rather than "irregularities" seems to better reflect the situation since it makes notice not only of ethnic origin eligibility but of those Roma who are in housing need and not merely of Roma origin.

Concerning access of immigrants and refugees to public health system (para.77-83), action has been taken in order to combat discrimination and facilitate access for immigrants and refugees to public hospitals throughout 2008. The Community Program "Progress" was implemented by the National Centre for Social Solidarity and aimed to inform immigrants and refugees about their rights to access the national health system and raise the awareness of the health care staff on this issue.

The allegation that members of the Legislative and the Judiciary often make racist or anti-Semitic statements (**paras. 80, 91, 92**) is unsubstantiated and therefore unacceptable. As we had the chance to comment with the occasion of the 3<sup>rd</sup> ECRI report on Greece, "the information provided by

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<sup>1</sup> JMD no. 13576/31.03.2003 (OG 396/B), 36871/21.08.2003 (OG 1208/B), 6035/30.01.2004 (OG 170/B), 28807/28.05.2004 (OG 812/B) and 7237/15.02.2005 (OG 236/B) Joint Ministerial Decisions of the Ministers of Interior and Economy & Finance.

sources and included in this report sometimes does not reflect the real situation concerning non-discriminatory behaviour of the State authorities”.

Judges and prosecutors have the duty to implement the law. Article 87 of the Constitution provides that Judges are independent both personally and functionally during the exercise of their duties. They are subjected only to the Constitution and the law. They are disciplinary liable according to Law 1756/1988 and criminally liable for criminal offences or omissions. An action for wrongful judgment can be brought against them according to Article 99 of the Constitution and Law 693/1977. Consequently, in case of a specific complaint, this should be brought before the competent authorities for investigation.

With reference to Racist Violence (**para. 82**), the March 2005 incident should not be attributed to racial motivation, but rather to the fact that unfortunately football games are worldwide often accompanied by clashes between fans.

With regard to the Integrated Action Plan for Roma (**para.99**), we wish to state that contrary to any other housing project held, the housing loans scheme has been in practice, the result of continuous monitoring and adjustments (as reflected in the legal framework in force) to the needs of the target group. To this end, upon collection of statistical data in full conformity with applicants’ informed consent according to Joint Ministerial Decision 33165/2006 an important number of quantitative and quality figures on the results achieved were presented during the 2008 Implementation Report. Reference was also made to Roma representatives’ participation during the implementation and monitoring procedure of the housing projects held through the Committee operating at national level for the Social Inclusion of Greek Roma and the Loans’ Evaluation Committees operating at local level.

The Integrated Action Plan for the social inclusion of Greek Roma was adopted as a coherent strategy of affirmative policies and actions within the context of the National Action Plan on Social Inclusion. The Integrated Action Plan, being a policy framework and not that much a financing tool, was drafted upon the proposals made by the Roma representatives late in the mid '90s and in cooperation with local authorities.

At this stage, we would like to acknowledge the importance of the recommendations brought into our attention through ECRI Report regarding the Implementation and Monitoring of the affirmative policies introduced within the Integrated Action Plan for the Social Inclusion of Greek Roma.

Concerning the protection and promotion of freedom of religion and belief in Greece (**paras. 103-110**), it is perhaps necessary to make the point on the legal background on which pertinent legislation is based.

Greek legal order, as it exists today, is among the oldest in Europe, dating back to 1822 and therefore contemporary to such legal orders as those of Belgium or the Netherlands and antedating, e.g. the legal orders of Italy, or Germany, or indeed most Amendments to the U.S. Constitution. Greece's Supreme Court is functioning uninterruptedly ever since 1828; Greece has been a fully constitutional State since 1843. It should be expected, such a legal environment would have produced, by now, a rather consistent corpus of jurisprudence on most important social issues and such is the present case indeed. The need for brand-new ad hoc legislation, on this matter- as on others- is not as important in Greece, as in the new States sprung up, mainly in Eastern Europe and the Balkans, since 1989; rather, the usual legislative and judicial processes, familiar to all other countries in the Western world, are also to be found at work here.

Religious freedom is guaranteed by Article 13 of the Constitution, which actually enjoins the State to be pro-active in the defense of religious liberties. Consistent constitutional practice maintained ever since 1822, further relevant legislation enacted by Parliament, as well as an important corpus of Supreme Court and Council of State jurisprudence form the legal basis for the protection of religious freedom in Greece.

To tackle a notorious bugbear in this context: it is often claimed, that according to Article 13 paragraph 2, religious 'proselytizing'... is forbidden'. Laws 1363/1938 and 1672/1939, did provide for prosecution under Article 13 para. 2, but they have long since fallen into disuse- they are what is known in French legal practice an *ordonnance caduque*. At any rate, Supreme Court jurisprudence makes it clear Article 13 para. 2, refers to 'perfidious proselytizing', i.e. involving actual criminal behaviour, such as coercing, bribery, use of one's social or professional position to this purpose, disturbance of domestic peace (the foot in the door approach) etc. This interpretation has also been adopted by the European Court of Human Rights (*Kokkinakis vs. Greece*, *Larissis vs. Greece* etc.).

With reference to the influence of the Church of Greece on everyday life (**para.105**), the State indeed covers part of the annual budget of the Church of Greece. This, in fact, represents payment for the huge tracts of land the Church released to the State, in the late Twenties, to house 1.9 million Greek refugees from Asia Minor. Pay-off is still quite far, given the value of the land given at the time. Therefore, this settlement is based on civil contractual law and does not represent any kind of positive discrimination in favour of the Church of Greece. Groups not party to this settlement (known as the Settlement of 1928) cannot therefore expect to participate in its benefits only.

The relation between Church and State ends more or less at this point. Of course, the Church of Greece enjoys particular prestige among large segments of Greek society both for historical reasons and for the simple fact, the majority of the Greek people are affiliated to this Church. However,

since the later part of the last century, Church and State have very much demarcated their respective areas of competence.

The claim the Church has any influence on State appointments is farfetched. The State, today, is mandated to be an equal opportunities employer. In fact, both civil service and military careers were open to members of all faiths, even before World War Two and several distinguished Generals, Admirals, Ambassadors and High Officials in the Civil Service were or are of faiths other than Orthodox (mainly Catholic and, to a lesser extent, Jewish), their faith becoming only known if and when they should care to divulge it themselves.

Some thought should perhaps be given as to the language used in the ECRI Report, on the alleged influence of the Church of Greece, which seems to reflect a strong cultural bias against European civilization as expressed east of the Adriatic.

It must also be stated that the exclusive use of the term "Minority Religious Groups" in the report is strongly contested, not least by the denominations concerned themselves, as- especially when translated in Greek- it is less than "politically correct". "Denominations other than Orthodox" is much more precise and more acceptable to all parties.

With respect to the references to "Macedonian" community and language (**paras. 111-120**), we would like to stress that a small number of people in Greek Macedonia, mainly in the prefecture of Florina, apart from Greek, speak a Slavic dialect, which is confined to family or colloquial use. This dialect has similarities with the language spoken by the Slav-Macedonians in the neighbouring Former Yugoslav Republic of Macedonia. Cross-border contacts, such as tourism and trade, keep this dialect alive, as is the case with the Greek language spoken in the southern part of the Former Yugoslav Republic of Macedonia. All people in Greece speaking this dialect are bilingual (Slavic/Greek).

Subjective claims or perceptions of some of the above-mentioned individuals, which are not based on objective facts and criteria, that they are ethnically "Macedonians" do not establish by themselves a corresponding obligation of Greece to officially recognize this group as a «minority» and to guarantee to its members specific minority rights, additional to those guaranteed by human rights treaties. Moreover, the use on their behalf of the term "Macedonian" in order to define a distinct ethnicity creates confusion with the 2,5 million Greeks who identify themselves as Macedonians in the regional/cultural sense.

In any case, in Greece, even if a group is not recognised as a minority enjoying specific minority rights, individuals are free to declare that they belong to a distinct ethnic or cultural group, without any negative consequences resulting from such a statement. In addition, these persons

enjoy fully all their civil, cultural, economic, political and social rights, which are recognized by the provisions of national and international law. Both the judiciary and the administration are obliged to implement these provisions. Persons who consider that their rights are being violated can bring their case before the Greek courts and also have the possibility to appeal to the competent international bodies, as provided for by the relevant treaties binding Greece.

A couple of examples prove the above mentioned affirmations:

- There is a political party in Greece, which claims to represent the "Macedonian minority". This party operates freely and participates without any impediments in the elections. One of the leading figures of the party is a civil servant, working for the Greek State, regardless of his political activities and views.
- There are regular cultural events and festivities organised by the Slav-speaking persons in the region of Florina, where everyone is free to participate, including nationals of the neighbouring Former Yugoslav Republic of Macedonia.

In conclusion, all persons residing in Greece, regardless of their nationality, ethnic origin, language, religious or political affiliation enjoy full protection of their human rights and liberties. Everyone is free to declare his/her origin, speak his/her language, exercise his/her religion and observe his/her particular customs and traditions.

Finally, with regard to the implementation of measures of reconciliation, the Greek State, in order to definitely heal the wounds of the Civil War, proceeded to the reinstatement of the citizenship and the return of confiscated property of persons of Greek origin who had fled the country after this traumatic historical experience. However, all individuals, irrespective of their ethnic origin, have the possibility to bring before Greek courts any claims regarding property or other issues, under the general provisions of law.

Concerning asylum seekers (**para.131**), it is to be stated that asylum seekers are never detained. Nevertheless, even while in detention due to illegally entering the country, a third country national may still apply for asylum. In that case, the applicant remains in detention, his application being prioritized. However, at any case, the detention of aliens and asylum seekers (originally arrested for illegal entry), following the Administrative deportation decision, is subjected, according to national legislation, both to judicial (Court of First Instance) and administrative (Ministry of Interior) revision, so that the possibility that the detainees be discharged may be secured, when the above Bodies consider that the reasons for detention have been alleviated.

With regard to interpretation services and legal counseling for refugees and asylum seekers (**paras.131-132**), notable improvement has been made at several entry points through programs of the Ministry of Health and Social Solidarity run by NGOs and co-financed by the European Refugee Fund and the state budget.

Specifically, two projects concerning the provision of legal counselling to asylum seekers and one of interpretation services<sup>2</sup> to the same target group were run by NGOs<sup>3</sup> in the region of Athens. These projects were selected through the regular procedure of the European Refugee Fund R.A.<sup>4</sup> in Greece during 2008.

Also, one project implemented in the same framework provided for legal aid services to asylum seekers at the entrance points through scheduled visits by law-expert groups. Another project, run in the island of Lesbos throughout 2008, provided for legal counselling to asylum seekers in the detention centre of Paghani<sup>5</sup>.

In addition, one project included in the framework of the Emergency Measures of the ERF 2008 Annual Programme regarding legal aid support to asylum seekers at the entrance points (Thrace, Samos<sup>6</sup>, Lesbos<sup>7</sup> & Leros<sup>8</sup>) was implemented until the end of May 2009.

Moreover, action has been taken toward the provision of health care services to asylum seekers, mainly in major detention centres and at several entry points<sup>9</sup>. In this framework, a project aiming to the provision of health services by expert teams was staged until the end of May 2009 on the border-line islands across the Aegean and included instant screening of the incomers & spotting of the vulnerable cases<sup>10</sup>.

The Ministry of Health and Social Solidarity has already planned to implement such programs throughout 2009 and 2010 within the framework of European Refugee Fund.

With reference to the co-operation of state authorities with NGOs in asylum matters (**para.136**), one must take into account that most of the actions concerning asylum seekers co-financed by the European Refugee Fund and

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<sup>2</sup> The project regarding the interpretation services was implemented by Klimaka.

<sup>3</sup> One project was implemented by the Greek Council for Refugees & the other by the Ecumenical Refugee Program.

<sup>4</sup> Ministry of Health & Social Solidarity represent the Responsible Authority for the European Refugee Fund in Greece, in accordance with Law 3613/263/2007.

<sup>5</sup> According to official data, Lesbos was one of the major entrance points for asylum seekers, for 2008.

<sup>6</sup> The projects in Thrace & Samos were implemented by PRAKSIS.

<sup>7</sup> The project in Lesbos was implemented by the Ecumenical Refugee Program.

<sup>8</sup> The project in Leros was implemented by the Greek Council for Refugees.

<sup>9</sup> These projects were implemented by MedIn and the Hellenic Center for Infectious Diseases Control.

<sup>10</sup> This project was implemented by the Hellenic Center for Infectious Diseases Control.



the state budget are run by NGOs, whose role in planning and implementing policies for asylum seekers is thus of high importance for the Ministry of Health and Social Solidarity. Access to detention centres holding asylum seekers is granted by either the Hellenic Police Headquarters or the local Police Directorate.

With reference to Immigrants, one must certainly take into account the huge figures of individuals who daily reach the Greek territory. However, it must be stated that all children born in Greece and whose parents are stateless acquire Greek citizenship **(para.153)**.

Concerning anti-Semitism **(paras.167-171)**, the objection, at this point, is that from the text no one can infer that, in fact, anti-Semitic incidents in Greece are rare and that more often than not, they do not reflect serious anti- Semitic sentiment, but rather juvenile misbehaviour, defacement of public monuments, whether secular, Orthodox or other being something of a vogue at the moment. The innovative approach by the Ministry of Education, to combating this particular phenomenon is justly praised in the report, however, some reference that would show the sporadic frequency and the random and unthinking nature of these acts would be welcome. Greece, after all, ranks right at the bottom of the list for anti- Semitic acts in Europe and none of those few involve physical violence.

As to the oral or written expression of anti- Semitic feeling, it is not stressed enough the vast majority of such cases involve persons and media on the outer fringe of society, usually the same that dabble in "UFOlogy" or suchlike nonsense. That a few minor public figures should sporadically borrow expressions from this particular area of pop culture, is certainly reprehensible, but certainly not characteristic of Greece's politic body or society at large.

Legal measures to actually suppress the possibility to express objectionable ideas are a matter that is pondered in legal circles. However, it should be remembered that Greece's very liberal legislation on freedom of expression and of the Press, was adopted right after the fall of the Colonels' regime, a period when such freedoms and others had been drastically curtailed and therefore enjoys enormously strong and unanimous acceptance in all spheres of society.

Furthermore, it is to be noted that the application of the criminal anti-racist legislation (Law 927/1979) falls within the exclusive competence of the judicial authorities, with no interference from the Government. It is significant that, in one of the cases referred to in para.16 of the Report, the Prosecutor at the Supreme Court filed, in July 2009, an "appeal in the interests of the law", which is expected to give our Supreme Court the opportunity to provide guidance on the interpretation of law 927/1979.

As a demonstrable sensitivity of Greece vis-à-vis the Holocaust and its victims, the Greek 2009 OSCE Chairmanship undertook the publication of a book entitled "Greeks in Auschwitz-Birkenau". This book was presented at the Memorial Event for the Greek victims of the Holocaust (June 17, 2009).

Additionally, 2009 will see the opening of a permanent Greek exhibit at the Auschwitz-Birkenau Memorial and State Museum, which was achieved through the signing of a Greek-Polish bilateral agreement in 2008.

Concerning Media (**paras. 183-184**), it should be stated that Law 3592/2007 on "Concentration and Licensing of Media Enterprises and Other Provisions" has been issued in order to provide the necessary conditions for the operation of television and radio stations. This Law is a product of lengthy consultations between the Greek General Secretariat of Communication/Information and the competent EU authorities (the European Commission), lasting more than six months and held in the most constructive and fruitful way. A number of criteria have been taken into account to ensure that media operators abide by high standards, safeguarding at the same time fundamental rights of media operators, individuals and consumers. Thus, media pluralism, commercial viability, quality of programming, technical requirements, freedom of expression and information are amongst other criteria specified for license eligibility. It must also be taken into account that frequencies constitute a "public good" which must be carefully managed, the public interest bore always in mind.

More specifically, provisions of this Law in no way hinder any local or regional applicant from obtaining a licence, which is granted by a local (prefecture level) or regional authority (article 8). Provisions under the same article for minimum disbursed capital (distinguishing between news and information providers and others) linked to population ratio (according to latest population census data) and/or employing a certain number of staff for radio stations, are amongst other requirements which purport to guarantee commercial viability, quantity and quality of programming, professional sustainability and better employment conditions, fully respecting national and international regulations and in line with the demands of professional groups (trade unions) themselves. In this respect, it is beyond any reasonable doubt that employment conditions in the industry were in need of strong remedial measures. It is obvious to us that media power must come with responsibilities.

With these provisions, we strongly believe that media operators will adapt to a new set of responsibilities, professional standards and obligations towards their staff as well as their audiences, like their counterparts in other countries. Serious professionals abiding by the minimum requirements set by this new media legislation have nothing to be afraid of. That is why, a one year grace period is provided in order to give perspective licensees sufficient time to adapt to a new regulated media environment.

It should be noted that licensing procedures, also provided for in the legal framework reformed by the new media law, are also fully consistent with relevant EU legislation (the *acquis Communautaire*).

The legal framework for radio and television provided for by the Law 3592/2007 is consistent with the fundamental principle of equality of Article 4 par. 1 of the Constitution and ensures pluralism, objective broadcasting of information and news, quality of programs, transparency and competition.

As far as the obligation to broadcast in Greek as the main - but not the exclusive- language, quite frankly, we do not see how this contravenes any EU or other international provision. On the contrary, no broadcasting language, either (European) Community or "minority" language, is excluded. Linguistic pluralism and cultural diversity are given ample room to flourish.