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## **EUROPEAN SOCIAL CHARTER**

Comments by the Greek National Commission for Human Rights  
(GNCHR)

on the 27<sup>th</sup> national report

on the implementation of the 1961 European Social Charter

submitted by

**THE GOVERNMENT OF GREECE**

(Articles 3, 11, 12, 13, 14 and Article 4 of the Additional Protocol  
for the period 01/01/2012 – 31/12/2015)

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*HELLENIC REPUBLIC*

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**OBSERVATIONS SUBMITTED BY THE GREEK NATIONAL COMMISSION FOR HUMAN RIGHTS (GNCHR) IN VIEW OF THE EXAMINATION OF THE 27<sup>TH</sup> GREEK REPORT ON THE APPLICATION OF THE EUROPEAN SOCIAL CHARTER (ARTICLES 3, 11, 12, 13 AND 14) AND ON THE 11<sup>TH</sup> GREEK REPORT ON THE APPLICATION OF THE ADDITIONAL PROTOCOL TO THE EUROPEAN SOCIAL CHARTER (ARTICLE 4) (REFERENCE PERIOD 01/01/2012-31/12/2015)**

*January 2017*

*The Greek National Commission for Human Rights (GNCHR) is the independent advisory body to the Greek State on matters pertaining to human rights protection. It was established by Law 2667/1998 and is functioning in accordance with the UN Paris Principles. Its 32 members are nominated by institutions whose activities cover the field of human rights (NGOs, trade unions, independent authorities, universities, bar associations, political parties, Parliament and the Administration).*

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**I. Introduction**

The Greek National Commission for Human Rights (hereinafter GNCHR) has already, in the past, expressed its concerns regarding issues falling within the scope of application of the European Social Charter (hereinafter ESC) and its Additional Protocol and has addressed relevant opinions and recommendations to the competent Ministries in Greece.

The Minister of Labour, Social Security and Welfare informed the GNCHR about process of the forthcoming submission of the 27<sup>th</sup> Greek Report on the application of the ESC and the 11<sup>th</sup> Greek Report on the application of the Additional Protocol to the ESC.

In line with previous practice, the GNCHR is directly sending its observations to the European Committee of Social Rights (hereinafter ECSR). It has also submitted comments on previous Greek Reports on the application of the ESC (24<sup>th</sup> Report on the application of the ESC and the 9<sup>th</sup> Report on the application of the Additional Protocol to the ESC; 21<sup>st</sup> Report on the application of the ESC) with a view to its examination by the ECSR.

In view of the adoption of its observations, the GNCHR also addressed an open call for contributions to the i) Racist Violence Recording Network, which operates, since 2011, under the auspices of the GNCHR and the UNHCR, and consists of 38 Non-Governmental Organisations and civil society organizations; and to the ii) Hellenic Institute for Occupational Health and Safety (ELINYAE), whose mandate is to provide for technical and scientific support on Occupational Health, Hygiene and Security policies in Greece. The GNCHR is thankful for the written contributions submitted by the Greek General Confederation of Labour (GSEE), «Doctors of the World – Greece» and ELINYAE.

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\* Adopted by the Plenary of the GNCHR at its session of 30 January 2017. Rapporteur: E. Varchalama, GNCHR member designated by the Greek General Confederation of Labour, 2<sup>nd</sup> GNCHR Vice-President. The preparation of the report has been assigned to the GNCHR legal officer, K. Tsampi.

## II. General observations

### A. The Turin process

The GNCHR has expressed its support to the Turin process for the improvement of the implementation of social and economic rights in the Council of Europe Member States and strongly hopes that the submission of the present observations will reinforce the fruitful cooperation with the ECSR in the framework of the Turin process.

The GNCHR reiterates its commitment to engage fully with the Council of Europe, the EU, states, and civil society in the pursuit of the Turin process priorities, recalling in particular the recent ENNHRI *Statement of Support for the Turin Process to strengthen Social Rights in Europe*<sup>1</sup>. The GNCHR acknowledges Greece's support to the Turin process and stresses that it should be constant and effective.

Along with ENNHRI, the GNCHR encourages the EU to take into account the ESC and the revised ESC when interpreting EU law, and recommends that the provisions of the European Social Charter be integrated into the EU's human rights impact assessments<sup>2</sup>.

### B. The overall situation in Greece

It has been indeed observed that during the reference period of this reporting procedure (01/01/2012-31/12/2015)<sup>3</sup>, while Greece has been facing an unprecedented economic crisis<sup>4</sup>, there has been no human rights impact assessment of the measures adopted in response to the crisis. Along with many international human rights organizations, the GNCHR has urgently called upon the EU institutions, the EU member-States as well as the Greek authorities to act in unison for the creation of a permanent mechanism that would evaluate and assess the impact of austerity

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<sup>1</sup> ENNHRI, [Statement of Support for the Turin Process to strengthen Social Rights in Europe](#), 2016.

<sup>2</sup> *Ibid.*

<sup>3</sup> GNCHR Clarification regarding the reference period and the information contained in this report: According to its established practice when reporting, the GNCHR monitors the situation of human rights until the moment of the submission of the report (that is January 2017). Furthermore, references to the situation/data prior to 2012 may also be included when the relevant information demonstrates a situation of a permanent character.

<sup>4</sup> For the relevant GNCHR reports, see: [Statement of the Greek National Commission for Human Rights \(GNCHR\) on the impact of the continuing austerity measures on human rights](#), 15.7.2015 ; [The NCHR Recommendation and decisions of international bodies on the conformity of austerity measures to international human rights standards](#), 2013; [NCHR Recommendation: On the imperative need to reverse the sharp decline in civil liberties and social rights](#), 2011; [The need for constant respect of human rights during the implementation of the fiscal and social exit strategy from the debt crisis](#), 2010. See also, *Open letter of the President of the European Network of National Human Rights Institutions, Mr. Alan Miller, to the President of the European Commission, Mr. José Manuel Barroso and the President of the European Central Bank Mr. Mario Draghi, 16.01.2014.*

measures on both the enjoyment of and access to human rights by all those living on EU territory<sup>5</sup>.

The GNCHR, in its capacity as an independent advisory body to the Greek State, is following with particular attention and concern the impact of austerity measures on fundamental, especially social, rights<sup>6</sup>. It is also highlighting the European and international monitoring bodies' observations regarding the violation of international norms on the protection of human rights and the international concern as expressed in the decisions and recommendations of these bodies, which take GNCHR's Recommendations into consideration<sup>7</sup>.

In this context, the GNCHR extends its gratitude to the ECSR for quoting the GNCHR observations in its decisions and conclusions which have been of fundamental importance<sup>8</sup>.

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<sup>5</sup> GNCHR, [Statement of the Greek National Commission for Human Rights \(GNCHR\) on the impact of the continuing austerity measures on human rights](#), 15.7.2015. See in particular its Annex IV on "Human Rights Impact Assessment: An instrument for the protection of human rights especially in times of financial crisis", p. 12 *et seq.*

<sup>6</sup> The GNCHR had addressed a series of issues such as: the limitation of the scope of social rights; the mounting barriers to access to Justice and judicial protection; the continued increase in unemployment; minimum and average wage and family needs; equal pay for work of equal value; measures to ensure safety and health at the workplace; measures for the elimination of discrimination in the enjoyment of social rights; right to work of older persons; working conditions for all workers, including overtime, paid and unpaid leave; public holidays with pay; weekly rest period; the right of all workers to a reasonable period of notice for the termination of employment; the impact of changes to collective bargaining on social rights; the right to social insurance and security; the reconciliation of working and private life, including protection of maternity; mental health; the right to health and care; access to health services; special educational programmes organized and addressed to young people with special needs (vision, hearing, mobility); care and protection of persons with special needs and disabilities.

<sup>7</sup> CERD, [Concluding observations on the twentieth to twenty-second periodic reports of Greece](#), CERD/C/GRC/CO/20-22, 26.8.2016, par. 6; UN, [Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights on his mission to Greece](#), A/HRC/31/60/Add.2, 21.4.2016; Council of Europe, Committee of Ministers, [Resolution CM/ResCSS\(2013\)21 on the application of the European Code of Social Security by Greece \(Period from 1 July 2011 to 30 June 2012\)](#), adopted by the Committee of Ministers on 16 October 2013 at the 1181st meeting of the Ministers' Deputies; Council of Europe, Commissioner for Human Rights, [Safeguarding human rights in times of economic crisis](#), November 2013, p. 52; CEACR, in Reports to the International Labour Conference (ILC) 2013 finding violations of ILO Conventions Nos. 95 (protection of wages) and 102 (social security *minimum* standards) by Greece; UN Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Cephias Lumina, in his Report *Mission to Greece (22–27 April 2013)*, to the UN Human Rights Council 25<sup>th</sup> Session, 11 March 2014 (A/HRC/25/50/Add.1).

<sup>8</sup> ECSR 23.05.2012, Complaints Nos. 65/2011, *General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece* and 66/2011, *General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece*, as well as ECSR 07.12.2012, Complaints Nos. 76/2012, *Federation of employed pensioners of Greece (IKA-ETAM) v. Greece*, 77/2012, *Panhellenic Federation of Public Service Pensioners (POPS) v. Greece*, 78/2012, *Pensioners' Union of the Athens-Piraeus Electric Railways (I.S.A.P.) v. Greece*, 79/2012, *Panhellenic Federation of pensioners of the Public Electricity Corporation (POS-DEI) v.*



With respect to the seven ESRC decisions on austerity measures, the GNCHR observes that none of the provisions found incompatible with the ESC has been modified or repealed<sup>9</sup>.

Furthermore, the GNCHR follows with particular interest the procedures before the ECSR pertaining to the complaint lodged by the Greek National Confederation of Labour (hereinafter GSEE) regarding the violation of a great number of workers' social rights, guaranteed by the ESC, since 2010. In this regard, the GNCHR welcomes the decision of the ECSR to hold a public hearing in the case<sup>10</sup>.

The complete deregulation of labour relations, the dramatic salary reductions and the dismantling of the welfare state do not only concern the workers, the unemployed and the pensioners in Greece; they are features of fiscal and social policies which are widespread in Europe.

Moreover, apart from the ECSR, the CEACR has found in its Report to the 103<sup>rd</sup> International Labour Conference (hereinafter ILC) 2014 on the application of ILO Convention No 102 by Greece that its observations made in previous reports were not followed, with the result that the situation has considerably deteriorated. The same conclusion was reached by the CoE Committee of Ministers in a Resolution finding violations of the European Code of Social Security by Greece<sup>11</sup>.

The CEACR stresses in particular, referring to the ECSR, that “austerity policies led the country to an economic and humanitarian catastrophe unprecedented in peacetime: a 25% shrinking of GDP – more than at the time of the Great Depression in the United States; over 27% unemployment – the highest level in any western industrialized country during the last 30 years; 40% reduction of household disposable incomes; a third of the population below the poverty threshold; and over 1 million people or 17.5% of the population living in households with no income at all. These consequences are substantially related to the economic adjustment program

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*Greece*, 80/2012, *Pensioners' Union of the Agricultural Bank of Greece (ATE) v. Greece*. See also, ECSR, [Conclusions XX-3](#) (2014) (GREECE), January 2015.

<sup>9</sup> GNCHR, [Observations on the 24<sup>th</sup> Greek Report on the application of the European Social Charter and on the 9<sup>th</sup> Greek Report on the application of the Additional Protocol to the European Social Charter](#), 2014.

<sup>10</sup> ECSR, News, [Public hearing in Complaint No. 111/2014, Greek General Confederation of Labour \(GSEE\) v. Greece](#), 20.10.2016. For the complaint see, General Confederation of Greek Workers (GSEE), [Press Release – GSEE's Recourse to the Council of Europe](#), 29.9.2014.

<sup>11</sup> Council of Europe, Committee of Ministers, *Resolution CM/ResCSS(2013)21 on the application of the European Code of Social Security by Greece (Period from 1 July 2011 to 30 June 2012)*, adopted by the Committee of Ministers on 16 October 2013 at the 1181st meeting of the Ministers' Deputies, *op. cit.*

Greece had to accept from the group of international institutions known as “the Troika” [...], to ensure repayment of its sovereign debt”<sup>12</sup>.

Furthermore, the GNCHR reiterates that up to now there has been no progress regarding the respect for the rights guaranteed under the ESC. The avalanche of often unpredictable, complicated, conflicting and constantly modified “austerity measures” of immediate and even retroactive effect, which exacerbate the general feeling of insecurity, as indicated in the GNCHR “Recommendation on the imperative need to reverse the sharp decline in civil liberties and social rights” of 8 December 2011, is continuing<sup>13</sup>.

It is in the light of the above that the GNCHR's more specific observations on the respect for the rights dealt with in the Greek Reports under examination should be read.

### C. The ratification of the Revised European Social Charter

In the light of the overall situation in Greece, the GNCHR expresses its satisfaction that its constant recommendation<sup>14</sup> for the ratification of the Revised European Social Charter (hereinafter RESC) has been followed by the Greek State. The RESC has been ratified by virtue of Law 4359/2016 (OJ 5/A/20.1.2016), which also includes in its Article 2 an important reservation related to lockout and arbitration in collective disputes. The ratification and implementation of the RESC can constitute an important step towards achieving social progress in the present financial and political conjuncture<sup>15</sup>. The GNCHR emphasises that, in the context of the financial crisis which afflicts the country, the Greek State must effectively implement the newly ratified RESC in order to guarantee the safeguard of social rights at a time when the welfare state is being dismantled<sup>16</sup>. The GNCHR invites the State to take into consideration its obligations under the RESC when adopting new legislation<sup>17</sup>.

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<sup>12</sup> [Observations \(CEACR\)](#) adopted 2013, published 103<sup>rd</sup> ILC session (2014), *Social Security (Minimum Standards) Convention*, 1952 (No. 102), Greece, p. 516.

<sup>13</sup> The eleventh austerity package was voted by the Greek Parliament in August 2015 under the title “Pension Arrangements - Ratification of the Financial Assistance Draft Contract by the ESM and provisions for the implementation of the Financing Agreement” (Law 4336/2015, OJ A 94/14-8-2015).

<sup>14</sup> GNCHR, [Observations on the 24th Greek Report on the application of the European Social Charter and on the 9th Greek Report on the application of the Additional Protocol to the European Social Charter](#) (2014) and GNCHR, [Observations and proposals concerning the Bill on the «Ratification of the Revised European Social Charter](#), 2010.

<sup>15</sup> Council of Europe, Parliamentary Assembly, [Austerity measures – a danger for democracy and social rights](#), Resolution 1884 (2012), 26.6.2012, par. 10.3.

<sup>16</sup> GNCHR, [Observations on the 24th Greek Report on the application of the European Social Charter and on the 9th Greek Report on the application of the Additional Protocol to the European Social Charter](#), *op. cit.*, citing in particular Greek Economic and Social Committee (OKE), [Opinion concerning the Bill on the “Ratification of the Revised European Social Charter”](#).

<sup>17</sup> GNCHR, [Observations \[in Greek\] on the Draft Law of the Ministry of Justice, Transparency and Human Rights «Implementation of the principle of equal treatment regardless of race, color, national](#)

### III. Specific Observations on the implementation of the European Social Charter and the Additional Protocol to the European Social Charter

#### A. HEALTH

##### 1. THE RIGHT TO SAFE AND HEALTHY WORKING CONDITIONS<sup>18</sup>

With regard to the implementation of Article 3 ESC in Greece, the ECSR has found, in its previous Conclusions (2013), that the prevalence of occupational diseases is not adequately monitored<sup>19</sup>.

As observed by the Hellenic Institute for Occupational Health and Safety reliable and representative data on occupational accidents and diseases serve as a basis on evidence based prevention of occupational risks and facilitate prioritization on national strategy measures. However, the competent authorities do not publish on a regular basis the relevant data; the occupational accidents statistics for 2013 are the most recent.

As far as the occupational diseases are concerned, they are not officially recorded in Greece. Furthermore, by virtue of the PD [Presidential Decree] 41/2012 the list of occupational diseases has been reformed on the basis of the European schedule (about 150 occupational diseases). However this schedule has not been activated ever since due to the fact that the necessary legislation determining the diagnostic criteria has not been issued yet.

In recession times social inequalities do influence, inter alia, health and safety. Undeclared workers are seriously affected, since the employers do not declare, among other things, occupational accidents suffered by them. Besides, the workers belonging to this category are not covered by the protective and preventive services in a company. As these workers are not officially recorded in the labour force of the company their posts and subsequent risks may not be included in the risk assessment that is mandatory for every employee in Greece. As a consequence, it is highly possible that undeclared workers<sup>20</sup> do not enjoy the necessary protection and

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*or ethnic origin, descent, religion or belief, disability or chronic illness, age, marital or social status, sexual orientation, gender identity or characteristics and other provisions», 20.9.2016.*

<sup>18</sup> The data presented in this chapter are submitted to the GNCHR by the Hellenic Institute for Occupational Health and Safety (ELYNYAE).

<sup>19</sup> ECSR, *Conclusions XX-2* - Greece - Article 3-2, XX-2/def/GRC/3/2/EN, 6.12.2013 (Reference period: 01/01/2008 - 31/12/2011).

<sup>20</sup> The GNCHR considers that the tripartite agreement between the Greek State and the national social partners on undeclared work with the technical assistance of the ILO is a step forward for effectively combating undeclared work. See, ILO Press Release, [Transition to formal employment ILO members agree on a roadmap to curb undeclared work in Greece](#), 31.10.2016.

prevention measures and they are not entitled to participate in trainings on health and safety issues.

Furthermore, due to financial reasons, many workers actually perform different tasks than the ones that are officially declared or hired for (e.g. workers can be registered as office employees where they are employed in heavy and dangerous job tasks). As a result, they do not receive the appropriate training and protection for the occupational risks to which they are actually exposed.

Finally, the institutional role of trade unions, as well as their bargaining power, has been weakened due to extensive State interventions to the national legislative framework on collective bargaining and especially to the scope and binding force of collective labour agreements. Evaluating the exacerbation of labour inequality and the extensive breaches of fundamental international labour law standards, in conjunction with breaches of national labour law, which lead to the overexpansion of the informal sector of the economy and the emergence of situations of lawlessness and violence, along with the loss of priority of OSH issues, the GNCHR has repeatedly stressed the need for immediate restoration of the system of collective bargaining and collective agreements introduced by Law 1876/1990. Within this framework, the re-establishment of the procedure for concluding national general collective agreements (NGCAs) and of their content and scope should be an immediate priority, with a view to maintaining the NGCA status as an institutional instrument serving the general interest and the interest of workers in particular, through the establishment of general minimum standards of wages and working conditions for all workers throughout Greece. Besides, in the post-junta era, the content of the NGCAs was not merely financial, given the inclusion also of important provisions on Health and Safety Issues, among which was the agreement of the national social partners in 1992 to establish ELINYAE. In order to effectively reverse the heavy consequences affecting a large part of society, this re-establishment should be combined with the repeal of the legislative suspension of the application of crucial principles that govern the minimum standards of collective labour protection; including the principle of favourability and the extension of the scope of collective agreements (Articles 37 §§ 5-6 of Law 4024/2011)<sup>21</sup>.

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<sup>21</sup> GNCHR, [\*The NCHR Recommendation and decisions of international bodies on the conformity of austerity measures to international human rights standards\*](#), 2013.

## 2. THE RIGHT TO PROTECTION OF HEALTH

### 2.1. General assessment

#### 2.1.1. Overview of legislation<sup>22</sup>

Prior to 2011, there were many different insurance funds providing coverage for primary, secondary and pharmaceutical care and in some cases also coverage for other benefits such as glasses, diagnostic and laboratory tests. The Private Employees' Fund (*Idryma Kinonikon Asfaliseon – IKA*) was the largest social health insurance fund. Law 3918/2011, which was published on 2 March 2011, established the National Organisation for Healthcare Provision (EOPYY), which started operating on 1 January 2012. This health insurance reform unified all social and health insurance funds into a central health fund, EOPYY, which is supervised by the Ministry of Health.

In 2014, the Greek Parliament adopted a primary healthcare law (Law 4238/2014), in order to ensure better health of the Greek people<sup>23</sup>. With this law, Greece intended to build a comprehensive and strong nation-wide primary healthcare service<sup>24,25</sup>.

Although the EOPYY could theoretically reduce administrative costs and improve access to healthcare, a series of immediate measures transferred a portion of costs to the insured population<sup>26</sup>. For example, EOPYY immediately restricted access to many essential health services, such as medical care, glasses, dental care and physiotherapy services<sup>27</sup>.

Another legislation<sup>28</sup> concerning healthcare was adopted on 20 February 2016: Law 4368/2016, implemented by the joint ministerial decision n°

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<sup>22</sup> The data presented in this chapter are submitted to the GNCHR by the «Doctors of the World – Greece».

<sup>23</sup> WHO, [Greece launches new primary health care law](#), 7.2.2014.

<sup>24</sup> *Ibid.*

<sup>25</sup> N. Polyzos et al., “[The introduction of Greek Central Health Fund: Has the reform met its goal in the sector of Primary Health Care or is there a new model needed?](#)”, *BMC Health Services Research*, 2014; S. Karakolias and N. Polyzos, “[The Newly Established Unified Healthcare Fund \(EOPYY\): Current Situation and Proposed Structural Changes, towards an Upgraded Model of Primary Health Care, in Greece](#)”, *Scientific Research*, 2014.

<sup>26</sup> D. Niakas, “[Greek economic crisis and health reforms: correcting the wrong prescription](#)”, *International Journal of Health Services*, Vol 43, No 4, 2013.

<sup>27</sup> *Ibid.*

<sup>28</sup> UN, [Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights on his mission to Greece](#), *op. cit.*; The Independent Expert welcomed “the new law (4368/2016) enacted on 20 February 2016 which aims at providing universal health coverage, free access to the public health system and easier access to medical care, treatment and hospitalization. The law will improve access to health care for uninsured individuals and their family members, pregnant women, the chronically ill, disabled, minors and other vulnerable groups”.

A3(c)/GP/oik.25132/2016 on 4 April 2016, opened access to the public health system to uninsured and vulnerable people and minimized the bureaucratic procedures<sup>29</sup>.

However, the GNCHR considers that these legislative measures do not effectively address the cumulative effect<sup>30</sup> of the economic crisis and austerity measures on the right to protection of health.

Furthermore, special attention should be paid to the geographical particularity of Greece, where the use of alternative means of delivering health-related services, such as telehealth, should be specifically addressed.

### 2.1.2. The impact of the economic crisis

The GNCHR has observed with particular concern that the prolonged implementation of austerity measures, which eventually acquire a permanent character, has undermined the State's ability to guarantee basic economic and social rights due to drastic cuts in social expenditure, has dismantled the welfare State and has intensified the deterioration of living standards resulting in the impoverishment and destitution of an increasing part of the population, the widening the social divide and the disruption of the social fabric<sup>31</sup>.

In its recent report on his mission to Greece, the UN Independent Expert on the effects of foreign debt has expressed its concerns about the impact of the austerity measures on the right to health.

According to the data he refers to “the number of persons reporting that they have postponed a medical examination because health care was too expensive increased by 85 per cent between 2010 and 2013. In 2013, 13.9 per cent of people in the lowest income quintile reported that that they had postponed a necessary medical examination because it was too expensive (up from 7.8 per cent in 2010). Suicide

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<sup>29</sup> Pursuant to Article 33 of the Law 4368/2016, uninsured people and vulnerable social groups now have free access to public health facilities, nursing and medical services.

Section 2 of Article 33 further provides that beneficiaries of the rights stated in Section 1 are:

- Uninsured Greek nationals, authorized residents and their family members (spouse and dependent children)
- Vulnerable groups, regardless of their legal status i.e. children up to 18 years old, pregnant women, chronically ill people, beneficiaries of a form of international protection, holders of a residence permit for humanitarian reasons, asylum seekers and their families, persons accommodated in mental units, victims of certain crimes, persons with heavy disabilities, seriously ill people, homeless people, inmates...

<sup>30</sup> The GNCHR has put emphasis on the “cumulative effect” of the austerity measures, which has been particularly addressed by the ECSR in its relevant decisions (GNCHR, [The NCHR Recommendation and decisions of international bodies on the conformity of austerity measures to international human rights standards](#), 2013).

<sup>31</sup> GNCHR, *Statement of the Greek National Commission for Human Rights (GNCHR) on the impact of the continuing austerity measures on human rights*, *op. cit.*



rates and mental disorders have significantly increased in Greece as a consequence of the financial crises, while mental health care has been affected by severe cuts”<sup>32</sup>.

Indeed, there is evidence of an increased number of suicides in Greece since 2010 and a significant correlation between unemployment and suicide mortality, especially among working age men<sup>33</sup>.

According to the first multidecade, national analysis of suicide in Greece using monthly data, published on 2 February 2015, select austerity-related events in Greece corresponded to statistically significant increases for suicides overall, as well as for suicides among men and women<sup>34</sup>. The passage of new austerity measures in June 2011 marked the beginning of significant, abrupt and sustained increases in total suicides (+35.7%,  $p < 0.001$ ) and male suicides (+18.5%,  $p < 0.01$ ). Sensitivity analyses that figured in undercounting of suicides also found a significant, abrupt and sustained increase in June 2011 (+20.5%,  $p < 0.001$ ). As the study concludes the consideration of future austerity measures should give greater weight to the unintended mental health consequences that may follow and the public messaging of these policies and related events<sup>35</sup>.

Furthermore, the economic crisis significantly reduced health insurance coverage among the population. Those who were most affected were the long-term unemployed, as well as self-employed workers who decided not to renew their health insurance plan because of reduced disposable income<sup>36</sup> and their subsequent inability to cover their mandatory social security and health care contributions. An estimated 2.5 million people have no health insurance, as public health insurance is largely linked to employment status and social security contributions<sup>37</sup>.

According to the data published in 2016 by the OECD, most EU countries have universal (or near universal) health coverage, but Cyprus, Romania, Greece and Bulgaria have a large coverage gap<sup>38</sup>. Indeed, Greece is among the four EU countries

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<sup>32</sup> UN, [\*Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights on his mission to Greece\*](#), *op. cit.*, par. 73.

<sup>33</sup> OECD, [\*Greece Policy Brief\*](#), March 2016.

<sup>34</sup> Charles Branas, Anastasia Kastanaki, Manolis Michalodimitrakis, John Tzougas, Elena Kranioti, Pavlos Theodorakis, Brendan Carr, Douglas Wiebe, “[The impact of economic austerity and prosperity events on suicide in Greece: a 30-year interrupted time-series analysis](#)”, *BMJ Open* 2015 Feb 2;5(1):e005619. Epub 2015 Dec 2.

<sup>35</sup> *Ibid.*

<sup>36</sup> OECD, [\*OECD Health Policy Review, Health Policy in Greece\*](#), January 2016, p. 1.

<sup>37</sup> UN, [\*Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights on his mission to Greece\*](#), *op. cit.*, par. 73.

<sup>38</sup> “[Health at a Glance Europe 2016: Chartset](#)”, *Health at a Glance: Europe 2016 - State of Health in the EU Cycle*, Joint publication of the OECD and the European Commission Released on November 23, 2016, p. 42.

that still had more than 10% of its population not regularly covered for health care costs in 2014<sup>39</sup>.

Furthermore, according to OECD, between 2009 and 2013, public spending on health fell by EUR 5.2 billion – representing a 32% drop in real-terms. This reduction clearly represents a shock for the system to absorb, even though it is clear that there were inefficiencies in the Greek system (for example, inappropriate prescribing, weak primary care, imbalances in the mix of health professionals). A whole series of changes to entitlement, benefits and user charges as well as structural reforms have left all sectors of the Greek health system affected<sup>40</sup>.

The consequences of these cuts health care spending on access to health care have been considered by the UN Independent Expert on the effects of foreign debt. The GNCHR agrees that the “unprecedented cuts to the public health system have resulted in critical understaffing in parts of the public health system, an increase in co-payments and waiting lists, and difficulties in providing effective and affordable access to the right to adequate health care for all”<sup>41</sup>.

The same concerns are shared by the UN Committee on social and economic rights, which in its recent Concluding observations on the second periodic report of Greece, has expressed its concerns about the severe impact of the financial crises on the health system, especially in the mental-health sector, which led to a decrease in health expenditure and critical understaffing of the health system<sup>42</sup>.

The GNCHR particularly underlines the obligation of the State to assure the progressive realization and non-retrogression of the right to health. In this context, and as the UN Committee on social and economic rights recommends, it is necessary for the State to progressively increase health-care expenditure as a proportion of gross domestic product with a view to complying with its obligation to fulfil the right to

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<sup>39</sup> OECD Multilingual Summaries, [\*Health at a Glance: Europe 2016 \(Summary in English\): State of Health in the EU Cycle\*](#), 2016.

<sup>40</sup> OECD, *OECD Health Policy Review, Health Policy in Greece*, *op. cit.*; See also, OECD, [\*Greece Policy Brief\*](#), *op. cit.*; The OECD data for Greece are available from: <https://data.oecd.org/greece.htm>; According to OECD “Several European countries hard hit by the economic crisis have cut their health spending since 2009”: “Health at a Glance Europe 2016: Chartset”, *op. cit.*, p. 29.

<sup>41</sup> UN, [\*Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights on his mission to Greece\*](#), *op. cit.*, par. 73: “Civil society initiatives are trying to fill the gaps in public services by looking after a growing number of people within Greece who cannot afford medical services or medication”.

<sup>42</sup> UN, [\*Concluding observations of the Committee on Economic, Social and Cultural Rights on the second periodic report of Greece\*](#), E/C.12/GRC/CO/2, 27.10.2015, par. 35.



health under the Covenant and the State party's Constitution<sup>43</sup>. It is, however, essential for this increase to be adequate and the resources to be properly distributed<sup>44</sup>.

## 2.2. Specific aspects

### 2.2.1. Children

The right to health for all children without exception is being secured in Greece through preventive measures (preventive examinations, vaccinations) and the promotion of research on health issues as well as through measures securing access to quality health services<sup>45</sup> for addressing health problems (treatments, hospitalisation, medical care). This has become more imperative than ever in circumstances of constantly increasing child poverty which doubly affects children's right to health. The socio-economic crisis that afflicts many European countries, and especially Greece, is doing more and more serious harm to social protection programs. The unconditional recognition of the child's right to health and access to health services and other protective welfare mechanisms, does not, therefore, seem to be adequate, when the effectiveness of exercising this right is subject to the diversity of institutional mechanisms and national legislations<sup>46</sup>. This is the more so, at a time when society at large is going through a most deep social, cultural and financial crisis.

Indeed, the increase of child poverty in Greece is not a new phenomenon: the relevant index had started increasing slowly but steadily already since the late 1990s. This increase has become more dramatic in recent years.

According to the data released in 2016 by Eurostat ahead of Universal Children's Day (November 20), one in four children are at risk of poverty or social exclusion in the EU. In 2015, around 25 million children, or 26.9 percent of the EU population from the ages of zero to 17 years were at risk of poverty or social exclusion as a result of living in households at risk of poverty. The share of poverty and social exclusion is highest in Romania (46.8 percent), Bulgaria (43.7 percent) and Greece (37.8

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<sup>43</sup> *Idem.*, par. 36.

<sup>44</sup> UN, [\*Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights on his mission to Greece\*](#), *op. cit.*, par. 74: In this context, the Independent Expert welcomes the decision to allocate additional funds for public health care in the 2016 budget, but doubts that the limited increase of funds is sufficient to restore respect for the right to health in Greece.

<sup>45</sup> See among others: European Commission, *Commission Recommendation: Investing in children: breaking the cycle of disadvantage*, 20.2.2013, C(2013) 778 final and Council of Europe, *Strategy for the Rights of the Child (2012-2015)*, 15.2.2012, CM(2011)171 final.

<sup>46</sup> As far as Child protection is specifically concerned, the GNCHR has [adopted](#) the *Statement of Principles on Child Protection in Greece* (June 2016). The Statement is the outcome of an open consultation on the initiative of the Greek Ombudsman/Department of Children's Rights and the Institute of Child Health, Department of Mental Health and Social Welfare and takes into consideration the deficiencies of the child protection in Greece. The GNCHR, considering the importance of these Principles, has recommended that the State should specifically address them in the framework of the ongoing process for the finalization of the National Action Plan on Children's Rights.

percent)<sup>47</sup>. In approximately half of the EU Member States, the at-risk-of-poverty or social exclusion rate has grown from 2010 to 2015, with the highest increases being recorded in Greece (from 28.7% in 2010 to 37.8% in 2015, or +9.1 percentage points), Cyprus (+7.1 pp), and Italy (+4.0 pp).

According to a research conducted by Athens University of Economics and Business, it is estimated that 20% of children (as opposed to 4% in 2009) live in families which are in no position to buy the necessary goods for securing the minimum level of decent living<sup>48</sup>.

More specifically, in Greece, more than 2.2 million people live under the poverty line; among them are 440,000 children. The constantly increasing unemployment rates and the difficulty of access to social services financed by the State combined with the important shrinking of state financing exacerbate the already hazardous living conditions for both children and their families and render necessary the evaluation of the results of the financial crisis in children and adolescents' life and development, while aiming at minimising the hazards in their life and development<sup>49</sup>. On the one hand, child poverty creates circumstances that aggravate child health, while on the other, it creates obstacles to the access of children to the necessary health services.

Poverty creates additional problems, e.g. the lowering of the education level, which impedes prevention and the timely coping with health problems and results in differentiations in morbidity among income groups. However, holistic health protection is more fully and efficiently achieved through state intervention in other fields as well, apart from securing the child's best possible mental and physical state.

According to a recent research on the state of health in Greece during the period of financial crisis, austerity measures have afflicted children's health due to decrease in family income and parents' unemployment<sup>50</sup>. As the same research mentions, the percentage of children on the borderline of poverty has increased from 28.2% in 2007 to 30.4% in 2011, while the number of children receiving inadequate nutrition is constantly increasing. In the meantime, between 2011 and 2012 children living below

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<sup>47</sup> Eurostat, [20 November: Universal Children's Day, One in four children at risk of poverty or social exclusion in the EU, 25 million children in this situation in the EU](#), 225/2016, 16.11.2016.

<sup>48</sup> See Athens University of Economics and Business, Policy Analysis Research Unit, [The Anatomy of Poverty in Greece of 2013](#), Information Brochure 5/2013, (eds.) M. Matsaganis, C. Leventi, p. 5-7 and [The politics against poverty in Greece during the crisis](#), Information Brochure 6/2013, (ed.) M. Matsaganis, p. 5.

<sup>49</sup> Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention, Concluding observations: Greece*, par. 28-29 and Greek Ombudsman (Ombudsman for Children's Rights), *Recommendations about the content of a National Plan of Action for Children's Rights*, July 2013, par. 11.

<sup>50</sup> A. Kentikelenis, M. Karanikolos, A. Reeves, M. McKee, D. Stuckler, «Greece's health crisis: from austerity to denialism», *Lancet*, Vol. 383 - February 22, 2014, p. 750.

the income poverty line were increased by 12%, as opposed to 8% in the whole population of the poor<sup>51</sup>.

Considering the above, as well as data obtained from the analytic Report of the Ombudsman for Children's Rights included in a study of the European Network of Ombudspersons for Children (ENOC)<sup>52</sup>, the GNCHR observes with concern that securing the children's universal right to health encounters innumerable obstacles.

The GNCHR observes that the number of children receiving insufficient nutrition is constantly increasing. Nutrition problems constitute a fundamental factor of child health degradation, both mental and physical. Poor children in Greece have more chances of being undernourished, even though children who do not belong to families living below the income poverty line can also experience circumstances of deprivation. According to *Eurostat's* data, between 2010 and 2011 the percentage of households below the poverty line declaring incapable of securing nutrition containing meat, fish, chicken or vegetables of equal nutritive value every other day, has doubled. Equal incapability is also observed in non-poor households, something which intensifies social inequality<sup>53</sup>. Apart from inadequate nutrition, it is also incapability of securing sufficient heating in combination with housing problems, e.g. humidity conditions, lack of living space, insufficient lighting which significantly aggravate the state of children's health<sup>54</sup>.

### 2.2.2. Persons with intellectual and psychosocial disabilities

In September 2016, further to his visit in Greece, the CoE Commissioner for Human Rights addressed a letter to the Greek Minister of Health of Greece, and to the Alternate Minister of Social Solidarity of Greece specifically concerning the human rights of persons with intellectual and psychosocial disabilities and their de-institutionalisation.

The Commissioner expressed its concerns for the persisting deficiencies in the state mental health care system, stressing in particular that the very high increase of health care demand in Greece, which reportedly reached 120% during 2011-2013, has been accompanied by a sharp decrease of health care expenditure and of specialized staff,

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<sup>51</sup> UNICEF, Hellenic National Committee, [The State of the Children in Greece 2014. The consequences of the financial crisis on children](#), p. 27.

<sup>52</sup> Greek Ombudsman (Ombudsman for Children's Rights), *The rights of children living in institutions. Report on a study of the European Network of Ombudspersons for Children (ENOC)*, July 2011.

<sup>53</sup> Unicef, Hellenic National Committee, [The State Of Children In Greece](#), 2013, p. 47-48.

<sup>54</sup> *Idem*, p. 48-49.

due to the austerity measures that the successive governments have been obliged to adopt<sup>55</sup>.

The GNCHR shares these concerns. In previous reports, the GNCHR had observed that the state of child and adolescent mental health in Greece of the crisis is appalling. In a relevant scientific study, it is highlighted *inter alia* that the number of new cases is increasing along with the need to provide reinforcing services within the community – due to the fact that social services units are not functioning–, but also in schools – where psychiatric services are not provided<sup>56</sup>. Besides, a great number of patients abandon the private sector and seek public system services. According to the relevant statistical data pertaining to a sample of public and private psychiatric institutions in Athens, Piraeus and Thessaloniki for the period between 2007 and 2011 (two years before and two years after the implementation of the first austerity measures), new cases in non-hospital services increased by 39.8% for children and by 25.5% for adults, while the corresponding percentages in the private sector decreased by 35.4%. As a result, the waiting lists and the waiting time are longer<sup>57</sup>. Indeed, the evaluation of the application of the National Plan of Action *Psychargos* for the period 2000-2009 demonstrates that the development of psychiatric services for children is more inadequate than for adults, while only 30% of scheduled services have indeed been brought into effect. Moreover, the distribution of these services has been quite heterogeneous, given that they are mainly located in Attica. In other regions, the provision of psychiatric care to children is inexistent<sup>58</sup>. In fact, the situation is exacerbated due to the impact of the crisis on families and schools, which are no longer capable to fulfil their supporting role as before.

With regard to the existing mental health services structures, they operate with reduced by 10-40% staff, which is not always remunerated on time and whose salary has been significantly cut. A great number of more specialised personnel had to retire<sup>59</sup>. Also, an important number of community centers, mental rehabilitation units and specialized centers no longer function. The impact of the crisis was exceptionally strong especially on units dealing with special categories of disorders and learning difficulties. This most serious impact of the financial crisis is not only limited to the already existing structures, since the plans to create mental health units for children,

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<sup>55</sup> CoE, Commissioner for Human Rights, [Letter to Mr. Andreas Xanthos, Minister of Health and Ms. Theanou Fotiou, Alternate Minister of Social Solidarity of Greece](#), CommDH(2016)33, 12.9.2016.

<sup>56</sup> D. Anagnostopoulos, E. Soumaki, «[Child and adolescent psychiatry in Greece during the crisis: a brief report](#)», *ECAP Journal*, February 2013.

<sup>57</sup> *Ibidem*.

<sup>58</sup> G. Thornicroft, T. Craig, T. Power, «Ex post evaluation of the National Plan of Action ‘Psychargos’ 2000–2009. Executive summary». *Hellenic Ministry of Health and Social Solidarity*, Athens 2010.

<sup>59</sup> D. Anagnostopoulos, E. Soumaki, «Child and adolescent psychiatry in Greece during the crisis: a brief report», *op. cit.*

which had been originally adopted in the framework of the psychiatric reform since 2000, were abandoned<sup>60</sup>.

Regarding services and structures for children with disabilities and chronic diseases, there is great concern that these structures typically assume asylum character in Greece. The State has not established recreation centers, nor has it provided for care and services in the community for children with serious or multiple disabilities. This causes great concern, given that in certain cases, these children are also neglected in the family which is not receiving adequate support from the State.

### 2.2.3. Access to healthcare for Non-Greek nationals

The GNCHR addresses the issues pertaining to the access to healthcare for Non-Greek nationals on the basis of three distinctive categories: undocumented migrants (a), asylum seekers and refugees (b) and unaccompanied minors (c).

As a general remark, however, the GNCHR wishes to emphasise the deficiencies of community interpretation and cultural mediation in Greece which impede effective access to quality healthcare for the foreign nationals who do not speak and/or understand Greek. Recent academic studies have shown the gravitas of this problem<sup>61</sup>; the members of the Racist Violence Recording Network (RVRN) also expressed their concerns for this very problem in its Plenary session on 24.11.2016. In the light of this situation, there is a pressing need for the State to take into consideration the GNCHR recommendation to restructure the general institutional framework that governs the system of translators and interpreters in Greece, establishing, inter alia, national registers for translators and interpreters<sup>62</sup>.

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<sup>60</sup> A. Kentikelenis, M. Karanikolos, A. Reeves, M. Mckee, D. Stuckler, «Greece's Health Crisis: From Austerity to Denialism», *op. cit.*, p. 749.

<sup>61</sup> The relevant studies in the framework of the research project *Community Interpreting in Greece* (CiGreece) are available from: <http://www.cigreecce.gr/el/%CE%BC%CE%B5%CE%BB%CE%B5%CF%84%CE%B5%CF%83-%CE%B4%CE%B7%CE%BC%CE%BF%CF%83%CE%B9%CE%B5%CF%85%CF%83%CE%B5%CE%B9%CF%83/>. The need to specifically ensure access to medical care, interpreters, adequate food, clothing and social support migrants, asylum seekers and refugees in reception and identification centres in Greece has been emphasised by both the UN Committee on Economic, Social and Cultural Rights and the UN Committee on the Elimination of Racial Discrimination. The UN Human Rights Committee has also addressed a similar recommendation for the refugee determination procedures (UN, *Concluding observations of the Committee on Economic, Social and Cultural Rights on the second periodic report of Greece* (October 2015), par. 12; UN, *Concluding observations of CERD on the twentieth to twenty-second periodic reports of Greece* (2016), par. 23 (b); UN, *Concluding observations of the Human Rights Committee on the second periodic report of Greece* (November 2015), par. 30.

<sup>62</sup> For further details see, GNCHR, *The right to interpretation and translation and the right to information in criminal proceedings*, 23.11.2015. See also the recommendation pertaining to the development of a national curriculum for cultural mediators in WHO, *Greece: assessing health-system capacity to manage sudden large influxes of migrants*, Joint report on a mission of the Ministry of Health of Greece, Hellenic Center for Disease Control and Prevention and WHO Regional Office for Europe, 2015, p. vii.

*a. Undocumented migrants*<sup>63</sup>

In Greece, there is a legislation prohibiting care beyond emergency care for adult undocumented migrants. The new Law 4368/2016 introduced exceptions to this rule, allowing the most vulnerable categories of people to access healthcare.

The Migration Code, implemented by Law 4251/2014 and repealing Law 3386/2005, is still prohibiting healthcare for undocumented migrants.

In particular, Article 26§1 Law 4251/2014 states that “public services, legal entities of public law, local authorities, public utilities and social security organisations shall not provide their services to third-country nationals who do not have a passport or any other travel document recognised by international conventions, an entry visa or a residence permit and, generally, who cannot prove that they have entered and reside legally in Greece. Third-country nationals who are objectively deprived of their passport shall be given the right to transact with the agencies referred to above, simply by showing their residence permit”.

In addition, Article 26.2a states that “the arrangements of the previous paragraph shall not apply to hospitals, treatment centres and clinics in the case of third-country minors and nationals who are urgently admitted for hospitalisation and childbirth, and the social security structures which operate under local authorities”.

It should be noted that Law 2910/2001 expressly excludes minors of the prohibition to provide healthcare.

Since April 2016, undocumented migrants can be entitled to free healthcare if they belong to one of the vulnerable groups defined by Article 33, section 2 of the 4368/2016 law and Article 3 of the joint ministerial decision implementing it.

For instance, are entitled to free healthcare, undocumented:

- Pregnant women
- Children (under 18 years old)
- Chronically ill individuals
- Seriously ill individuals
- Victims of severe crimes
- Disabled individuals

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<sup>63</sup> The data presented in this chapter are submitted to the GNCHR by the «Doctors of the World – Greece».



*b. Asylum seekers and refugees*<sup>64</sup>

According to Article 33 Section 2 of Law 4368/2016, asylum seekers and refugees are considered as vulnerable groups and thus have access to the public healthcare system for free, same as destitute Greek nationals.

To access free healthcare, asylum seekers must hold and display a special Foreigner Healthcare Card (K.Y.P.A.).

Prior to the Law of 2016, the Common ministerial decision KYA Y4α/48566/05 provided for free healthcare for asylum seekers and refugees.

Moreover, Article 14 of the Presidential Decree 220/2007 on the transposition into the Greek legislation of Council Directive 2003/9/EC from January 27, 2003 laying down minimum standards for the reception of asylum seekers, already stated that “applicants [for refugee status] shall receive free of charge the necessary health, pharmaceutical and hospital care, on condition that they are uninsured and financially indigent. Such care shall include: a. Clinical and medical examinations in public hospitals, health centres or regional medical centres. Medication provided on prescription from a medical doctor serving in one of the above institutions and acknowledged by their director. c. Hospital-based care in public hospitals, class C of hospitalisation. 2. In all cases, emergency aid shall be provided to applicants free of charge (...)”.

In principle, asylum seekers and refugees have free access to hospitals and medical care. However, Greece is witnessing an unprecedented increase in the inflow of refugees and migrants to its territory and, even though the Greek state and population showed great solidarity with the migrants, the ability of the Greek health system to provide adequate health care to refugees upon entry is severely stretched. This is precisely observed by the UN Committee on Economic, Social and Cultural Rights, in its recent concluding observations for Greece, where it is correctly noted that refugees, asylum seekers and undocumented migrants continue to encounter difficulties in gaining access to health-care facilities, goods, services and information<sup>65</sup>.

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<sup>64</sup> The present chapter contains information submitted to the GNCHR by the «Doctors of the World – Greece».

<sup>65</sup> UN, [\*Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights on his mission to Greece\*](#), *op. cit.*, par. 73 and 74. The GNCHR has specifically addressed the issue of the protection of the migrants, refugees and asylum seekers with disabilities before the UN Human Rights Council (Thirty-first session) in its written submission on *Article 11 of the Convention on the Rights of Persons with Disabilities on situations of risk and humanitarian emergencies*, A/HRC/31/NI/XX, 19 February 2016.

*c. Unaccompanied minors*<sup>66</sup>

According to Article 19 of Directive 2003/9/EC, which sets out minimum standards for the reception of asylum seekers, unaccompanied minors must be placed in accommodation centres with special provisions for minors, a condition incorporated in Article 11-3 of the Directive 2013/33/EC<sup>67</sup> which provides for a general ban on detaining minors except under “exceptional circumstances”.

For each unaccompanied child, the Public Prosecutor for Children or the First Instance Prosecutor is informed and acts as the temporary guardian for the child and undertakes the necessary actions for the appointment of a guardian<sup>68</sup>. Given the particular characteristics of unaccompanied children, as well as their numbers, the effective exercise of guardianship functions by temporary or permanent guardians becomes particularly difficult, resulting in children not being able to enjoy the protection and rights enshrined in the Convention of the Rights of the Child<sup>69</sup>.

Besides, when arriving in Greece, unaccompanied children are often not accurately or adequately identified (including through proper age assessment procedures).

Greek law does not prohibit detention of unaccompanied minors who enter Greece without valid papers, although it enjoins authorities to “avoid it” (Article 13(6) (c) PD 114/2010; Article 12(8) (c) PD 113/2013 and article 46 (10) b of the recent law 4375/2016 which repealed PD 113/2013). Unaccompanied children can be detained only until a place in a special facility for minors is found<sup>70</sup>. What is more, Article 32 of Law 3907/2011<sup>71</sup> (implementing Directive 2008/115/EC) stipulates that minors and families with minor children should only be detained as a measure of last resort, and only if no other adequate but less burdensome measures can be taken, and for the shortest appropriate period of time.

Yet, the authorities detain unaccompanied children, either on arrival or when they are found without valid documents, for periods of ranging from a few hours to several days or months<sup>72</sup>. The reasons for detaining children for longer or shorter periods

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<sup>66</sup> The data presented in this chapter are submitted to the GNCHR by the «Doctors of the World – Greece».

<sup>67</sup> Directive 2013/33/EC.

<sup>68</sup> United Nations High Commissioner for Refugees Greece, [Current Issues of Refugee Protection in Greece](#), July 2013.

<sup>69</sup> *Ibid.*

<sup>70</sup> AIDA, [Detention of vulnerable applicants, Greece](#).

<sup>71</sup> Law 3907/2011.

<sup>72</sup> Platform for International Cooperation on Undocumented Migrants (PICUM), [Recommendations to the European Union to Urgently Address Criminalisation and Violence Against Migrants in Greece](#), Brussels, 2014.



appear to be arbitrary<sup>73</sup>. The detention of children is also caused by the fact that the large influx of asylum seekers to Greece has overwhelmed existing centres.

Reception capacity for children is insufficient : at national level, there are 432 places in special centres for unaccompanied minors and 240 unaccompanied children are detained in closed premises and police stations due to lack of accommodation facilities (as of 30 March 2016)<sup>74</sup>.

There is no institutionalised procedure for determining the best interests of the child, a guiding principle of the protection of children according to international standards and Greece's obligations as a signatory to the CRC. As a result of existing shortcomings in Greece's child protection system, unaccompanied minors remain in administrative detention, often for a long time, in contravention of applicable national and international law.

#### 2.2.4. HIV testing and treatment

HIV treatment is another specific issue of concern. In its recent concluding observations for Greece, the UN Committee on Economic, Social and Cultural Rights regretted the decrease in measures in preventing and combating HIV/AIDS, including the suspension of the distribution of free condoms, due to the financial and economic crisis. The Committee also notes with concern the increase in the number of HIV infections reported among injecting drug users<sup>75</sup>.

Since the Circular Y4α/οικ 93443/11 of 18 August 2011<sup>76</sup> was adopted, HIV testing and treatment are free for all people living in Greece, regardless of their legal status and health coverage. Thus, it includes Greek citizens without health coverage and undocumented migrants.

However, HIV treatment is not always effectively available and patients have to endure periods of interruption of this essential treatment. Indeed, because of the economic crisis, hospitals in Greece are in financial difficulty and some of them do not have sufficient budget to buy all necessary medicine, which results in drug shortages.

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<sup>73</sup> *Ibid.*

<sup>74</sup> Press release, Athens, [Intervention by the Ombudsman for unaccompanied children, refugees and immigrants](#), 30.3.2016.

<sup>75</sup> UN, [Concluding observations of the Committee on Economic, Social and Cultural Rights on the second periodic report of Greece](#), *op. cit.*, par. 37.

<sup>76</sup> Circular Y4α/οικ 93443/11.

## 2.2.5. Prevention and treatment of infectious diseases

### *a. Detention on public health grounds*<sup>77</sup>

The Article 76 of Law 3386/2005, providing for the detention of migrants and asylum seekers on public health grounds, is still in force<sup>78</sup>. The law permits the detention for up to 18 months of a migrant or asylum seeker who represents a danger to public health<sup>79</sup>. «Doctors of the World – Greece» report that in some cases the decision was taken exclusively by Police officers.

### *b. Repeal of measure 39A of the Health Act*<sup>80</sup>

A Ministerial Decision published in the Government Gazette on 17 April 2015 repealed the restoration of measure 39A of the Health Act. Decree 39A has been the cause of hundreds of police operations since 2012, mainly targeting drug users and sex workers. It allowed the authorities to conduct forced HIV tests on citizens with the help of security forces.

Several women were detained during the election campaign in 2012. They were arrested and then forced to undergo HIV screening and were detained for several months merely because they were HIV positive. It is thus a positive development that it has been decided to repeal this measure which violated human rights and affected human dignity.

## **B. SOCIAL SECURITY AND SOCIAL PROTECTION**

### **1. GENERAL**

The case of Greece under the implementation of C102 is a case of general interest characterized by the continuity of the violations of social security standards and the accumulation of the effects (cumulative impact) not only in the proper exercise of the protected rights but also in their core content. Thus, during the period of reference, the level of the minimum protection has been further lowered and the distance from the expected result is even greater.

The reform of the social security (insurance and pension) system in 2016 (Law 4387/2016) did not modified this situation. In May 2016, in view of this reform, the GNCHR underlined that its specific observations on the impact of continuing

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<sup>77</sup> The data presented in this chapter are submitted to the GNCHR by the «Doctors of the World – Greece».

<sup>78</sup> Article 76 of Law 3386/2005 has been amended by Law 4075/2012 and remains in force according to Article 139 (2) of Law 4251/2014.

<sup>79</sup> *Global Detention Center, Greece*: <http://www.globaldetentionproject.org/countries/europe/greece>.

<sup>80</sup> The data presented in this chapter are submitted to the GNCHR by the «Doctors of the World – Greece».

austerity measures also regard the social security right and still remain topical<sup>81</sup>. In particular, the GNCHR had stressed that the prolonged implementation of austerity measures, which eventually acquire a permanent character, leads to the degradation of the protection of human rights and, ultimately, to their non-fulfillment; undermines the State's ability to guarantee basic economic and social rights due to drastic cuts in social expenditure; dismantles the welfare State and intensifies the deterioration of living standards resulting in the impoverishment and destitution of an increasing part of the population, the widening the social divide and the disruption of the social fabric, as noted by international monitoring bodies<sup>82</sup>.

Furthermore, the GNCHR, in the framework of its specific report, enumerated and analysed in depth the basic axes of the right to social security, reminding thus to the Greek State what are the human rights obligations deriving both from the international standards and the case-law of the Greek courts<sup>83</sup>.

### *1.1. A sustainable and viable system of social security*

In its report on social security the GNCHR has emphasised the requirements for a sustainable and viable social security system in the light of the ESC. Furthermore, according to the case-law by the Hellenic Supreme Administrative Court, the State shall guarantee the adequacy of the benefits and the viability of the social security organizations, bearing the main obligation to cover their deficits. On the basis of ILO recommendations the State is required to guarantee the sustainable management of the social security system by preserving its economic balance, ensuring effective collection of social security contributions and taxes taking into consideration the country's economic situation and protected persons groups, the elaboration of actuarial and economic studies to evaluate the impact from any change in allowances, taxes or contributions, the granting of benefits as enshrined in ILC 102 and the European Code of Social Security, and avoiding any additional encumbrance on low income persons<sup>84</sup>.

The GNCHR observes that the situation in Greece does not satisfy these requirements. In its recent Concluding Observations for Greece, the UN Committee on Economic, Social and Cultural Rights expressed its concerns “about the restructuring of the State party's social security system that was carried out as a

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<sup>81</sup> GNCHR, *The right to social security: main axes*, 5.5.2016.

<sup>82</sup> GNCHR, *Statement of the Greek National Commission for Human Rights (GNCHR) on the impact of the continuing austerity measures on human rights*, *op. cit.*

<sup>83</sup> GNCHR, *The right to social security: main axes*, *op. cit.*

<sup>84</sup> *Ibid.*

consequence of the austerity measures implemented and that led to drastic cuts in social security benefits and restrictive entitlements and conditions”<sup>85</sup>.

As far as the new pension reform (Law 4387/2016) is concerned, according to the legislator, it aims to guarantee the long-term sustainability of the pension system, by addressing the large horizontal and vertical inequalities in the pension system. The State considers that the fundamental principles of the reform are equality and social justice. The former is mainly served through a thorough harmonization of all rules, horizontally in the private and public sector. The latter is accomplished by the introduction of a national pension, of an amount equal to the threshold of poverty in Greece, which will not be financed by contributions, but directly by the State budget, and will introduce an important distributional effect to the system.

The GNCHR observes that the aforementioned reform is characterized by fiscal and collection-oriented measures rather than insurance based and operational effectiveness measures<sup>86</sup>. Among other things, it severely undermines proportionality in contributions manifesting financial rather than social security concerns. In other words, instead of reforms towards distributional equity and effectiveness, the 2016 reform too, is guided by a focus on spending cuts and revenue increases without a theoretically or empirically grounded vision for a new and efficient social protection system.

In the face of the risks posed by negative demographic changes and the severity of the economic crisis, the 2016 reform does not effectively address the historical structural pathology and inefficiency of the Greek social protection system including the dependence of the social system on state budget, the mismanagement, financial in particular of social security system funds and resources.

In sum, dismantling of employment protection coupled with the drastic decline of minimum wage and labour market deregulation aggravated unemployment levels depriving the already debt-burdened social security funds of much needed resources<sup>87</sup>.

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<sup>85</sup> UN, [Concluding observations of the Committee on Economic, Social and Cultural Rights on the second periodic report of Greece](#), *op. cit.*, par. 23.

<sup>86</sup> This point was extensively discussed in the consultation with stakeholders specialized in the law of social security which was held by the GNCHR on 18.2.2016 (see GNCHR, [The right to social security: main axes](#), *op. cit.*).

<sup>87</sup> UN, [Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights on his mission to Greece](#), *op. cit.*, par. 66: “In the view of the Independent Expert, Greece needs to undertake reforms that will transform the existing system into a modern social welfare system that is just, efficient, sufficiently funded and targeted to those in need and that protects core social, economic and cultural rights in a comprehensive and non-discriminatory manner. It is essential to roll out the guaranteed minimum income scheme, which will provide means-tested support for the poor, as quickly and as reasonably as possible. Greece needs a social welfare system that assists and encourages taking up employment as soon as it becomes available. However, under current economic conditions, coverage of unemployment benefits needs to be expanded to ensure that the unemployed

Instead of reducing pre-existing gaps between the public and private sector by upgrading working conditions in the latter, the reforms have enforced a race to the bottom. The reduction of social security contributions further threatens the financial viability of social security funds while drastic cuts in pension levels increase the vulnerability of the elderly in addressing basic needs. Taking into account that pensions comprise the vast majority of social protection expenditure and that families are the only existing safety net, it follows that these so called ‘reforms’ indicate negative outcomes for social cohesion.

### *1.2. A satisfactory living standard*

In his report for Greece, the UN Independent Expert on the effects of foreign debt underlined that there is a need to reform the pension system on the basis of the principle of intergenerational solidarity to make it financially sustainable and to prevent old age poverty<sup>88</sup>.

Up to this moment, the unfair and disproportionate reduction (up to 50% per cent from 2010 to 2016) in the amounts of pensions has driven thousands of pensioners into poverty. A substantial number of retirees now only have pensions well below the poverty threshold<sup>89</sup>, and even the subsistence threshold, all in the absence of a minimum safety net to address the shortcomings of social security. In the period 2010-2016, through a raft of laws, retirees saw their pension shrink from 14,3% to up to 50%, depending on their height, including the abolition of bonuses and holiday allowance, even when there was no other reduction.

As explicitly observed by UN Independent Expert on the effects of foreign debt of particular concern to the Independent Expert are the drastic cuts in social security benefits, including restrictive entitlements, implemented as part of the austerity measures. The current coverage and level of social security and social welfare benefits are inadequate to ensure a decent living for many rights holders and are not in line with the right to social security. For example, only about 10 per cent of all registered unemployed persons are actually receiving unemployment benefits<sup>90</sup>.

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receive benefits for up to 24 months. Furthermore, the extremely limited tax-funded unemployment schemes need to be enlarged, in order to support more unemployed workers in low-income households. In this context, it would also be essential to increase support to affected individuals through the European Social Fund. The aim should be a reliable and responsive social welfare net that ensures that persons who are either unable to find jobs or physically unable to work can enjoy a life in dignity.

<sup>88</sup> *Ibid.*, par. 67.

<sup>89</sup> In this context, the Independent Expert pointed out that the current official poverty threshold of €12.63 per day or €384 per month for a single person is, in his view, already at the margins of what can be considered as a minimal threshold for ensuring a life in dignity; it should be considered a line that should not be crossed, if there is no evidence that the actual cost of living has fallen significantly.

<sup>90</sup> UN, [\*Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights on his mission to Greece\*](#), *op. cit.*, par. 60.

The UN Committee on Economic, Social and Cultural Rights have also expressed its concerns that the current coverage and benefits are inadequate to ensure a decent living for the recipients and members of their families. The Committee is further concerned about the insufficient assistance provided to persons whose benefits have been reduced or discontinued and at the cuts and stringent terms and conditions imposed on non-contributory old-age benefits, which have a negative impact on the living conditions of older persons and their families<sup>91</sup>.

In fact, over 3.8 million people in Greece (36 per cent of the population) are at risk of poverty or social exclusion, which is the highest rate in the eurozone<sup>92</sup>. Over one million people in Greece can be considered as extremely poor, meaning that they have less than 40 per cent of the median average income at their disposal<sup>93</sup>. The number of persons that are considered severely materially deprived, meaning that they cannot afford four or more items on a nine-point scale measuring deprivation, has nearly doubled, from 11.6 per cent in 2010 to 21.5 per cent in 2014. This rate is significantly above the eurozone average of 7.3 per cent and currently far above that of other Southern European countries that underwent adjustment policies, such as Portugal (10.5 per cent) and Spain (7.1 per cent)<sup>94</sup>.

According to Eurostat, among Member States for which data are available, the at-risk-of-poverty or social exclusion rate has grown from 2008 to 2015 in fifteen Member States, with the highest increases being recorded in Greece (from 28.1% in 2008 to 35.7% in 2015, or +7.6 percentage points)<sup>95</sup>.

Finally, the GNCHR underlines the observations submitted by the Scientific Committee of the Parliament prior to the adoption of the 2016 reform of the social security system. The Scientific Committee had observed, inter alia, that with respect

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<sup>91</sup> UN, [Concluding observations of the Committee on Economic, Social and Cultural Rights on the second periodic report of Greece](#), *op. cit.*, par. 23.

<sup>92</sup> It is even more worrying that 71.5 per cent of foreign nationals of countries outside the European Union aged 18-64 and living in Greece are at risk of poverty or social exclusion. [...] In 2014 an estimated 2.4 million individuals were at risk of income poverty; that means that they had to live on less than €12.63 per day if living alone or survive on less than €6.62 per day per person for a household of two adults and two children under 14 years of age. A significant proportion of foreign nationals residing in Greece (48.0 per cent), the unemployed (45.9 per cent), persons living in households with three or more children (32.4 per cent) and single-parent households with dependent children (27.8 per cent) are at particular risk. Gender-disaggregated data show that women in all of these categories are at significantly higher risk of poverty (UN, [Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights on his mission to Greece](#), *op. cit.*, par. 61).

<sup>93</sup> UN, [Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights on his mission to Greece](#), *op. cit.*, par. 63.

<sup>94</sup> *Ibid.*, par. 65.

<sup>95</sup> Eurostat, [17 October: International Day for the Eradication of Poverty, The share of persons at risk of poverty or social exclusion in the EU back to its pre-crisis level, Contrasting trends across Member States](#), 199/2016, 17.10.2016.

to specific categories of insured persons (self-employed and freelancers), imposing contributions for main pension, supplementary insurance, healthcare as well as the one-off payment, at a rate higher than 35% of their income, in conjunction with the new scales of tax rates, may result, in some cases, to an excessive reduction of their income, violating their right to participate in social and economic life of the country (Article 5 par. 1 of the Constitution)<sup>96</sup>. This observation confirms the relevance of the “cumulative effect” paradigm as underlined by the ECSR and on which the GNCHR insists when assessing the measures adopted during the period of the crisis in Greece<sup>97</sup>.

### *1.3. Impact assessment*

Along with a series of International and European Human Rights Institutions the GNCHR has been insisting on the value of the human rights impact assessment (HRIA) especially when adopting austerity measures<sup>98</sup>. In its report on social security the GNCHR has specifically recalled, inter alia, the decision of the Hellenic State Council Plenary (Supreme Administrative Court) decision no 2287/2015 (recital 24), which echoing the aforementioned observations and recommendations, ruled in favor of an impact assessment study prior to the adaptation of social-security specific measures. As adjudicated by the Supreme Administrative Court: “In particular, in the context of such study, the legislator is first and foremost [bound to] proceed to an overall assessment of the factors that provoked the problem being invoked with respect to social security organizations sustainability (making reference to each one of them separately, in view of its administrative and financial autonomy), and in the light of such factors—like the value decrease, through the PSI (l. 4050/2012), the available resources of such organizations, (...) mainly the prolonged recession and the resulting increase of unemployment, being the practical outcome of the falling living standards of large population groups driven by similar measures or tax burdens as the ones under dispute (pension and salary cuts) – to judge the suitability of such contested measures. The legislator should proceed to any judgment taking into consideration that to date similar measures (pension and salary cuts) have not yielded the anticipated outcome and that the economic recession has been intensified at such a pace that all initial forecasts have been disproved. Moreover (...), the legislator [is bound to] further study and reasonably decide on their necessity, envisaging the possibility of alternative options and comparing the benefits and disadvantages of

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<sup>96</sup> Scientific Committee of the Parliament, [Report on the Draft Law “Single Social Security System - Insurance-pension system reform - Income tax and lotteries settings and other provisions](#), 6.5.2015.

<sup>97</sup> See, *supra* no 30.

<sup>98</sup> The most recent examples, GNCHR, [The right to social security: main axes](#), *op. cit.* and GNCHR, [Statement of the Greek National Commission for Human Rights \(GNCHR\) on the impact of the continuing austerity measures on human rights](#), *op. cit.*



each option for the public purposes sought after (fiscal adjustment, sustainability of social security organizations, safeguarding a satisfactory, by virtue of article 22 para. 5, Const., living standard for insured persons). Further to the above, if the legislator [chooses] to proceed to specific pension cuts (an option being judicially uncontrolled), he/she [owes] to first examine, in a scientific and judicially authorized way, whether the impact from such cuts on the affected persons living conditions, in combination with the impact from the measures taken already to cope with the crisis (such as consecutive tax burdens) and in the light of the broader socio-economic conditions of the current extraordinary period (cost of goods and services, healthcare cuts, unemployment and its impact on family income, extent and content of borrowing obligations), drive to an unacceptable lowering of retirees' living conditions below the threshold enshrined, as mentioned above, by their social security right”.

Despite the aforementioned, the Greek State when reforming the social security system, did not proceed to a study to substantiate whether such measures are compatible with the commitments of the Greek Constitution and ratified International Conventions including C102, the European Social Charter and the European Social Security Charter reflecting the principles of equality and proportionality and the protection of human value which underpin the institution social security.

Furthermore, the impact analysis as provided for in Law 4048/2012<sup>99</sup> cannot be considered equivalent to a procedure of HRIA as part of a permanent mechanism. The existing procedure seems to have characteristics of a typical formality, because it is not based and thus cannot guarantee an evidence-based impact analysis on the specific human rights.

In connection to the lack of a human rights impact assessment, the GNCHR regrets the absence of detailed data necessary to effectively assess the impact of certain measures on the enjoyment of the right to social security. This is particularly stressed by the UN Committee on Social, which recommends that the State adopt a human rights-based approach in assessing the impact of cuts on benefits and provide disaggregated statistics in its next periodic report on how the austerity measures have affected the enjoyment of the right to social security<sup>100</sup>.

The particular value of data has been also underlined by the Independent Expert in his report on Greece, with special regard on how the EU data tend to underestimate the

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<sup>99</sup> See in particular, Articles 7 and 9.

<sup>100</sup> UN, [\*Concluding observations of the Committee on Economic, Social and Cultural Rights on the second periodic report of Greece, op. cit.\*](#)



current humanitarian and human rights crisis in Greece<sup>101</sup>. Disaggregated data on the social situation of particular groups at risk of vulnerability, such as the homeless, Roma, irregular migrants or persons with disabilities, are missing or not collected regularly, despite repeated requests by United Nations human rights treaty bodies to provide such data<sup>102</sup>.

#### *1.4. Are the measures for addressing the humanitarian crisis due to austerity an adequate measure for the effective protection of the right to social security?*

The right to social security and the non compliance with the C102 and the European Code of Social Security does not only concern old age benefits, but also other benefits protected under these instruments. This is mainly due to the fact that the number of people who have access to social security is increasingly falling as changes either removed protections wholesale, or made the conditions so stringent that few remain eligible to qualify for social security benefits.

The UN Independent Expert on the effects of foreign debt in his Report Mission to Greece observed that “[l]imited funds that had been available to combat social exclusion, for rental and housing support and family and child benefits were reduced drastically. Spending to support sick persons and persons with disabilities decreased also disproportionately, while pension benefits – the biggest social expenditure and backbone of the social protection system of Greece – saw consecutive cuts in line with the overall reduction of Government expenditure. Unemployed benefits fell nearly by one third while unemployed rose during the same time nearly threefold”<sup>103</sup>.

On the contrary, more people are eligible for the humanitarian support and allocations provided for in the legislation after 2015<sup>54</sup>, but even more people, usually unemployed and also poor but with income slightly above of the provided threshold, are excluded from both social security benefits and humanitarian assistance. For example, while the unemployment rate is very high, particularly among youth, the number and percentage of those receiving unemployment benefits has decreased to only 10 per cent of the registered unemployed due to the stricter eligibility criteria and to the short duration of protection. It should be noted that the percentage of unemployed people is not precise, given that a large number of people is not registered to the competent

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<sup>101</sup> UN, *Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights on his mission to Greece*, *op. cit.*, par. 64: “It should be further noted that European Union-wide surveys on income and living conditions are based on household interviews and therefore tend to undersample social groups at particular risk of poverty or social exclusion, such as homeless people and Roma, and exclude persons living in camps or institutions, including refugees and asylum seekers. They tend to underestimate the current humanitarian and human rights crisis in Greece”.

<sup>102</sup> *Ibid.*, par. 64.

<sup>103</sup> *Ibid.*, par. 34.

authority (OAED) as it joins every day the ranks of the discouraged workers who are not accounted for in the statistics. This situation amounts to non-conformity.

Analysing the development of social protection expenditure it can sadly be said that reductions were particularly harsh for the most marginalised who lacked any strong political lobby<sup>104</sup>.

## **2. THE ELDERLY PERSONS**

The GNCHR has published a specific study about the rights of the elderly persons in Greece urging the State to take specific measures in order to protect this particularly vulnerable social group<sup>105</sup>. Furthermore, in previous reports, the GNCHR had expressed its deep concern about the serious impact of the financial crisis and the subsequent austerity measures on guarantying older persons' right to a sufficient income allowing them a decent living<sup>106</sup>.

### ***2.1. Autonomy and participation***

The population increase for older persons, the insecurity regarding work and social security as well as the failure to fruitfully use their knowledge and experience results in the marginalisation and the exclusion of a large workforce and its contribution to society. This is a great challenge with respect to the protection of older persons: what they are mostly being denied nowadays is their equal participation in public life. They are thus condemned in gradual isolation and degradation.

As a direct consequence of their marginalisation comes the violation of their autonomy and the deprivation of the possibility to participate in public life. Their accessibility to public spaces is limited, if not non-existent, while older persons usually face a hostile environment, not adapted to the third age's particular needs.

Furthermore, another aspect of the social exclusion of older persons is connected to the shift of public and private services towards digital technology (e-banking, e-commerce, e-learning, e-health). The applications of digital technology have in principle influenced the State's operation positively, but they have been introduced without consideration for the particular needs of population groups who are not objectively able to access them. As far as older persons are concerned, this results in the creation of a new kind of “digital exclusion” (or “digital gap”), which includes important social implications, since older groups are more vulnerable to this danger

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<sup>104</sup> *Ibid.*, par. 34.

<sup>105</sup> GNCHR, [Protection of the rights of older persons](#), 20.11.2014.

<sup>106</sup> GNCHR, [The NCHR Recommendation and decisions of international bodies on the conformity of austerity measures to international human rights standards](#), 27.5.2013. Furthermore, in a report on the right to water, the GNCHR highlights the need to ensure the older persons' access to water in the context of respecting their right to health. See GNCHR [The Right to Water. GNCHR Recommendations for its effective protection](#), 20.3.2014.

due to non-access to digital means and even more so, to the applications of new technologies. The digital gap can potentially accumulate new inequalities, which shall reinforce and aggravate the currently existing ones, as, for instance, the marginalisation and the social exclusion. These inequalities have serious impact on education, health, social welfare, access to labour market and the use of public administration services while they are frequently linked to very important implications of administrative nature, such as the imposition of administrative penalties<sup>107</sup>.

These observations are further corroborated by the research of the Special Eurobarometer, according to which the rate of Greek citizens considering their country “non-friendly towards third age” is high (67%)<sup>108</sup>.

The insufficiency of the provisions addressed to older persons seems to be absolute, especially towards persons of the so-called “fourth age”<sup>109</sup> who find themselves by definition in a worse position than the rest of older persons, since a person in this vulnerable period of his/her life finds it impossible to perform self-care due to biological deterioration, illnesses and the increase in accidents. In order for an older person to continue living in decency and self-respect, he/she is in need of support when his/her social, emotional and financial self-sufficiency is being restricted. At this point, since in the current circumstances the family is not able to satisfyingly meet the needs of older persons in Greece, the State and the local authorities owe to assume responsibility for their decent protection and living.

Strengthening independence and encouraging older persons' social participation are of fundamental importance, given that it has been proven that there is a connection between the reduction of their physical abilities and their subjective sense of isolation.

In Greece, an interesting good practice is implemented on safeguarding older persons' autonomy at home, since programmes such as “Help at home” and “Teleassistance at Home” enables the direct communication of older persons, living alone and unable to perform self-care, with their friends and relatives as well as with services of immediate intervention in order for them to feel less vulnerable and insecure and to reside in their place of choice<sup>110</sup>. GNCHR, at this point, seizes the opportunity to express its concern about the fact that the operation of such an important work of social policy essentially depends on European programmes for its funding. These

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<sup>107</sup> See in the respect 50+ Hellas, *Positions and Suggestions for an Active and Health Ageing in Greece*, April 2013.

<sup>108</sup> European Commission, Special Eurobarometer 378, *Active Ageing*, January 2012, p. 107.

<sup>109</sup> The “fourth age” includes, according to the suggested definition, older persons, usually more than 80 years of age that have restricted ability to self-care. The age limit is always a relevant factor.

<sup>110</sup> Ministry of Justice, General Secretariat of Transparency and Human Rights, *National Plan of Action for Human Rights*, March 2014, pp. 207-209.

services ought to be integrated in a framework of public, free-of-charge health and welfare services which shall be steadily provided and funded by the State budget.

Moreover, since 2009, “Parents' Schools” operate in Greece under the auspices of the General Secretariat for Lifelong Learning of Ministry of Education. More than 5000 trainees have attended 295 seminars on the status of older persons in society, their particular needs and the difficulties they face as well as on the ways in which society can respond<sup>111</sup>.

The GNCHR, recognising the need to respect older persons' dignity and their inalienable right to lead their life in an independent and autonomous way, associates itself at this point with the Council of Europe Recommendations on *The promotion of human rights of older persons*<sup>112</sup>. Furthermore, the GNCHR estimates that in order to support active ageing and older persons' social participation, the institutionalisation of the above social protection systems is very important even though not sufficient in itself.

## **2.2. Informed consent in healthcare**

The decrease in the mobility and autonomy of older persons combined with their increased needs for long-term health provision and the traditionally “paternalistic” model of doctor-patient relations, which up until recently was dominant in our country, frequently creates problems in the application of the principle of patient's consent to the medical act. Balancing the protection of older persons and their autonomy does not always seem to be feasible.

The respect of the principle of autonomy of older persons, however, should not be in constant conflict with the need to safeguard their protection. The Oviedo Convention for Human Rights and Biomedicine constitutes the first binding instrument of international law to integrate “consent upon information” for any medical act. Apart from the Convention, in Greek law exist explicit provisions including both the Code of Medical Ethics (CME – Law 3418/2005)<sup>113</sup> and more specific legislative texts<sup>114</sup>. The pre-condition of the patient's consent (Articles 11-12 of Law 3418/2005)<sup>115</sup> does not simply constitute a patient's right, as provided for by Law 2071/1992<sup>116</sup>, but it is an essential obligation of the doctor towards the patient before attempting any medical act. Moreover, Article 12(1) of Law 3418/2005 explicitly introduces a prohibiting

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<sup>111</sup>Council of Europe, Committee of Ministers, *Recommendation CM/REC (2014)2 to member States on the promotion of human rights of older persons*, p. 4.

<sup>112</sup> *Idem*; Council of Europe, Committee of Ministers, *Recommendation CM/REC (2014)2 to member States on the promotion of human rights of older persons*, p. 3-4.

<sup>113</sup> OJ 287/11.28.2005/A.

<sup>114</sup> On assisted reproduction, transplantation etc.

<sup>115</sup> OJ 287/11.28.2005/A.

<sup>116</sup> OJ 123/7.15.1992/A.

provision according to which *verbatim* “*the doctor is not allowed to carry out any medical act without the patient's previous consent*”. This implies that informing and subsequently receiving the patient's consent is a necessary pre-condition of the legality of a medical act.<sup>117</sup>

Nevertheless, as it is characteristically outlined in a relevant Opinion by the Greek National Bioethics Commission, the aforementioned example on the Code of Medical Ethics provisions itself proves that the traditional model of doctor-patient relations has not been completely abandoned in Greece. According to another provision “*the doctor, when exercising medicine, acts in total freedom, in the context of the generally accepted rules and practices of medical science*”, maintaining the “*right to choose the treatment method which is deemed to considerably prevail over another one, for a specific patient based on the modern rules of medical science*” (Article 3(3) of Law 3418/2005).

The restriction in the doctor-patient communication time, the vagueness regarding the appropriate extent of the information, the insufficient doctor training regarding the relations they ought to develop with their patients and the lack of the general public's familiarisation with the rights and options of everyone addressing health services are factors that, combined with the reduced autonomy of older persons, impede and in many cases render practically impossible the full enjoyment of every older person's right to individualised information, advice and consent upon information.

Furthermore, the tendency not to provide information to older patients, but to inform instead their families has been fiercely criticised. Such a tendency implies that older persons in need of care remain passive receptors without being involved in the decision making process regarding issues which affect them. However, if the patient is able to consent<sup>118</sup> and has not refused to be informed, exercising thus the right of ignorance<sup>119</sup>, this practice, even when due to the fear of undermining the patient's psychological stability, breaks the fundamental connection between information and consent, risking to cause the patient distress<sup>120</sup>.

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<sup>117</sup> Greek National Bioethics Commission, [Consent in the Patient-Physician Relationship](#), Opinion and Report, April 2010, p. 13.

<sup>118</sup> According to the prevailing opinion in our country, patients' consent is independent from their legal capacity. A strong consent pre-conditions the patients' ability to fully understand the current situation the moment they give their consent as well as when the medical act is carried out.

<sup>119</sup> According to the provisions of Article 11(2), Medical Code of Conduct, patients have the right to not get informed (right to ignorance) and to ask the doctor to only inform another or other persons that they shall indicate.

<sup>120</sup> *Idem*, p. 15.

### *2.3. Protection from violence and abuse*

Older persons' abuse is being more and more recognised as a major social problem not only on an international or a European level<sup>121</sup>, but also in Greece, despite the serious lack of data regarding the size of the problem. As stressed by the Greek Ombudsman's representative in the relevant deliberation which took place with the participation of different stakeholders, unfortunately, in Greece, data about cases of older persons' abuse are exceptionally limited. This is due to the fear of older persons to testify their experience, as well as to the absence of national policy for systematically recording these cases of violence and abuse at the expense of older persons. The types of older persons' abuse are many and more than one usually take place simultaneously: physical abuse, psychological abuse – which includes emotional, mental and verbal abuse – financial abuse, sexual abuse, social abuse, as well as neglect<sup>122</sup>.

Regarding physical abuse, the cases annually recorded demonstrate the problem of insufficient or non-existent monitoring not only in retirement homes, but, even more so, in home care. Statistical data show that approximately 70% of those exercising violence to older persons are either family members or persons very close to them and most of them are either their partners or their children<sup>123</sup>. It is worth mentioning that during the first 36 months of its operation (4.12.2011 – 31.4.2014) the Greek National Hotline SOS 10-65 received 595 calls regarding complaints of older persons abuse<sup>124</sup>.

### *2.4. Prohibition of discrimination*

The GNCHR stresses that the presence of a coherent legislative framework protecting from discrimination on the grounds of age has a fundamental importance, particularly when it is nowadays observed in Europe that discrimination on the grounds of age is the most common ground of discrimination<sup>125</sup>.

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<sup>121</sup> See in this respect World Health Organization, Regional Office for Europe, [European report on preventing elder maltreatment](#), 2011, pp. 1-9.

<sup>122</sup> See in this respect J.J.F. Soares, H. Barros, Fr. Torres-Gonzales, El. Ioannidi-Kapolou, G. Lamura, J. Lindert, J. de Dios Luna, G. Macassa, M.G. Melchiorre, M. Stank, ABUEL. [Abuse and Health Among Elderly People](#), 2010, p. 22.

<sup>123</sup> N. Georgantzi, [Elder abuse and neglect in the European Union UN Open-ended Working Group on Ageing](#), 21-24.8.2012.

<sup>124</sup> According to a research conducted by partners of the Press Office of NGO LifelineHellas, from the published cases of abuse of older persons, it appears that for the time period 2010-2014 (to date) the following data arises, which are not absolute of course, but paints a picture of the size of the problem: 27 older persons were murdered, 390 older persons were victims of violence, 7 older women were victims of sexual abuse and 192 older persons were victims of financial abuse. See LifelineHellas, Press Release, "World Elder Abuse Awareness Day. Help exists! And it's available to all! 1065: National SOS Hotline for old persons".

<sup>125</sup>P. Stangos, "Discrimination on the grounds of age and the challenge of intergenerational solidarity in the Greek and European law", *Review of Labour Law*, Vol. 73, Year 2014, p. 978.



In Greece, Law 3304/2005 has established the general framework for combating discrimination in the field of employment, according to Directives 2000/43/EC of the Council of 29 June 2000 and 2000/78/EC of the Council of 27 November 2000 implementing the principle of equal treatment. Age discrimination is explicitly mentioned in Law 3304/2005.

The Greek State has recently undertaken the initiative to reinforce the legislative framework on equality (recent Law 4443/2016 – OJ 232/A/9-12-2016). The GNCHR addressed specific recommendations both when the Bill was issued for public consultation<sup>126</sup> and when it was introduced before the Parliament<sup>127</sup>. Some of the GNCHR recommendations were indeed followed by the State while some others not.

The GNCHR had highlighted that the abovementioned legislative framework is not considered sufficient for combating discrimination on the grounds of age<sup>128</sup>. The GNCHR noted that Law 3304/2005 concerns exclusively the field of employment. This has been also highlighted by the ECSR<sup>129</sup>. Even though a great number of cases of discrimination against older persons concern their right to work for a fact, this discrimination concerns most of their rights. The new legislative framework extends indeed the scope of the protection against discrimination.

However, there are specific concerns that persist. It is still uncertain whether the new legislative framework provides protection against discrimination that occurs in the field of employment or social security. Furthermore, the protection of the victims

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<sup>126</sup> GNCHR, *Observations* [in Greek] on the Draft Law of the Ministry of Justice, Transparency and Human Rights «Implementation of the principle of equal treatment regardless of race, color, national or ethnic origin, descent, religion or belief, disability or chronic illness, age, marital or social status, sexual orientation, gender identity or characteristics and other provisions», 20.9.2016.

<sup>127</sup> GNCHR, *Statement* [in Greek] on the Draft Law of Ministry of Justice, Transparency and Human Rights, submitted to the Parliament on 9.11.2016 and entitled «Incorporation of Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, of the Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, and of the Directive 2014/54/EC, on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workersII) adoption of measures in order to comply with Articles 22, 23, 30, 31(1), 32 and 34 of the Regulation No 596/2014 on market abuse and repealing the Directive 2003/6/EC of the European Parliament and the Council and the Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC and transposition of the Directive 2014/57/EU on criminal sanctions for market abuse and its implementing Directive 2015/2392, III) transposition of Directive 2014/62 on the protection of the euro and other currencies from counterfeiting through criminal law, and the replacement of the Framework-Decision 2000/383/JHA and, IV) Establishment National mechanism for investigating incidents of arbitrariness in security forces and in detention facilities », 17.11.2016.

<sup>128</sup> GNCHR, “Comments regarding Law 3304/2005 ‘Implementation of the principle of equal treatment irrespective of racial or ethnic origin, religious or other beliefs, disability, age or sexual orientation’ and recommendations for its amendment”, 2010 Annual Report, pp. 39-48 and GNCHR, “Comments on the Bill ‘Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation- Harmonisation of Legislation with Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006’”, 2008 Annual Report.

<sup>129</sup> ECSR, *Conclusions XX-2 (2013)*, Articles 3, 11, 12, 13 and 14 of the 1961 Charter and Article 4 of the 1988 Additional Protocol (Greece).

needs to be strengthened, facilitating inter alia their access to justice by allowing legal entities to bring cases before the national courts on their behalf (and not simply to represent them), enhancing the protection of the witnesses, providing legal aid and modify the provisions on the burden of proof. It is within this wider context that the State should address the issue of discrimination against older persons.

The GNCHR has also expressed its concern regarding the implementation of the principle of equal treatment in Greece, especially in times of financial crisis. And this because many of the austerity measures adopted in Greece (especially related to employment and social security) are connected to age and entail unfavourable treatment solely based on age, introducing, thus, an unjustifiable direct discrimination in violation of Directive 2000/78<sup>130</sup>. In fact, in some cases indirect discrimination on the grounds of sex and multiple indirect discrimination on the grounds of sex and age are highly likely, since, for instance, most pensioners below 55 years of age are women who have retired with fewer years of service on the grounds that they were mothers of underage children<sup>131</sup>. This has been also highlighted by ILO<sup>132</sup>.

In fact, neither Law 3304/2005 nor Law 4443/2016 does not provide for the prohibition of multiple discrimination which has been repeatedly stressed by the GNCHR, underlining the need for its amendment<sup>133</sup>. Regarding older persons' rights in particular, the GNCHR stresses that prohibition of multiple discrimination is particularly important. Older persons are often victims of discrimination not only on the grounds of age, but also (indicatively) on grounds of gender, ethnic origins, sexual orientation, nationality, religion or disability.

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<sup>130</sup> S. Spiliotopoulou-Koukouli, "Austerity measures and human rights: judgments of international bodies, EU law and examples of Greek case-law", *Review of the Social Security Network*, Iss. 2/644, par. 173,181,182,189.

<sup>131</sup> *Idem*, par. 83, 176, 190.

<sup>132</sup> ILO, *Report on the High Level Mission to Greece* (Athens, 19-23.9.2011), par. 1-8.

<sup>133</sup> GNCHR, "Comments regarding Law 3304/2005 «Implementation of the principle of equal treatment irrespective of racial or ethnic origin, religious or other beliefs, disability, age or sexual orientation» and recommendations for its amendment", *2010 Annual Report* and GNCHR ["Comments on the Bill "Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation- Harmonisation of Legislation with Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006"](#), *2008 Annual Report*.