



HELLENIC REPUBLIC
GREEK NATIONAL COMMISSION FOR HUMAN RIGHTS

Neofytou Vamva 6, GR 106 74 Athens, Greece,
Tel: +30 210 7233221-2; fax: +30 210 7233217; e-mail: info@nchr.gr,
website: www.nchr.gr

GREEK NATIONAL COMMISSION FOR HUMAN RIGHTS
Submission to the United Nations Human Rights Committee (The Committee):

NHRI report on Greece's 2nd periodic report under the International Covenant on Civil and Political Rights (ICCPR)

September 2015

THE GREEK NATIONAL COMMISSION FOR HUMAN RIGHTS

The Greek National Commission for Human Rights (hereinafter GNCHR) was established by Law 2667/1998 as an independent advisory body to the State on matters pertaining to the promotion and safeguard of human rights. The main rationale behind the establishment of the GNCHR was to ensure the constant monitoring of developments concerning human rights and the briefing of both the administration and public opinion on the dangers posed to human rights. The founding law of the GNCHR is based on the Paris Principles adopted by the UN General Assembly; the GNCHR has been granted status 'A' by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC).

The GNCHR has a pluralistic composition. Its 32 members are nominated by NGOs, trade unions, independent authorities, universities, bar associations, political parties, Parliament and the Administration .

According to its founding law, the GNCHR's mission consists in:

- a) the constant monitoring of human rights issues, the information of the public and the advancement of research in this connection;*
- b) the exchange of experiences at international level with monitoring bodies and similar organs of international organizations, such as the UN, the Council of Europe, the OECD, or of other States;*
- c) the formulation of policy proposals on matters related to its objectives.*

The GNCHR mandate covers the whole spectrum of human rights; however it does not deal with individual cases.

Since its establishment, the GNCHR has dealt with a broad range of human rights issues. Among the factors playing a role for its agenda-setting are the urgency of a particular topic as well as its importance in terms of the seriousness of human rights violations involved, the numbers of individuals affected or its impact on the public.

The GNCHR publishes each year an Annual Report, describing its yearly activities and containing all its decisions. The Annual Report is communicated to Parliament, the Prime Minister, State authorities and other institutions.

All the reports, decisions and resolutions of the GNCHR are made public via the website of the GNCHR, their communication to the competent authorities, press releases etc.

Contact Person:

Professor Maria Gavouneli, Chair of the Sub-Commission for International Communication and Co-operation, Greek National Commission for Human Rights, Neofytou Vamva 6, 10674 Athens, Greece, info@nchr.gr, mgavoun@law.uoa.gr, Tel.: + 30 210 7233221.

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PART I. GENERAL OBSERVATIONS ON THE REPORT

i) Scope

The GNCHR welcomes the opportunity to submit its recommendations to the Human Rights Committee (hereinafter the Committee) regarding Greece's second periodic report under the ICCPR. The present report takes into account the replies of Greece to the List of Issues (LOIs) and is a follow-up to our previous LOIs report, which was sent to the Committee in December 2014. It discusses the general legal framework, policies and practices in Greece and their relation to and/or effect on civil and political rights.

ii) Structure and sources

The structure of the report is patterned after the Committee's LOIs, adopted in April 2015. The GNCHR took account of the replies of Greece to the LOIs dated August 2015 and proceeded, where appropriate, with comments and recommendations which primarily draw upon her previous reports and interventions on the issues in question as well as other external sources. Additional information and background can be found in our previous [submission](#) (December 2014) as well as in the GNCHR [Observations](#) on the Draft of the Second Periodic Report of the Hellenic Republic for the International Covenant on Civil and Political Rights (ICCPR)(5.12.2013).

The GNCHR would be pleased to provide any further clarification or other assistance to the Committee experts before, during or after the forthcoming session.

iii) Background regarding the report

The submission of the Report on the application of the Covenant comes at a time when Greece is entering the sixth year of a severe financial crisis. The GNCHR applauds the incidental references in the Committee's LOIs in relation to the second periodic report of Greece regarding the impact of the financial crisis on the enjoyment of the rights protected under the Covenant. The GNCHR recalls that, since 2010, it has already drawn the attention of the Greek State to the [“need for constant respect of human rights during the implementation of the fiscal and social exit strategy from the debt crisis”](#), whilst a year and a half later it issued a Recommendation [“on the imperative need to reverse the sharp decline in civil liberties and social rights”](#). In June 2013, the Plenary of the GNCHR recalled in its Report entitled [“Recommendation and decisions of international bodies on the conformity of austerity measures to international human rights standards”](#) its concerns about the rapid deterioration of living standards coupled with the effective dismantling of the Welfare State.

The recent [“GNCHR Statement on the impact on human rights in Greece of the continuing austerity measures”](#) (See Appendix) took note of the judgments of national supreme courts as well as of relevant decisions and reports issued by national, European and international monitoring bodies and drew attention to the prolonged implementation of austerity measures, which eventually acquire a permanent character. In this Statement, the GNCHR observed with particular concern the degradation of human rights in Greece and, at the institutional level, an effective reversal of priorities and values, as fiscal and financial objectives have taken precedence over fundamental rights and social values. The GNCHR is echoing what has been already affirmed by competent international and European monitoring bodies, namely that austerity measures violate rules of international and European human rights law; and moreover that the financing rules of International Financial Institutions (IFIs), including the International Monetary Fund or of other international or European mechanisms relating to the economic or financial support of a State, cannot circumvent the obligation to respect international and European human rights law, especially as these rules are also binding on all States participating in these mechanisms.

In this regard, the GNCHR cannot but reiterate the need to refer to the impact of the financial crisis and the financial austerity measures, which have clearly affected the rights covered by the Covenant and urgently

call upon the EU institutions, the EU Member-States and the Greek authorities to immediately and jointly mobilize towards the preservation of our common European values.

PART II. BACKGROUND BRIEFING

Constitutional and legal framework within which the Covenant is implemented (Art. 2)

(Paragraph 1 LOIs)

On the basis of Article 28 (1) of the Greek Constitution, the International Covenant on Civil and Political Rights (ICCPR) constitutes an integral part of Greek domestic law, is directly applicable to the Greek legal order and prevails, by virtue of its supra-legislative force, over any contravening provision of domestic law. Accordingly, any alleged violation of the provisions of the Covenant by the Greek administration will be brought before national courts, which are competent to examine all claims that fall under the scope of the ICCPR.

(Paragraph 3 LOIs) The Greek National Commission for Human Rights

The GNCHR is currently striving and will continue to strive for the increase of its human and material resources. The GNCHR is, according to Article 1 of its founding Law, supported as to its staffing and infrastructure by the General Secretariat of the Government, while its budget is incorporated into the budget of this service unit. In practice, GNCHR fixed operating costs are approved and covered by the General Secretariat of the Government without encountering any major obstacles. The unhindered approval of these expenses notwithstanding, the GNCHR has repeatedly sought and is constantly seeking full financial independence by virtue of a specific budget line, something which is particularly difficult given the current economic crisis.

With regard to the GNCHR's human resources, the founding Law (Article 7) provided for two posts of specialised academic staff, on a private law employment contract for a term of three years, renewable, while Law 3156/2003 amending the founding Law (Article 23) provided for a third post. Currently all three posts are filled. Furthermore, as far as the GNCHR Secretariat is concerned, according to Article 8 of the founding Law, a post of executive secretary and three posts for secretarial and technical support of the GNCHR have been established. Since the beginning of its operation (2000) to date, the GNCHR employs one executive secretary and from 2007-2014 one more secretary by secondment. Currently, the GNCHR employs two staff-members.

The financial autonomy of the GNCHR is – especially during a period of severe economic and social crisis – very important for the fulfilment of its mandate. It should be nonetheless emphasized that the lack of full financial autonomy of the GNCHR does not affect the independent fulfilment of its mandate. However, the fact that the GNCHR has to go through approval of its expenses on an *ad hoc* basis makes it particularly difficult for it to plan its activities, to organise and manage its infrastructure and human resources in a timely and proper manner and, generally, to function flexibly and efficiently. The GNCHR is striving to overcome these problems with high-quality work. It is using its resources and staff to the maximum extent in order to accomplish its mission while the personal contributions of its members should also be appraised.

Non-discrimination, equality between men and women, prohibition of advocacy of national, racial or religious hatred and minority rights (Arts. 2, 3, 20, 26 and 27)

(Paragraph 5 LOIs) Impact of the crisis and austerity measures on women

The GNCHR has made, in the recent past, various observations on the impact of the crisis and austerity measures on women¹. No progress has been made ever since. The deregulation of employment relations due to the growing financial crisis and the successive austerity measures continue to aggravate the position of women in the labour market, rendering them even more vulnerable.

The GNCHR expresses its concern regarding the marginalization of women in the labour market as reflected in the high female unemployment rates. Besides, the severe pension cuts affecting widows and other categories of women have also had a negative impact. Furthermore, the reversal of the hierarchy of Collective Agreements (CAs) and the weakening of the National General CA and the sectoral CAs affect gender equality in pay and thus lead to the widening of the pay gap since the CAs used to be the best means to promote and protect equal and uniform pay and employment conditions.

Another source of concern is the continuous reduction of the already insufficient day-care structures for children and dependent persons as well as other social structures limiting women's ability to take up employment or keeping them in jobs with reduced rights. This perpetuates gender stereotypes since men are not encouraged to participate in such care. The harmonisation of family professional life should be a concern for both men and women. There is also a disturbing rise in discriminatory practices against women employed within the framework of sub-contracting or temporary employment. In such cases, women are targeted especially if engaged in trade-union activity².

The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has expressed its concern about the “disproportionate impact” on women of the crisis and austerity measures as well as the widening of the pay gap to the latter's detriment. The CEACR stresses in particular that “the combined effect of the financial crisis, the growing informal economy and the implementation of structural reform measures adversely affected the negotiating power of women, and would lead to their over-representation in precarious low-paid jobs”. The UN Committee on the Elimination of Discrimination against Women³ and the CoE Commissioner for Human Rights has also emphasized the serious impact of the crisis and austerities measures on women⁴.

As regards the private sector, the rapid growth of flexible forms of employment and the replacement of contracts of indefinite duration with fixed-term contracts lead to a significant reduction in wages. The CEACR stresses, referring to the Ombudsman, that it is usual that flexible forms of employment, mainly part-time and rotation work, are offered to women especially during pregnancy and upon return from maternity leave. This reduces their levels of pay, while lay-offs due to pregnancy, maternity and sexual harassment are on the increase. "Flexibility had been introduced without sufficient safeguards for the most vulnerable, or safeguards which had been introduced by law were not effectively enforced"⁵.

In fact, unemployment, especially among women and young people, is particularly high while according to the CEACR “a large number of women have joined the ranks of the ‘discouraged’ workers who are not

¹ 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); 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](#) (9.4.2014); GNCHR, [Observations on the Draft of the Second Periodic Report of the Hellenic Republic for the International Covenant on Civil and Political Rights \(ICCPR\)](#) (5.12.2013).

² GNCHR, [Workers' rights and conditions of work in the framework of sub-contracting](#) (9.7.2009). See also: INE-GSEE, *The participation of women in the administration of GSEE worker's syndicates*, 2015.

³ Committee on the Elimination of Discrimination against Women, *Concluding Observations: Greece*, CEDAW/C/GRC/CO/7 (26.4.2013), par. 28.

⁴ Council of Europe, Commissioner for Human Rights, [Safeguarding human rights in times of economic crisis](#), November 2013, p. 23 and [Protect women's rights during the crisis](#).

⁵ Observation (CEACR) - adopted 2011, published 101st ILC session (2012), [Equal Remuneration Convention, 1951 \(No. 100\), Greece](#) (Ratification: 1975). See also, Observation (CEACR) - adopted 2014, published 104th ILC session (2015), [Equal Remuneration Convention, 1951 \(No. 100\), Greece](#) (Ratification: 1975).

accounted for in the statistics” and “small and medium-sized enterprises, which are an important source of employment for women and young people, close down massively”⁶.

According to the latest data of the Greek Statistical Authority (hereinafter ELSTAT), in May 2015 (which is, notably, a month of seasonal employment), male unemployment rate was 22,4% while female unemployment rate was 28,2%⁷.

Moreover, as the ECSR and other treaty-bodies remark, fiscal consolidation decisions and austerity measures are taken without any ex ante or even ex post impact assessment. In addition, “recalling that CAs have been a principal source of determination of pay rates, the Committee refers to its comments on Convention No. 98 and calls upon the Government to bear in mind that collective bargaining is an important means of addressing equal pay issues in a proactive manner, including unequal pay that arises from indirect discrimination on the ground of sex”⁸.

The Committee may wish to recommend that the State Party:

- a) Take necessary measures, carefully and without any delay, in cooperation with the social partners, to monitor the evolution and impact of the austerity measures on the remuneration of men and women in the public and private sectors, with a view to determining the most appropriate means to address the disproportionate impact of the crisis and austerity measures on women;**
- b) Strengthen the Labour Inspectorate (SEPE) and the Ombudsman, so that any labour protection policy may be effective.**

(Paragraph 5 LOIs) Accessibility of public buildings and public transportation

The GNCHR considers the ratification by Greece of the United Nations Convention on the Rights of Persons with Disabilities (Convention) and its Optional Protocol (Protocol) an important step towards protecting fundamental human rights in Greece. The Convention and the Protocol were approved by Parliament on 31 May 2012⁹ by Law 4074/2012. They were then ratified and entered into force globally on 31 June 2012. However, on a first, indicative level, the GNCHR identified serious problems arising from the approving law as well as the implementation of the Convention in practice¹⁰.

Inadequate legislative compliance with the Convention: Article 3 of the approving law reads as follows: “By decision of the Prime Minister, in accordance with Article 33(1) of the United Nations Convention on the Rights of Persons with Disabilities, a focal point is designated in the government for monitoring the implementation of the Convention along with a coordination mechanism for facilitating related action.” This provision constitutes inadequate compliance with the obligations undertaken by the Greek State upon ratification of the Convention, since it enables the Prime Minister to only implement Article 33(1) of the Convention and not the remaining paragraphs thereof. Pursuant to this enabling provision, Prime Minister’s decision No. 426/02.20.2014 “Designation of a focal point for monitoring the implementation of the United

⁶ Observation (CEACR) - adopted 2011, published 101st ILC session (2012), [Equal Remuneration Convention, 1951 \(No. 100\), Greece](#) (Ratification: 1975). See also Observation (CEACR) - adopted 2012, published 102nd ILC session (2013) [Discrimination \(Employment and Occupation\) Convention, 1958 \(No. 111\), Greece](#).

⁷ ELSTAT, [Press Release](#), 6 August 2015.

⁸ Observation (CEACR) - adopted 2011, published 101st ILC session (2012), [Equal Remuneration Convention, 1951 \(No. 100\), Greece](#) (Ratification: 1975). See also Observation (CEACR) - adopted 2012, published 102nd ILC session (2013), [Discrimination \(Employment and Occupation\) Convention, 1958 \(No. 111\), Greece](#). See also, ILO High Level Mission to Greece, Report (November 2011), op. cit., par. 126; ILO, Application of International Labour Standards 2014 (I), Report of the CEACR, International Labour Conference, 103rd Session, 2014, p. 111-112, available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_235054.pdf.

⁹ See http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=68&Lang=en.

¹⁰ GNCHR, [International Convention on the Rights of Persons with Disabilities: Problems regarding its implementation](#) (9.10.2014).

Nations Convention on the rights of persons with disabilities (Law 4074/2012, OJ A 88) along with a coordination mechanism for facilitating related action” (OJHR B 523/02.28.2014). With the Sole Article of this decision, a focal point is designated for monitoring the implementation of the Convention along with a coordination mechanism for facilitating related action. This focal point shall be the Ministry of Labour, Social Security and Welfare. Moreover, the decision reproduces word for word Article 33(3) of the Convention (above No. 2(c)). Thus, due to the inadequacy of the enabling statute, independent mechanisms, which would have promoted, protected and monitored the implementation of the Convention, have not been established, as required by Article 33(2) of the Convention. A single mechanism of this kind may even be established or this mission may be assigned to an existing independent body; it is sufficient that this body be independent and dispose of the necessary means (adequate specialised staff and funding) for fulfilling this mission. This omission constitutes a serious violation of the Convention since it considerably reduces its effectiveness. For this purpose, the enabling provision must be completed. Besides, the word-for-word reproduction of Article 33(3) of the Convention in the aforementioned Prime Minister’s Decision is pointless. A provision must be drawn enabling an administrative authority to take particular measures which shall grant civil society, in particular persons with disabilities and their representative organizations, the possibility to be involved and to fully participate in the monitoring process of the Convention.

Inadequate compliance in practice: The substantive provisions of the Convention guarantee the rights of persons with disabilities and impose relevant obligations on States Parties. Among these rights of utmost importance for avoiding social exclusion is the right of access for all persons with disabilities on an equal basis with others to public or private facilities and services which are open or provided to the public such as roads, transportation, buildings, housing, medical facilities, workplaces, monuments, sites of cultural importance etc. (Articles 9 and 30(1) of the Convention). In spite of significant advances, such comprehensive access remains a challenge for several buildings housing public services, including court premises.

The Committee may wish to recommend that the State Party:

- a) Promulgate legislative provisions specifically enabling administrative authorities to take measures for the implementation of Article 33(2-3) of the United Nations Convention on the Rights of Persons with Disabilities;**
- b) Take immediate measures in order to render essential public or private facilities and services accessible to persons with disabilities.**

(Paragraph 8 LOIs) Racism and xenophobia

Anti-racism legislation: Law 4285/2014 amended certain provisions of Law 927/1979 in order to bring national legislation in line with Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law, and added a new provision to the Penal Code. Article 1.1 of Law 927/1979, as amended, makes the intentional public incitement to acts or activities that may result in discrimination, hatred or violence against individuals or groups based on their racial, national or ethnic origin, colour, religion, sexual orientation or gender identity a criminal act. Article 1.4 prohibits the creation or leadership of, or participation in, a group that promotes racism, while Article 4 provides for the criminal liability of legal entities. Besides, a new provision was added to the Penal Code (article 81A), which makes racist motivation a general aggravating circumstance for all offences. Until this amendment the racist motive was taken into account only in the sentencing stage and was effectively precluded from the initial stages of investigation and prosecution.

The GNCHR has repeatedly underlined the need to address and combat racism and xenophobia and has addressed relevant recommendations to the Greek Authorities¹¹. The GNCHR expresses, in particular, its concern regarding the inadequate criminal punishment of acts of racist violence. The Racist Violence Recording Network, established by the GNCHR and the High Commissioner's for Refugees office in Greece, notes that "according to the recent legislative amendment, it is now necessary to prosecute hate crimes on the basis of the specific criminal offence as regulated in the Penal Code, in conjunction with the general aggravating circumstance regulated in Article 81A of the Penal Code. Consequently, the investigation of bias motivation both at the stage of preliminary investigation ordered by the Public Prosecutor and at the stage of ex proprio initial investigation by the police becomes even more necessary"¹².

Furthermore, the European Commission Against Racism and Intolerance (ECRI) recommended 'language' and 'citizenship' to be included in the list of grounds of Article of Law 927/1979 and Article 81A of the Criminal Code. It also recommends that the offences concerning the public dissemination, public distribution or production or storage of racist material to be included in the law¹³.

Protection of victims: Law 4332/2015 indeed provided that victims or material witnesses of the racist acts penalized under the relevant legislation may be granted, under certain conditions, a residence permit on humanitarian grounds, until a judgment has been delivered or the case has been closed. This is in compliance with repeated GNCHR recommendations initially for the provision to be adopted¹⁴, as indeed was the case with Joint Ministerial Decision (JMD) No. 30651/2014; and subsequently for it to be integrated in the Immigration and Social Integration Code, for reasons of legal certainty¹⁵. This is a particularly important development in view of the repeated condemnations of Greece by the European Court of Human Rights for degrading treatment of migrants by persons acting in an official capacity and inadequate investigation of related complaints.

In order to avoid discouraging victims to press charges, the Racist Violence Recording Network (RVRN) has also underlined the need a) to refrain from prosecuting persons illegally entering the country and b) to prohibit the arrest and detention of the victims and witnesses who press charges, for the period between pressing the charges and the issuance of the special prosecutor's act¹⁶.

Information on racist hate crimes: In May 2015 the Racist Violence Recording Network presented its 2014 annual report¹⁷, analyzing the quantitative and qualitative findings of racist violence and hate crime recordings by the organizations participating in the Network. During the period between January-December 2014, the RVRN recorded, through interviews with the victims, 81 incidents of racist violence with more than 100 victims. In 46 incidents, immigrants or refugees were targeted because of their ethnic origin or skin color, while 32 incidents were committed against LGBTIQI persons (in three of these cases the victims were foreigners). Finally, in 3 anti-Semitic attacks sacred places and symbols were desecrated. According to the

¹¹ GNCHR, *Press Release: Memorandum of the Greek National Commission for Human Rights (GNCHR) on the Antiracist Legislation* (16.9.2013), *Annual Report 2012-2013*; GNCHR, *Press Release: Memorandum of the Greek National Commission for Human Rights (GNCHR) on the Bill on Combating Racism and Xenophobia* (17.12.2013), *Annual Report 2012-2013*; GNCHR, *Comments on the bill by the Ministry of Justice, Transparency and Human Rights on "Combating certain forms and expressions of racism and xenophobia by means of criminal law"*, *Annual report 2011*; GNCHR, *Report: Dealing with racist violence: Legislative, Judicial and Police Responses, Annual Report 2011*; GNCHR, *Report: Extremist Groups, Public Discourse and Racism in Sports, Annual Report 2011*.

¹² RVRN, [Press Release on recent legislative amendment on combating racist crimes](#) (8.1.2015).

¹³ Council of Europe, European Commission Against Racism and Intolerance (ECRI), *Report on Greece* (fifth monitoring cycle), 24 February 2015, CRI(2015)1.

¹⁴ GNCHR, [Press Release "Withdrawal of Article 19 from the draft Law "Immigration and Social Inclusion Code"](#) (24.3.2014).

¹⁵ see GNCHR, [Observations on the Bill by the Ministry of Internal Affairs entitled "Incorporation in the Greek legal order of Directives 2011/98/EC on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State and 2014/36/EC on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers, regulations regarding citizenship issues and other provisions"](#) (12.11.2014).

¹⁶ RVRN, [Press Release on recent legislative amendment on combating racist crimes](#), 8.1.2015.

¹⁷ <http://rvrn.org/2015/05/annual-report-2014/>.

RVRN, there are indications that Greek society is familiarised with violence and the targeting of people on the basis of their ethnicity, skin color, religion, race, sexual orientation and/or gender identity. This finding is based on the three basic qualitative trends that were documented by the RVRN.

Furthermore, despite the criminal investigation of racially motivated criminal acts following the murder of Pavlos Fyssas, attacks against refugees and immigrants continue to represent the majority of the recordings. Even though the intensity of the attacks appears reduced, the pattern of organized attacks by groups of people and physical assaults has not stopped.

The Committee may wish to recommend that the State Party:

- a) Ensure the implementation of the antiracism legislation;**
- b) Recognise the right to civil action to legal entities or associations;**
- c) Provide on-going training to law enforcement personnel and members of the judiciary in order to ensure the proper investigation of racial motivation and the collection of relevant data, in the light of the recent legislative amendments.**

(Paragraph 9 LOIs) Roma

The GNCHR has repeatedly expressed its concern about the widespread prejudice which dominates Greek public opinion and the Greek Media, highlighting that the issues surrounding the protection of Roma rights are not limited to minority rights issues but in fact include individual rights as well¹⁸.

As observed by the Greek Ombudsman in its recent Report (2014), little progress has been made in the general situation of Roma in Greece, and particularly on issues pertaining to housing, education, access to employment and public services¹⁹.

From the outset, the GNCHR stressed that the Integrated Action Plan (IAP) for the Social Inclusion of the Greek Roma lacked the solid legal guarantees that are able to neutralize the factors that undermine it. As reported by the Ombudsman, there is no institutionally and regulatory integrated framework in place able to ensure the effective participation/integration of Roma in Greek social life.

In its recent report on Greece (February 2015), ECRI observes: “The National Strategy for Social Integration of Roma 2012-2020 has the objective of ending the social exclusion of Roma and creating conditions for their integration. The previous Integrated Action Plan, with broadly similar objectives, has largely failed. There was also insufficient participation of Roma representatives in its evaluation”. The Greek Ombudsman expresses the same concerns in its recent Report (2014)²⁰, thus concurring with the GNCHR’s findings and concerns.

Education: The GNCHR considers the segregation of Roma children unacceptable but finds that their dispersion in schools located in areas remote from their residence as a means to avoid remains controversial. Regarding the integration of Roma children into the educational procedure, the registration and documentation of the specific school population of every region and the collection of all relevant data on Roma communities is necessary. The training of Roma mediators serving as a link between Roma communities and schools is also necessary²¹.

¹⁸ GNCHR, [Observations on the Draft of the Second Periodic Report of the Hellenic Republic for the International Covenant on Civil and Political Rights \(ICCPR\)](#) (5.12.2013); GNCHR, [Observations on the Draft Report of Greece on CERD](#) (2008).

¹⁹ Ombudsman, [Combating discrimination-Special Report 2014](#), p. 118.

²⁰ *Ibid*, p. 119.

²¹ GNCHR, [GNCHR Observations on the Draft of the Second Periodic Report of the Hellenic Republic for the International Covenant on Civil and Political Rights \(ICCPR\)](#) (5.12.2013).

The Committee may wish to recommend that the State Party:

Put in place a regulatory integrated framework able to ensure the effective participation/integration of Roma in Greek social life.

Right to life, violence against women, including domestic violence, and prohibition of torture and cruel, inhuman or degrading treatment (arts. 3, 6 and 7)

(Paragraph 10 LOIs) Domestic Violence

The Greek legislation: The GNCHR welcomed Law 3500/2006 “on combating domestic violence”.²² However, it stills considers that the Law still does not fully and effectively deal with domestic violence.²³ In particular, it does not criminalise all offences of domestic character. It fails to address the essence of the phenomenon of violence against women and its root causes (the persisting roles of “man-master” and “woman-servant”). It does not create legal certainty, as most of its provisions are not incorporated in the Codes, subject matters of which it regulates, such as the Penal Code, the Civil Code, the Codes of Penal and Civil Procedure. In particular, the GNCHR has observed that:

- (a) The acts criminalised by the Law were already covered by the Pen.C, except for marital rape, marital sexual abuse and acts committed in the presence of minors. This creates confusion as to which acts are regulated by the Penal Code or Law 3500/2006.
- (b) The Law is gender-neutral regarding perpetrators and victims. It fails to address the reasons why in practice the perpetrator - husband or partner of the female victim - normally escapes punishment.
- (c) No ad hoc institution to deal with the matter is established.
- (d) It is questionable whether the penal mediation introduced is constitutional (the Prosecutor, to whom it is entrusted, is given judicial competences incompatible with his/her office) and effective.
- (e) The police and the Prosecutor remain the main actors of the prejudicial phase, although they have proven to be unsuitable for the task, while the establishment of an ad hoc specialised body, such as a body of family social workers, is not provided for.

The GNCHR deplores the continued delay in ratifying the Istanbul Convention. Greece has signed (11.5.2011) but not yet ratified the CoE Convention on preventing and combating violence against women and domestic violence (“Istanbul Convention”).

The implementation of the Greek legislation: Law 3500/2006 is an important step forward. However, domestic violence against women and children has not significantly decreased²⁴. The GNCHR has deplored that while there seem to be a significant number of cases, very few perpetrators are prosecuted and punished. This is also a main concern of the Committee against Torture, which also deplores the fact that the Greek Pen.C does not list rape and other acts of sexual violence as forms of torture but rather as “serious breaches of sexual dignity”²⁵.

Raising awareness to the phenomenon of domestic violence is still needed, mainly due to persisting patriarchal attitudes and deeply rooted stereotypes regarding the role and responsibilities of women and men as well as discriminatory practices. The CEDAW Committee has deplored the lack of State measures to eliminate stereotypes and negative traditional attitudes and practices. There are only a few studies on violence against women and domestic violence and their root causes and no statistical data on violence based on sex, age, minority/ethnic origin and the relationship between the perpetrator and the victim. We

²² *Written submission by the Greek National Commission for Human Rights to the Human Rights Council, A/HRC/29/NI/2, 12 June 2015.*

²³ GNCHR, *Comments on the Bill entitled Combating Domestic Violence* (9.2.2006).

²⁴ GNCHR, *Observations on the Draft of the Second Periodic Report of the Hellenic Republic for the ICCPR* (5.12.2013).

²⁵ UN Committee against Torture, *Conclusions and Recommendations: Greece, CAT/C/GRC/CO/5-6* (27.6.2012), para. 23.

concur with the UN Committee against Torture, which urges state authorities to organise wide awareness-raising campaigns and training courses on the prevention of violence against women and girls, for officials who are in direct contact with victims (law enforcement officers, judges, lawyers, social workers, etc.) and the general public²⁶.

The National Action Plan on Preventing and Combating Violence against Women 2009–2013: The GNCHR welcomed the protection measures for victims of domestic violence included in the National Action Plan on Preventing and Combating Violence against Women 2009 – 2013; however, it highlighted that female victims are not always ensured effective access to justice. While applauding the exemption of domestic violence victims from court fees required for lodging a complaint (Article 28 Law 4055/2012), the GNCHR insisted that lack of awareness by women as to their rights and the means to exercise them still hinders their protection²⁷.

National Criminal Statistics: Statistics on domestic violence are collected by the police and are publicly available. They present all cases investigated by the police and include the number of domestic violence victims. The data are gender- and age-disaggregated for victims only. Although the gender of perpetrators is also provided, this is not linked to the victim's gender; hence, the number of female victims of male perpetrators cannot be deduced. For femicides, the gender (not age) of perpetrators is provided. This information is further disaggregated to show the relationship between victim and perpetrator. Information on femicides shows 17 women murdered in 2011 and a total of 70 women murdered since 2007 by a male in a domestic context. Of the 70 women murdered, 46 were killed by their intimate partner (26 by their husband, 6 by their former husband and 14 by another intimate partner)²⁸. 149 rapes and 85 rape attempts were reported in 2013, and 134 rapes and 64 rape attempts in 2014²⁹.

The Committee may wish to recommend that the State Party:

- a) Improve its legislation “on combating domestic violence”;**
- b) Ensure to domestic violence victims effective access to justice;**
- c) Continue to take measures to raise awareness of the problem of domestic violence and to protect the victims;**
- d) Collect statistical data on domestic violence disaggregated by sex, age, and relationship between victim and perpetrator with due consideration to the national legislation on the protection of sensitive data, and undertake studies and/or surveys on the extent of violence against women and its root causes.**

Elimination of slavery and servitude (art. 8)

(Paragraph 14 LOIs) Human Trafficking

Greece has ratified the UN Convention against Transnational Organized Crime and the Protocols Thereto (Law 3875/2010), the Council of Europe Convention on Action against Trafficking in Human Beings (Law 4216/2013) and has transposed Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims (Law 4198/2013). In application thereof, the Office of National Rapporteur on Trafficking in Human Beings has been created and remains very active.

²⁶ UN Committee against Torture, *Conclusions and Recommendations: Greece, loc. cit.*

²⁷ GNCHR, *Recommendations on the Bill on “Fair satisfaction due to the excess of the reasonable length of proceedings in civil and criminal courts and the Court of Auditors”* (30.1.2014).

²⁸ European Anti-Violence Network (March 2013): Information provided based on data received from the National Police. See also WAVE, *Country Report 2012*, p. 115.

²⁹ *Hellenic Police statistics*, available (in Greek) at: www.astynomia.gr/images/stories/2014/statistics14/2014epikrateia.xls.

However, there is further need for effective implementation of the legal provisions³⁰. Furthermore, there is a lack of special measures for the combating of trafficking among children as well as among Roma adults and children, which presents particularities and should be handled on a separate basis. The GNCHR remains committed to continued vigilance over the the effective prevention and protection of trafficking victims, the prosecution of perpetrators and the assistance to victims.

The Committee may wish to recommend that the State Party:

- a) Ensure effective implementation of the national anti-trafficking legislation;**
 - b) Ensure that the implementation of anti-trafficking policy take into account the needs of vulnerable populations.**
-

Treatment of aliens and protection of children (arts. 2, 7, 9, 10, 13, 24 and 26)

(Paragraphs 18-22 LOIs) Rights of migrants – asylum seekers in general

Greece faces an unprecedented refugee emergency with new record arrival numbers: a total number of almost a quarter of a million people arrived on the shores of the Aegean, an increase of 1017,42% over the numbers of the previous year. Congestion on islands has further increased³¹ with 56.610 people arriving in the islands in July 2015 and 109.940 people in August 2015. Drastic action in the past weeks has helped to manage the influx but the sheer numbers involved exceeds the capacity of the system to deal with them. The GNCHR recently called [the European Union to urgently assume its responsibilities and redesign its asylum policy](#) (31.8.2015), so that, along with the UN, can act in a consistent and effective manner, in order to show the human face of the EU and so that the values and principles which form the foundation of European civilization are not simply words on paper. The GNCHR also attaches itself to the Open Letter addressed by Professor Alan Miller, President of the European Network of National Human Rights Institutions (ENNHRI) to the European Council on 10 September 2015 on the occasion of the Extraordinary Council of Interior Ministers on 14 September 2015³².

The GNCHR had also expressed its deep concern regarding the recurring [sea tragedies and the loss of human lives in the Mediterranean](#) (20.4.2015). It has also contributed to the drafting of the [ENNHRI Statement on the continuing tragedies in the Mediterranean Sea, a human rights approach](#) (April 2015).

Even prior to the summer 2015 influx, the GNCHR welcomed the establishment of the new autonomous Asylum Service and the Appeals Authority³³. However, the new Asylum System remains understaffed (25% of the foreseen posts are not filled) and not all the Regional Asylum Offices are established. Such deficiencies were further exacerbated in crisis conditions, as a considerable number of those who want to seek asylum but are unable to register in a timely manner may be at risk of removal and, potentially, refoulement³⁴. The GNCHR called on the Greek Authorities to investigate claims included in reports by

³⁰ GNCHR, [GNCHR Observations on the Draft of the Second Periodic Report of the Hellenic Republic for the International Covenant on Civil and Political Rights \(ICCPR\)](#), Annual Report 2012-2013, p. 69 and GNCHR, [Position and Recommendations regarding Human Trafficking-The Situation in Greece](#), Annual Report 2007.

³¹ UNHCR, Greece, *UNHCR Operational Update*, August 2015, http://www.unhcr.gr/fileadmin/Greece/Extras/Arrivals/operational/Greece_Operational_Update_2.pdf.

³² ENNHRI, *An Open Letter from the Chair of ENNHRI to all its Members within the European Union, 10 September 2015*, Brussels, http://www.nchr.gr/images/pdf/nea_epikairothta/Open%20Letter%20from%20ENNHRI%20Chair%20on%20Refugee%20Crisis%20Sept%202015.pdf.

³³ The GNCHR itself contributed to the staffing of the Appeals' Committees. See GNCHR in a [Public Statement](#) (9.10.2014) expressed its deep concern about the obvious legality issues arising from the procedure regarding the establishment of the Appeals Committees under Law 3907/2011, as amended.

³⁴ UNHCR, [UNHCR observations on the current asylum system in Greece](#), December 2014.

international and European bodies, according to which operations of repulsion and refoulement of third country nationals constitute standard policy for addressing the immigration problem³⁵.

Concerning the asylum system and, especially its second degree of examination, the Appeals Committees, the GNCHR notes the Third Joint Submission of the International Commission of Jurists (ICJ) and of the European Council on Refugees and Exiles (ECRE) to the Committee of Ministers of the Council of Europe in the case of *M.S.S. v. Belgium and Greece* (Application no. 30696/09) and related cases (May 2014, page 13). According to it "the institutional independence of the Appeals Committees is seriously compromised where civil servants, such as the Director of the Appeals Authority and the experts-rapporteurs, who are ultimately appointed by the Minister for Citizen Protection, have, in practice, binding powers able to potentially interfere with the work of the Appeals Committees. It appears that Appeals Committees are neither masters of their own procedure, nor can they fully assess a case of their own motion or on the basis of information sent to them directly and not through their Secretariat. The fact that the Committee members' mandate is only two years and is subject to renewal by the Minister for Citizen Protection also suggests a lack of institutional independence. Furthermore, the fact that the new legislation has reduced this appointment period to one year and increased the discretion of the Ministry in the appointment of the Committee members sheds serious doubts on the institutional independence of the Committee system in law and in practice. The fact that legal aid is not available at the Asylum Service and Appeals Committees stage also undermines the effectiveness of this remedy. For these reasons, the ICJ and ECRE consider that the Appeals Authority and its committees, as their rules stand, cannot be considered to be a mechanism that administers an effective remedy under article 13 ECHR, read in conjunction with article 3 ECHR".

The GNCHR has reiterated that continuing insecurity in countries of origin, which results in the increase of the flows, impose the need for revision of EU policy. In this respect, it should be taken into consideration that the respect of human life and dignity as well as the respect of the non-refoulement principle for persons in need or potentially in need of protection is a binding obligation under international and European law, not merely for Greece but also for every European State. In this context, the GNCHR has highlighted the need for more solidarity and responsibility-sharing among EU Member States. In view of the growing migration flow, it is not merely by providing financial assistance to Greece and other border countries that the EU will fulfil its primary duty to protect human rights. The EU asylum system must be re-designed and focus on human dignity and rights – not merely on ways to stockpile human beings in some Member States. The Resolution of the European Network of National Human Rights Institutions (ENNHRI, January 2014), of which GNCHR is a member, should also be underlined. ENNHRI calls on the EU institutions and Member States to take urgent action regarding the Syrian refugee crisis, in particular for the immediate application of the EU Directive on Temporary Protection and coordinated action for enhanced sea rescue and individual evaluation of refugees.

In its oral statement at the presentation of the Report of the UN Special Rapporteur on Human Rights of Migrants, Mr. François Crépeau³⁶, the GNCHR thanked the Special Rapporteur for recalling that "Greece is the custodian of an external EU border" and requesting "a European-wide approach to migrants' human rights". Fully concurring with his Conclusions and Recommendations, the GNCHR particularly thanked him for recommending its reinforcement through the provision of competent staff and resources. The GNCHR also stated that "it is very glad that the Report includes recommendations to the EU and stresses the need for more solidarity and responsibility-sharing among EU Member States. The recommended revision of the Dublin Regulation is crucial. In view of the growing migration flow, it is not merely by providing financial assistance to Greece that the EU will fulfil its primary duty to protect human rights. The EU asylum system must be re-designed and must focus on human dignity and rights – not merely on ways to stockpile human beings in some Member States".

³⁵ GNCHR, "[Observations on the Draft of the Second Periodic Report of the Hellenic Republic for the International Covenant on Civil and Political Rights \(ICCPR\)](#)", 5.12.2013.

³⁶ GNCHR, [Oral Statement of the GNCHR](#) delivered by the Geneva Representative of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), Mr Bruce Adamson, during the 23d session of the United Nations Human Rights Council on the report of the Special Rapporteur on the Human Rights of Migrants, Mr François Crépeau, following his visit to Greece (27.5.2012), *Annual Report 2012-2013*, pp. 99-100.

Sadly, the Dublin III Regulation³⁷ does not effectively realise the fundamental EU principles of solidarity, human dignity and fair sharing of responsibility proclaimed by the Treaties and the EU Charter (Art. 1 EU Charter, Arts. 2 and 3(3) TEU, 80 TFEU—asylum policies). Moreover, most measures against migration flows amount to automatic refoulement. Consequently, the deep human rights concerns in Greater Europe and the UN remain.

The GNCHR included similar observations in its oral statement at the presentation of the Report of the UN Working Group on Arbitrary Detention³⁸ and in its submissions to the Regional Representative for Europe Office of the High Commissioner for Human Rights, Mr. Jan Jařab and to the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mr. Mutuma Ruteere.

The GNCHR has repeatedly called³⁹ on the Greek authorities to comply with the recommendations of international bodies⁴⁰ and guarantee that detention conditions are in line with the right to health and human dignity.

(Paragraph 19 LOIs) Unaccompanied minors (UAM)

As previously underlined by the GNCHR⁴¹, the UN Committee on the Rights of the Child (CRC) has expressed its concern that the public prosecutors either are unable to assign the guardianship to a responsible person or agency, or transfer the guardianship to directors of the reception centres for minors, and that the duties of the temporary guardian are vague and unclear⁴².

The ECtHR has already found a violation of art. 5.1 ECHR, as the Greek authorities had not taken appropriate measures in order to place the minor in a special accommodation centre (ECtHR, *Housein v. Greece*, application No. 71825/11 (24 October 2013)). The case concerned the detention of an unaccompanied minor for a two months period in Filakio detention centre.

Recently, the Greek Ombudsman⁴³ has also highlighted the absence of a reliable system for the age assessment procedure for minors (apart from the procedure provided to UAM subject to First Reception Services, see Ministerial Decision 92490/4.10.2013, Government Gazette B, 2745/ 29.10.2013). According to the Ombudsman, the procedure prescribed by the relevant Ministerial Decision, governing age assessment

³⁷ Regulation (EU) No. 604/2013 (criteria and mechanisms for determining the Member State responsible for examining an application for international protection (recast)), OJ L 180/31, 29.6.2013.

³⁸ GNCHR, [Oral Statement on the Report of the UN Working Group on Arbitrary Detention](#) during the 27th session of the United Nations Human Rights Council (8-26 September 2014).

³⁹ GNCHR, “Detention Conditions in Police Stations and Detention Facilities for Aliens”, [Annual Report 2010](#), p. 82; GNCHR, “Findings of the in situ visit undertaken by the GNCHR and the Greek Ombudsman in detention facilities for aliens in the Evros Region”, [Annual Report 2011](#), p. 85; GNCHR, [“Observations on the Draft of the Second Periodic Report of the Hellenic Republic for the International Covenant on Civil and Political Rights \(ICCPR\)”](#), 5.12.2013.

⁴⁰ Council of Europe, Committee for the Prevention of Torture (CPT), Report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 4 to 16 April 2013, 16 October 2014, CPT/Inf (2014) 26, §§ 57 – 92. Several ECtHR judgments have found a violation of Article 3 ECHR due to inadequate conditions of detention and systemic deficiencies in the asylum procedure. E.g. *E.A. v. Greece*, No 74308/10, 30 July 2015; *Mahammad and others v. Greece*, No 48352/12, 15 January 2015; *Al. K. v. Greece*, No 63542/11, 11 December 2014; *Mohamad v. Greece*, No 70586/11, 11 December 2014; *A.E. v. Greece*, No 46673/10, 27 November 2014; *MD v. Greece*, No 60622/11, 13 November 2014; *H.H. v. Greece*, No 63493/11, 9 October 2014; *F.H. v. Greece*, No 78456/11, 31 July 2014; *Tatishvili v. Greece*, No 26452/11, 31 July 2014; *Los Santos and de la Cruz v. Greece*, No 2134/12, 2161/12, 27 June 2014; see also *Tabesch v. Greece*, No. 8256/07, 26.11.2009; *S.D. v. Greece*, No. 53541/07, 11.6.2009; *Rahimi v. Greece*, No. 8687/08, 1.04.2011; *M.S.S. v. Belgium and Greece*, No. 30696/09, 21.01.2011. See also, CJEU Judgments: Joined Cases C-411/10 and C-493/10 N.S. [2011] ECR I-13905, where the CJEU agreed with the ECtHR regarding systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers in Greece.

⁴¹ GNCHR, [Observations on the Draft of the Second Periodic Report of the Hellenic Republic for the International Covenant on Civil and Political Rights \(ICCPR\)](#), [Annual Report 2012-2013](#), p. 112. See also, GNCHR, [Recommendations regarding Unaccompanied Minors](#), [Annual Report 2007](#).

⁴² Consideration of reports submitted by States parties under article 44 of the Convention - Concluding observations: Greece, 13 August 2012, CRC/C/GRC/CO/2-3, (§ 62).

⁴³ Report of the Greek Ombudsman, [The issue of age assessment for unaccompanied minors](#), 6.10.2014.

procedures for UAM under First Reception Services should be applied to all UAM. An age assessment procedure based on a holistic approach (and not merely on medical examinations or other physical/somatometric parameters) should be adopted. In this context, the GNCHR observes that in case of a dispute concerning the exact age of the minor, the best interest of the child should be respected.

The Committee may wish to recommend that the State Party:

- a) Abolish police detention of unaccompanied minors having illegally entered the country and replace it by alternative measures of hospitality and/or protective custody in suitable facilities, while carrying out systematic registration, identification information and search for their family and their legal representation;**
 - b) Replace deportation by return and repatriation procedures, where possible;**
 - c) Ensure the appointment of an advisor or a custodian to every minor, especially in the field of childcare;**
 - d) Provide specialized personnel accompanied by an interpreter for free, so that access to medical care and legal aid may be guaranteed. Unaccompanied minors/ asylum seekers constitute a particularly vulnerable group;**
 - e) In case of minors victims of abuse, torture, inhuman or degrading treatment or armed conflict, provide to minors free access to healthcare and housing in accommodation centres under the auspices of the Services of the Ministry of Health. Also, they should have access to education until they learn the Greek language.**
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(Paragraph 20 LOIs) Changes in the Asylum System-Principle of Non-Refoulement

The GNCHR welcomes the operation of the new autonomous Asylum Service (1st level) and the Appeals Authority (2nd level). The GNCHR itself contributed to the staffing of the Appeals' Committees⁴⁴. Concerning the asylum system and, especially its second degree of examination, the Appeals Committees, the GNCHR notes the Third Joint Submission of the International Commission of Jurists (ICJ) and of the European Council on Refugees and Exiles (ECRE) to the Committee of Ministers of the Council of Europe in the case of *M.S.S. v. Belgium and Greece* (Application no. 30696/09) and related cases (May 2014, page 13). According to it "the institutional independence of the Appeals Committees is seriously compromised where civil servants, such as the Director of the Appeals Authority and the experts-rapporteurs, who are ultimately appointed by the Minister for Citizen Protection, have, in practice, binding powers able to potentially interfere with the work of the Appeals Committees. ... The fact that legal aid is not available at the Asylum Service and Appeals Committees stage also undermines the effectiveness of this remedy. For these reasons, the ICJ and ECRE consider that the Appeals Authority and its committees, as their rules stand, cannot be considered to be a mechanism that administers an effective remedy under article 13 ECHR, read in conjunction with article 3 ECHR".

The GNCHR called on the Greek Authorities to deeply investigate the claims and testimonies included in reports by international and European bodies, according to which operations of repulsion and refoulement of third country nationals constitute standard policy for addressing the immigration problem in Greece⁴⁵.

As the UNHCR has highlighted, First Reception Services were provided to a 20 per cent of the total population of new arrivals from January 2014 to September 2014. Thus, the majority of new arrivals do not benefit from reception services as foreseen by legislation. The new Asylum Service is not yet fully operational. Accordingly, not all the Regional Asylum Offices are established and the Asylum Service still

⁴⁴ GNCHR in a [Public Statement](#) (9.10.2014) expressed its deep concern about the obvious legality issues arising from the procedure regarding the establishment of the Appeals Committees under Law 3907/2011, as amended.

⁴⁵ GNCHR, *Observations on the Draft of the Second Periodic Report of the Hellenic Republic for the International Covenant on Civil and Political Rights (ICCPR), Annual Report 2012-2013*, p. 95

remains understaffed (25% of the foreseen posts are not fulfilled). The UNHCR is concerned about the continuous ineffectiveness of the system to ensure access to all persons claiming to be in need of international protection. As a consequence, a considerable number of those who want to seek asylum but are unable to register in a timely manner if at all, may be at risk of removal and, potentially, refoulement⁴⁶.

Recently, the Committee of Ministers has decided to continue the examination of the measures adopted by the Greek Authorities in compliance with the *M.S.S.* judgment and resume consideration of the issues regarding the asylum procedure and the conditions of detention in a forthcoming meeting in 2016⁴⁷. Besides, the UNHCR continues to advise Governments to refrain from returning asylum-seekers to Greece.

(Paragraph 21 LOIs) Detention Conditions of Migrants

The GNCHR has dealt many times with detention conditions of illegal migrants in Greece⁴⁸. The GNCHR has expressed its concerns regarding, among others, overpopulation and prolonged detention periods. The GNCHR has also underlined that the decision on the detention of an immigrant should be made in exceptional cases and only as an ultimum refugium, i.e. after all possible alternative measures have been taken into consideration.

The GNCHR has called on the Greek authorities to take into account and comply with the continuous recommendations of the CPT⁴⁹ and the other international bodies, but also with the GNCHR observations, in order to guarantee that detention conditions are in line with the right to human dignity and the right to health. Several ECtHR judgments⁵⁰ have found a violation of art. 3 ECHR due to inadequate conditions of detention and systemic deficiencies in the asylum procedure (of which ten (10) from the second semester 2014 up to date). Among them is the judgment in *AL .K. v. Greece* (No. 63542/11), 11.12.2014, where the ECtHR called for the adoption of general measures aiming at putting an end to the inhuman and degrading treatment prevailing in certain detention centers near the borders.

The Committee may wish to recommend that the State Party:

a) create open reception centres which should be constructed outside and be separated from detention or closed reception centres so as to increase their accessibility and not deter or discourage undocumented migrants from lodging asylum applications;

b) take, as a matter of priority, further steps to implement reforms of the asylum system necessary to comply with obligations under Article 3 and Article 13 ECHR. In particular, the Greek government should ensure institutional independence of the asylum appeals committee in the context of the right to an effective remedy guaranteed under international human rights law, which must be prompt, effective, accessible, provided through an impartial and independent procedure, must be enforceable, and lead to cessation of or reparation for the human rights violation concerned.

⁴⁶ UNHCR, *UNHCR observations on the current asylum system in Greece*, December 2014.

⁴⁷ Council of Europe, Committee of Ministers, *1222 DH meeting of the meeting of the Ministers' Deputies*, 12 March 2015.

⁴⁸ i.e. GNCHR, *Detention Conditions in Police Stations and Detention Facilities for Aliens, Annual Report 2010*, p. 82; GNCHR, *Findings of the in situ visit undertaken by the GNCHR and the Greek Ombudsman in detention facilities for aliens in the Evros Region, Annual Report 2011*, p. 85; GNCHR, *Observations on the Draft of the Second Periodic Report of the Hellenic Republic for the International Covenant on Civil and Political Rights (ICCPR), Annual Report 2012-2013*, p. 93-95.

⁴⁹ Council of Europe, Committee for the Prevention of Torture (CPT), Report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 4 to 16 April 2013, 16 October 2014, CPT/Inf (2014) 26, §§ 57 – 92.

⁵⁰ E.g. *E.A. v. Greece*, No 74308/10, 30 July 2015 ; *Mahammad and others v. Greece*, No 48352/12, 15 January 2015; *Al. K. v. Greece*, No 63542/11, 11 December 2014; *Mohamad v. Greece*, No 70586/11, 11 December 2014; *A.E. v. Greece*, No 46673/10, 27 November 2014; *MD v. Greece*, No 60622/11, 13 November 2014; *H.H. v. Greece*, No 63493/11, 9 October 2014; *F.H. v. Greece*, No 78456/11, 31 July 2014; *Tatishvili v. Greece*, No 26452/11, 31 July 2014; *Los Santos and de la Cruz v. Greece*, No 2134/12, 2161/12, 27 June 2014; see also *Tabesch v. Greece*, No. 8256/07, 26.11.2009; *S.D. v. Greece*, No. 53541/07, 11.6.2009; *Rahimi v. Greece*, No. 8687/08, 1.04.2011; *M.S.S. v. Belgium and Greece*, No. 30696/09, 21.01.2011. See also, CJEU Judgments: Joined Cases C-411/10 and C-493/10 N.S. [2011] ECR I-13905, where the CJEU agreed with the ECtHR regarding systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers in Greece.

Freedom of speech and association (arts. 7, 9, 19 and 21)

(Paragraphs 27 LOIs) Peaceful Demonstrations-Violence against journalists

Throughout this long crisis period (2010 to date), the country experienced an increased number of rallies of demonstrations, a significant number of which turned violent.⁵¹ In April 2012, the Greek Police issued a series of Guidelines for the cooperation between Police Officers and mass media representatives while doing their duty⁵². No further measures were taken to secure a safe and enabling working environment for all journalists and no particular effort was made to ensure investigation and prosecution of threats and attacks against journalists and media workers. In one example, two reporters and a photographer were targeted by police while covering a demonstration on 17 November 2014 marking the anniversary of a student uprising against the military dictatorship. The photos of a MAT police officer beating a photographer during a demonstration on 5 October 2011 went around the world. The policeman was given a suspended sentence of eight months in prison on a charge of aggravated assault but was never sanctioned for failing in his duty as a police officer. According to the World Press Freedom Index for 2014, most photographers and camera-operators tend to think that the police has no clear orders to attack journalists physically. Reporters Without Borders, nevertheless, argue that such attacks are never officially condemned, either publicly or internally. Impunity seems to be total, despite clear evidence of attacks supported by photos⁵³. Furthermore, it is claimed by certain journalists that despite the fact that complaints were filed, no action was taken.

⁵¹ Reporters without Borders, Greece. *Is the crisis in Greece a change for its media? Investigation Report*, September 2011, p. 7.

⁵² According to this text:

[... “Police Authorities shall smoothly cooperate with mass media, protecting the constitutionally guaranteed freedom of the Press (Article 14 Constitution), as long as it complies with the laws of the State (Article 14(1) Constitution), the right to security (Article 5 ECHR) and the need to safeguard public order.

- The relations between Police officers and mass media representatives (journalists, technicians, photojournalists, etc.) must be characterized by sincere cooperation, mutual understanding and trust.
- While on duty, we shall treat mass media representatives with respect for their role, always acting in the Force and the wider public's best interests.
- When in contact with mass media representatives we shall act on the basis of prudence, self-discipline, stability, decisiveness, objectivity and dignity. We shall always show understanding, responsibility and professionalism.
- While on duty, mass media shall be treated with justice in compliance with the principles of impartiality and equal treatment, without discrimination, exclusion or selective behavior.
- We shall never act authoritatively or violently and we shall never resort to self-redress against mass media representatives.

During police activity and operations mainly in public:

- We shall not forget that mass media are there to inform citizens and the public opinion.
- Their presence not only does not invalidate our work, but, on the contrary, it promotes and highlights it. Furthermore, it guarantees and proves legality, which shall always accompany every police activity.
- We shall provide mass media representatives with every possible protection and security and we shall pinpoint safe locations for them to work.
- We shall assist mass media representatives, providing every possible professional facilitation, always within the context of the distinct roles of Police and mass media.
- We shall evaluate and, once circumstances are appropriate, support any requests for assisting their professional activity and the fuller coverage of events.
- We shall remain within the context of acts relating to the exercise of our police duties and in case we are asked for information, we shall refer mass media representatives to the competent Services (Police Spokesman, Press and Journalist Information Offices).
- We shall not verbally argue and altercate with mass media representatives.

We shall always remember that:

- In any case, we shall totally respect the role and the mission of mass media and safeguard the constitutionally guaranteed citizens' right to information.
- The facilitation of the mission of mass media constitutes a constant factor in the process of building and maintaining good professional relations.
- Abiding by the rules of appropriate behavior, as provided by the Force's rules of procedure and imposed by the Code of Police Ethics, constitutes one of the fundamental obligations of police officers while cooperating with mass media representatives”.

⁵³ Reporters without Borders, Greece. *Is the crisis in Greece a change for its media? Investigation Report*, September 2011, p. 8, *op.cit.*

Moreover, according to the authors of the annual World Press Freedom Index view, the security situation has been aggravated by the rise of the neo-Nazi party Golden Dawn, whose leaders and supporters openly target journalists. Physical attacks have become systematic throughout the country. Physical attacks have become systematic throughout the country and death threats are growing⁵⁴.

The Committee may wish to recommend that the State Party:

Reinforce the legal framework for the effective protection of freedom of expression, press freedom and the right to information

⁵⁴ Reporters without Borders, *World Press Freedom Index 2014*, p. 26.

APPENDIX

Statement of the Greek National Commission for Human Rights (GNCHR) on the impact of the continuing austerity measures on human rights*

Following its unanimous decisions on the status of human rights in Greece during the implementation of measures to address the financial crisis⁵⁵, the Greek National Human Rights Commission (GNCHR), the independent advisory body to the Greek State specialised in human rights issues (founded by Law 2667/1998),

I. Recalling

1. the judgments of the national supreme courts⁵⁶ as well as the decisions and reports issued by national, European and international monitoring bodies concerning the continuing violation of a significant number of human rights in Greece, due to the financial crisis and the implementation of austerity measures⁵⁷,

II. Reaffirms that

2. austerity measures undermine fundamental constitutional principles and violate constitutionally guaranteed human rights such as the principle of equality (Article 4(1) of the Greek Constitution, hereinafter “the Constitution”) and its more specific expression, namely the contribution of citizens to public charges in proportion to their means (Article 4(5) of the Constitution), the right of equal access to education (Article 16(2) of the Constitution), the right to property (Article 17 of the Constitution), the right to health (Article 21(3) and Article 5(5) of the Constitution), the right to work (Article 22(1) of the Constitution), the right to social security (Article 22(5) of the Constitution), freedom of association (Article 23 of the Constitution), the principle of proportionality (Article 25(1) of the Constitution), the principle of social solidarity (Article 25(4) of the Constitution) as well as the principle of protected public trust towards State Institutions; moreover, austerity measures undermine the value of the human being, the respect and protection of which constitute the primary obligation of the State (Article 2 of the Constitution), seriously hinder the development of all persons (Article 5 of the Constitution), compromise the rule of law and the welfare State (Article 25(1) of the Constitution) and undermine the economic development of the country (Article 106 of the Constitution);

3. austerity measures violate rules of international and European human rights law, as affirmed by competent international and European monitoring bodies; and moreover the financing rules of International Financial Institutions (IFIs), namely of the International Monetary Fund or of other international or European mechanisms relating to the economic or financial support of a State, cannot circumvent the obligation to respect international and European human rights law, especially as these rules are also binding on all States participating in these mechanisms;

III. Recalls the commitments and obligations undertaken by the EU institutions and all EU member-States as these derive from

4. the EU Treaties, which place civil and social rights at the core of the EU and set social objectives (social inclusion, social justice and social progress) inextricably linked to the financial objectives and crucial to their effectiveness. Besides, the European Union “*is not merely an economic union, but is at the same time*

* Adopted by the GNCHR Plenary at its session of 15 July 2015.

⁵⁵ Attached Annex, II.

⁵⁶ Attached Annex, II and III.

⁵⁷ Attached Annex, II and III.

*intended, by common action, to ensure social progress and seek constant improvement of the living and working conditions of the peoples of Europe, as is emphasised in the Preamble to the Treaty*⁵⁸;

5. the Charter of Fundamental Rights of the European Union which echoes the common constitutional traditions of the EU members-States and the international human rights treaties that they have all ratified; guarantees indivisible civil and social rights, first and foremost the right to human dignity; proclaims that the EU “*places the individual at the heart of its activities*”⁵⁹ and is explicitly binding on both the member-States and the EU institutions. It is to be recalled that on the basis of this commitment, the European Network of National Human Rights Institutions (ENNHRI) has sent open letters to the Presidents of the European Commission and the European Central Bank, requesting them to take appropriate measures for the elimination of the serious violations of human rights that have been brought about by the austerity measures in Greece⁶⁰.

IV. Observes with particular concern that the prolonged implementation of austerity measures, which eventually acquire a permanent character,

6. leads to the degradation of the protection of human rights and, ultimately, to their non-fulfilment;

7. reverses the hierarchy of values and goals of the EU, giving priority to fiscal and financial objectives to the detriment of fundamental social values and disrupting the fair equilibrium between economic and social goals during the implementation of national policies of recovery from the debt crisis;

8. undermines the State’s ability to guarantee basic economic and social rights due to drastic cuts in social expenditure;

9. 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 bodies⁶¹;

10. strengthens extremist and intolerant elements and undermines the democratic institutions;

11. deprives from States such as Greece, which due to their geographical position constitute main points of entry and management of immigrant and refugee flows towards the EU, the capacity to fulfil their fundamental obligations with regard to the protection of human rights;

12. erodes the institutional foundations of the EU, as a union among the peoples of Europe based on the respect and protection of human rights, human dignity, equality and solidarity.

V. Urgently calls, once again, upon the EU institutions, the EU member-States as well as the Greek authorities to

13. immediately and jointly mobilize towards the preservation of the values on which the European civilisation has been founded: human dignity and value, respect for human rights, equality, freedom and solidarity;

14. act in unison for the creation of a permanent mechanism that would evaluate and assess the impact of austerity measures on both the enjoyment of and access to human rights by all those living on EU territory (Human Rights Impact Assessment)⁶²;

with a view to

15. restoring the regulatory *gravitas* of human rights in the process of financial policy-making,

16. constantly weighing the impact of fiscal measures on social protection and security as well as committing to protect social cohesion, which the EU institutions and all EU member-States jointly and separately are bound to safeguard.

⁵⁸ ECJ, Cases C-50/96 *Schröder* [2000] ECR-774 and C-270/97 *Sievers* [2000] ECR I-933. It is noted that the aforementioned remains in the Preamble of the TEU and TFEU even after the Lisbon Treaty.

⁵⁹ Charter of Fundamental Rights of the European Union, Preamble.

⁶⁰ Attached Annex, II.

⁶¹ Attached Annex, II and III.

⁶² Attached Annex, IV.

ANNEXES

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GNCHR Unanimous Decisions on Austerity Measures and Human Rights

- *GNCHR Decision on The need for constant respect of human rights during the implementation of the fiscal and social exit strategy from the debt crisis* (7.6.2010), available from: http://www.nchr.gr/images/English_Site/CRISIS/2010_Crisis.pdf.
- *GNCHR Recommendation: On the imperative need to reverse the sharp decline in civil liberties and social rights* (8.12.2011), available from: http://www.nchr.gr/images/English_Site/CRISIS/nchr_crisis.pdf.
- *The NCHR Recommendation and decisions of international bodies on the conformity of austerity measures to international human rights standards* (27.6.2013), available from: http://www.nchr.gr/images/English_Site/AusterityMeasuresHR/gnchr.austeritymeasures.2013.pdf.

II. FINDINGS NATIONAL, EUROPEAN AND INTERNATIONAL INSTITUTIONS

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- **Supreme Courts**

Symvoulío tis Epikrateias (Supreme Administrative Court)

Symvoulío tis Epikrateias, Plenary, no. 1972/2012 *declaring that the possibility of Public Power Corporation (ΔΕΗ) to interrupt the power supply, constitutes a constitutionally impermissible interference in the contractual relationship between the consumer and the electricity supplier, which is in breach of Article 5(1) of the Constitution (economic freedom and freedom of contract) and the principle of proportionality, as it leads to an infringement of the universality of providing a network of public utilities services, for a reason which is not related to the provision of that service.*

Symvoulío tis Epikrateias, Plenary, no. 3354/2013 *declaring unconstitutional the measure of pre-retirement suspension regime, as insufficiently justified, not necessary, inadequate and based on illicit criteria, such as age.*

Symvoulío tis Epikrateias, Plenary, no. 1906/2014 *declaring unconstitutional the transfer from the State to Hellenic Republic Asset Development Fund (HRADF-ΤΑΙΠΕΔ) of shares corresponding to 34,033% of the share capital of Athens Water Supply and Sewerage Company (EYDAP S.A.). It was considered that the alienation of the Greek government from the majority of the share capital of EYDAP SA, whose preservation is necessary as to avoid the transformation of the public enterprise into private, infringes Articles 5(5) and 21 of the Constitution.*

Symvoulío tis Epikrateias, Plenary, no. 2192-2196/2014 *declaring unconstitutional the retrospective pension and salaries reductions of armed military and security forces, in implementation of Law 4093/2012.*

Symvoulío tis Epikrateias, Plenary, no. 2307/2014 *declaring that the provisions of Article 3(1), (2) and (4) of the Ministerial Council Act 6/2012 abolishing the right to unilaterally resort to arbitration are contrary to article 22(2) of the Constitution.*

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“could lead to a reduction in the level of health services provided to citizens” and “having balanced the public interest of reducing public expenditure on health with the public interest to preventing potential harm in public health”, the Suspension Commission of the Council of State ordered the suspension of the enforcement of this measure.

Areios Pagos (Supreme Court for Civil Cases)

Areios Pagos no. 293/2014 (referral to Plenary) declaring unconstitutional the “extraordinary property tax in favour of the Greek State to the electrified for residential or commercial use structured surfaces”.

Special Court of Article 88(2) of the Constitution (Remuneration Court)

Judgment no. 88/2013 declaring unconstitutional the provisions of Law 4093/2012 which introduced a new fourth) drastic reduction of the salaries of the judges, with retroactive effect and the obligation to reimburse salaries which had been lawfully collected.

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IV. HUMAN RIGHTS IMPACT ASSESSMENT: AN INSTRUMENT FOR THE PROTECTION OF HUMAN RIGHTS ESPECIALLY IN TIMES OF FINANCIAL CRISIS

Introductory Remarks

The GNCHR, an independent advisory body to the Greek State on matters pertaining to human rights protection, examines *inter alia* the compatibility and adaptation of the Greek legislation to the provisions of international human rights law, issues opinions to state authorities and submits recommendations and proposals for taking legislative, administrative or other measures which will contribute to the improvement of the protection of human rights (GNCHR founding Law 2667/1998, Article 1(7) (b) and (i)).

In this context, the GNCHR Plenary has unanimously adopted, since 2010, a series of recommendations regarding the negative impact of the financial crisis and the austerity measures on the enjoyment of human rights in Greece⁶³. In these decisions, the GNCHR has underlined the rapid and dramatic deterioration of the living standards of the population and the dismantling of the Welfare State, have contributed to the pauperization of a significant part of the population, the widening the social divide, the disruption of the social fabric, the strengthening of extremist and intolerant elements and the undermining of democratic institutions.

Furthermore, the GNCHR has highlighted that the human rights impact of austerity measures which are continuously imposed in the context of the “support mechanism” to the Greek economy, has not been assessed, as it should in consultation with the relevant stakeholders⁶⁴.

Consequently, with a view to specifying its recommendations, the GNCHR⁶⁵ reiterates that the Impact Assessment on Human Rights may become a key tool for protecting human rights in times of crisis and describes its key features.

In drafting the present report⁶⁶, the GNCHR has taken into account the following references:

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⁶³ See GNCHR, *The need for constant respect of human rights during the implementation of the fiscal and social exit strategy from the debt crisis* (June 2010), available from: http://www.nchr.gr/images/English_Site/CRISIS/2010_Crisis.pdf ; *NCHR Recommendation: On the imperative need to reverse the sharp decline in civil liberties and social rights* (December 2011), available from: http://www.nchr.gr/images/English_Site/CRISIS/nchr_crisis.pdf and *The NCHR Recommendation and decisions of international bodies on the conformity of austerity measures to international human rights standards* (June 2013), available from: http://www.nchr.gr/images/English_Site/AusterityMeasuresHR/gnchr.austeritymeasures.2013.pdf.

⁶⁴ GNCHR, *NCHR Recommendation: On the imperative need to reverse the sharp decline in civil liberties and social rights* (December 2011), *op. cit.* and *The NCHR Recommendation and decisions of international bodies on the conformity of austerity measures to international human rights standards* (June 2013), *op. cit.*, par. 63.

⁶⁵ The issue of Impact Assessment on Human Rights has received special attention by the National Human Rights Institutions in Europe (NHRIs). In the Athens Declaration 2006 the European National Institutions for the Promotion and Protection of Human Rights recommended the development of a model impact assessment based on the case-law of the European Committee of Social Rights (adopted at the Fourth Round Table of European National Human Rights Institutions for the Promotion and Protection of Human Rights and the Council of Europe Commissioner for Human Rights, 27–28 September 2006), 20 November 2006, CommDH/NHRI(2006)10, available from: [www.coe.int/t/commissioner/Source/CommDH-NHRI\(2006\)10_E.doc](http://www.coe.int/t/commissioner/Source/CommDH-NHRI(2006)10_E.doc), par. 4.

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