

LEGISLATION

ANALYTICAL STUDY

by

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RAXEN

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1. EXECUTIVE SUMMARY

Discrimination, intolerance, racism and xenophobia have always been part of the social landscape worldwide, but it was not until after WWII that these phenomena were publicly and clearly condemned, when in 1948 the United Nations formally declared in Article 1, Universal Declaration of Human Rights that: “All human beings are born free and equal in dignity and rights”.

Since then two covenants – the Civil and Political Rights, and the Economic Social and Cultural Rights, 1966 – elaborated on this statement and in 1963 the UN adopted the Declaration on the Elimination of All Forms of Racial Discrimination considering racial discrimination “an obstacle to friendly and peaceful relations among nations and as a fact capable of disturbing the peace and security among peoples”.

The European Union considering racism as a “major challenge for European societies” and acknowledging “high levels of racist incidents and discrimination”¹ acted by introducing Article 13 in the EC Treaty and thus allowing the adoption of European legislative and other measures to combat discrimination on grounds of racial or ethnic origin and religion or belief. Later, the Council of Ministers adopted the Racial Equality Directive 2000/43/EC of 29 June 2000 and the Equality in Employment Directive 2000/78/EC of 27 November 2000 to be transposed in 2003 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

In Greece, it was only during the 1990s that rapid changes in the social, cultural and ethnic composition of the population through the influx of almost a million foreign migrants, refugees and ethnic Greeks from the NIS and Albania forced issues of discrimination on the political agenda and consequently led gradually to the formulation and implementation of relevant legislative provisions.

Nevertheless, the constitutional and legislative history of Modern Greece is indicative of the early significance attached to the protection of human rights. Already in 1823, the first constitutional document drafted during the revolt against Ottoman rule was unique among European legal texts in protecting the “honour and security” not only of Greeks, but of all persons in the territory recognising the freedom of the press, abolishing slavery and establishing universal male suffrage.

During the course of the late 19th and early 20th centuries, as Greece annexed new territories with ethnically mixed populations the nation building effort necessitated a different approach to human rights and thus the relevant constitutional provisions were largely ignored.

The Lausanne Treaty of 24 July 1923 is the first and only legal document recognising formally the existence of one minority in Greece, defined in religious terms as the Muslim Minority of western Thrace², and regulating its rights and obligations, which were further elaborated by subsequent bilateral agreements between Greece and Turkey. Any subsequent

¹ “An Action Plan Against Racism”, Brussels, 25.03.1998, COM

² Reciprocally also formally recognising a Christian minority in Turkey.

attempt to declare a minority ethnic identity collectively³ has encountered official hostility and occasionally penal prosecutions. The early legal framework regulating conditions of life for the Muslim Minority is geared more towards segregation rather than integration and consequently contains many elements that give rise to indirect and institutional discrimination.

The first post WWII Constitution of 1957, influenced by the recent end of a bloody civil war was “relatively anachronistic in the domain of basic rights and fundamental freedoms and did not even include provisions on social rights.”⁴

After the fall of the dictatorship in 1975, the new Constitution was drafted largely on the models of the 1949 West German Constitution and the 1958 French Constitution safeguarding individual and social rights. The Constitution was revised in 1986 and 2001 introducing new individual rights (such as the protection of genetic identity or the protection of personal data from electronic processing).

The 1975 Constitution of the Hellenic Republic⁵ contains the basic principles for the respect of human rights and the rejection of racism and any kind of discrimination. The relevant constitutional provisions explicitly prohibit discrimination on the basis of racial or ethnic origin, religion or belief. However, the Constitution also distinguishes clearly between Greek and foreign nationals as far as rights and privileges in employment, trade union and political activity are concerned, although such distinctions cannot be used for the implementation of discriminatory policies, because the constitutional guarantees of the minimum fundamental rights only for Greek citizens cannot be interpreted as a constitutional interdiction for the full provision of rights by common legislation. The Constitution, therefore, does not prevent legislation from including aliens in the scope of such rights.

In 1979, the first anti-racist law 927/1979 was enacted, largely because Greece was obliged to being party to a number of international treaties and agreements⁶. In 1984, an amendment to the law -appended to law 1419/84- specified that, “discrimination on the basis of religion is also punishable” and in 2001 another amendment -appended to law 2910/2001- allowed the public prosecutor to bring charges *ex officio*. However, as several reports⁷ have stressed the law is very difficult to apply and consequently has never been enforced in a court of law.

In 1997 law 2472/1997 on the protection of personal and sensitive data was enacted reinforcing the antidiscrimination legal framework by protecting any personal data referring to religious and philosophical beliefs. An independent authority was also set up to ensure the monitoring of the implementation of the legal provisions concerning personal data protection.

³ Members of the Muslim Minority have repeatedly claimed their right to be defined in ethnic terms as Turks, while another group in Western Macedonia has proclaimed its Macedonian ethnic identity.

⁴ George Katrougalos, (2000) “The Constitutional History of Greece, in the Balkan Context”, available at http://www.cecl.gr/RigasNetwork/databank/REPORTS/r1/GR_1_Katrougalos.htm (28/12/2002)

⁵ Revised in 1986 and 2001.

⁶ International Convention on the Elimination of all Forms of Racial Discrimination (ICERD, 1965); ratified and enacted by law N. 494/1970.

⁷ Annual Report 2001, Ombudsman; Annual Report 2001, National Commission of Human Rights; National Focal Point Analytical Study on Racial Violence; National Focal Point Final Data Collection Report 2001, etc.

During the 1990s the rising number of both ethnic Greek and foreign migrants led gradually to the formulation of a number of significant laws and other legislative measures concerning the status of aliens and repatriated or migrant ethnic Greeks⁸. Until then the status of migrants was determined by law 4310/1929 established for ethnic Greek refugees from Asia Minor. This antiquated law was replaced in 1991 by Aliens' law 1975/1991, which became the main legal instrument regulating conditions of entry into the country, conditions of stay, work and deportation procedures as well as the criteria for awarding political asylum according to the 1951 Geneva Convention.

The severe restrictions placed by law 1975/1991 to legal migration, however, soon led to a growing number of undocumented migrants. In 1998 the first regularization process implemented on the basis of Presidential Decrees 358/1997 and 359/1997 led to almost 371,641⁹ applications from migrants, although many could still not secure the minimum legal documents required.

In 2000 the growing number of ethnic Greeks migrating from the NIS led to the enactment of law 2790/2000 regulating the repatriation procedures and establishing special rights, privileges and social support structures for repatriates to facilitate their social integration.

In 2001, law 1975 was replaced by law 2910 (amended by law 3013/2002) providing the basic legal framework for the regulation of residence, employment and naturalization conditions and processes for third country nationals. Furthermore, this law safeguards the fundamental social rights of documented migrants, such as social security and welfare provisions. The law also provided for a second regularization process for the remaining undocumented migrants. Although official data are not yet available, the Interior Ministry has stated that 351,000 migrants applied for residence and work permits. The Ombudsman's Report¹⁰ and reports from several NGOs stressed certain negative aspects of the law noting serious problems with its implementation and especially the migrant registration process by the Prefectures (local authorities responsible for the registration process) who had not been properly prepared, organised or staffed.

Greece ratified the Geneva Convention on the Status of Refugees in 1959 and in 1968 the 1967 New York Protocol. The legal situation of refugees is defined by law 1975/1991, as amended by law 2452/1996, and Presidential Decrees 83/1993, 209/1994, 189/1998, 266/1999 and 61/1999. In 1991 Greece ratified the Dublin Convention that was put into effect on September 1, 1997 and in 1992 Greece signed the Schengen Agreement that was implemented in 2000. However, in practice Greece grants asylum very rarely: in 2002 by September only 26 persons were granted refugee status out of 4,135 that applied.

⁸ For an elaboration of the terms "migrant and repatriate ethnic Greek" see ANTIGONE - Greek NFP, (2002), "Analytical Study on Education", unpublished and available from the EUMC, pp.30-32

⁹ Kavounidis J. and Hatzaki L., (2000) "Alien Applications for Residence and Work Permits", Athens: National Institute of Labour, available at http://www.eie.org.gr/Greek/contents_keimena_ergasias2.htm (12/05/2002)

¹⁰ Office of the Ombudsman, (2001) "Special report on the implementation of the registration procedures under law 2910/2001" Athens, Ref No 2013, available at http://www.synigoros.gr/reports/diavivasi_koinepstef.doc (15/09/2002)

Greece has signed and ratified most international Treaties and Conventions concerning the protection of refugees, the respect of human rights and the fight against discrimination and intolerance. However, there are still several important international instruments that should be signed and/or ratified.

Religious freedom is guaranteed by the Constitution, however, some aspects of religious life, like the right to preach and most importantly the procedure for obtaining a permit for the construction of temples and houses of prayer are governed by antiquated laws (law 1363/38 of 1938 and Royal Decree of 1939) and unnecessarily complex bureaucratic regulations that may at times hinder religious expression.

The establishment of the National Commission for Human Rights and the Ombudsman in the late 1990s have contributed positively in the fight against racism and discrimination.

However, although legislative provisions against discrimination, racism, xenophobia and intolerance have improved in the past ten years we consider them still relatively ineffective in safeguarding the rights of vulnerable social groups against discriminatory and racist practices, especially in view of the imminent transposition of the Racial Equality Directive 2000/43/EC of 29 June 2000 and the Equality in Employment Directive 2000/78/EC of 27 November.

As National Focal Point of the RAXEN network we hope that the present analytical study of the Greek legislative framework will provide EU institutions, national and local authorities, policy makers and NGOs with a better understanding of the situation that will assist them in their fight against racism, intolerance and discrimination.

2. AIM OF THE STUDY

The analytical study on legislation attempts to satisfy two requirements: on the one hand to adhere to the general EUMC guidelines aiming to improve the level of comparability between the 15 national studies and on the other to present and analyse effectively the rather complex peculiarities of the Greek legislative framework. In order to satisfy both, we have adopted the following structure.

3. METHODOLOGY AND PROBLEMS

The present study relies on the following sources: Firstly, legislative instruments, such as the constitution, laws, presidential decrees, ministerial and administrative decisions and circulars; secondly case law that directly or indirectly affects¹¹ subsequent court cases; and thirdly reports from independent authorities¹², NGOs and international organisations.

Legislation is published by the National Printing Office¹³ in the three daily issues of the Government Gazette (Sheet A, B and C¹⁴) available in print or electronic form (only for post 1994 legislation), as well as through the internet for subscribers. Existing legislation is categorised chronologically and it is not possible to search for relevant legislation by keyword¹⁵. Therefore finding and collecting existing relevant legislation requires extensive and detailed knowledge of it.

Case law is also very difficult to find since neither the Ministry of Justice nor any other source has computerised centrally accessible full records of court cases or relevant statistical information: court decisions are still handwritten and subsequently typed on paper without storing them electronically. Therefore, collecting data on court cases was a particularly difficult and time consuming task. Up to late November 2002, the Ministry of Justice could not provide us with any official data concerning court decisions on cases involving racism or discrimination on the basis of race, ethnicity or belief, although important jurisprudence has recently been produced by the Supreme Court. Our researchers utilised also the only existing database of court cases¹⁶ (by the Athens first instance and appeal courts as well as the Supreme Court) maintained by the Athens Bar Association¹⁷ and then referred to the appropriate court for transcripts of the decisions.

It should also be noted, that there are few cases of either racism or discrimination on any ground actually brought to court. The main reason why victims of racism were reluctant to address the courts in accordance to anti-racist law 927/1979, at least until 2001, was the requirement for the wronged party to file a complaint, a costly and uncertain procedure. Moreover, the absence of free legal aid dissuades victims of discrimination from resorting to justice since they cannot afford to do so.

The present study relies largely on data collected during 2001, while an effort has been made to analyse data covering the period up to the end of November 2002, when deemed important.

¹¹ A court verdict does not constitute obligatory case law for other courts. However, in practice judges will tend to be influenced by previous court decisions.

¹² The Ombudsman, the Personal Data Protection Authority and the National Commission for Human Rights

¹³ More information available at <http://www.et.gr> (02/12/2002)

¹⁴ Sheet A' contains laws and Presidential Decrees, while Sheet B' contains Ministerial Decisions, etc

¹⁵ The internet site (<http://www.et.gr>) offers a search machine, but the results are very poor.

¹⁶ Containing only the reference details and an abstract of the court decision

¹⁷ For more information consult <http://www.dsa.gr> (11-12-2002)

4. SOCIALLY VULNERABLE GROUPS

Vulnerable social groups – definitions and demographics

The Ministry of Foreign Affairs (responsible for asylum seekers, refugees and the Muslim minority) adheres to the existing international legal definitions (1951 Geneva Convention) for asylum seekers and refugees and the 1923 Lausanne Treaty for the Muslim minority of Thrace.

The Ministry of Public Order (supervising the Police and Border Guard), **the Ministry of Merchant Marine** (supervising the Coast Guard) and **the Ministry of the Interior** (supervising Local Authorities and responsible for migration issues) define vulnerable groups according to the taxonomy adopted by the **Ministry of Labour and Social Security**¹⁸ to be used in the context of policies and projects aimed at combating social exclusion. The following groups are listed (non hierarchical categorisation):

- Roma
- Repatriated ethnic Greeks
- Migrants
- Refugees
- Cultural and Religious Minorities
- Inhabitants of mountainous and remote regions
- Single parent families
- Prisoners and ex-prisoners
- Juvenile delinquents
- Addicts and ex addicts of narcotic substances
- Disabled individuals
- Mental patients
- HIV positive patients

For the purpose of this study we will examine the legal definition and demographic situation of the following groups that are possible victims of racial violence due to their ethnic, religious and cultural specificity:

- **Documented and undocumented migrants (aliens)**
- **Asylum seekers and refugees (aliens)**
- **Roma (Greek citizens)**
- **Religious Minorities (Greek citizens)**

¹⁸ Indirectly in the sense that there is no “official” list, but such groups are defined as vulnerable in policies and projects aimed at combating social exclusion; relevant information in Greek only available at http://www.labor-ministry.gr/index_gr.html (22/05/2002). Also some additional information on definitions of vulnerable groups can be found in the “National Action Plan for Social Inclusion 2001-2003”, prepared by the Ministry of Labour and Social Security and available at europa.eu.int/comm/employment_social/news/2001/jun/napincl2001el_en.pdf (21/06/2002).

- **“Repatriated” ethnic Greeks from the NIS and migrant ethnic Greeks from Albania (NIS repatriates acquire Greek citizenship through a special process and Albanian ethnic Greeks hold a special residence permit)¹⁹**

A common feature of the above groups is their relative social exclusion²⁰ from essential public social services, such as education, vocational training, social welfare and health care and from other social activities and their marginal position in the labour market. The problems created by social exclusion have led many such groups to develop and rely on extensive informal aid and self-assistance networks that have further alienated them from mainstream society.

This situation is aggravated due to the absence of anti-discrimination legislation on the one hand protecting vulnerable groups and on the other, proactively, promoting equality in social life.

I. Resident Aliens – Documented / undocumented migrants, asylum seekers & refugees

A. Legal definitions

Documented migrants are foreign nationals who reside and work in Greece legally holding a residence and work permit.²¹

Undocumented migrants are foreign nationals who reside and work in Greece illegally either without a residence and work permit or holding one that has expired.²²

Asylum seekers are foreign nationals and their immediate dependants (wife/husband, minor or handicapped children and parents) who apply or have applied orally or in writing to any public authority for political asylum according to the 1951 Geneva Convention as amended by the 1967 New York Protocol or have entered the country with the intention to apply for asylum according to the Dublin Convention 1990 as transposed in national legislation.²³

Refugees are foreign nationals who reside and work in Greece legally having acquired the status of political refugee by the competent authorities following the due process prescribed by international law and transposed on national legislation.²⁴

B. Demographic data

→ Documented / undocumented migrants

The demographic situation is difficult to establish with precision due on the one hand to the nature of illegal immigration and on the other the inability (or unwillingness) of public authorities to measure effectively the resident migrant population. Therefore, there are

¹⁹ Official data concerning the number of special permits issued are not available.

²⁰ Although formally entitled to such services, members of these groups will in many cases not use them either because they are (self) intimidated by poor language skills or because of ill-treatment by officials or because they see no real benefit.

²¹ Greece, N. 2910/2001 (02/05/2001)

²² *ibid*

²³ Greece, P. D. 61/1999 (06/04/1999)

²⁴ *ibid*

different estimates²⁵ concerning the actual number of migrants resident in Greece at any one time ranging from 600,000 to 1,200,000.

According to the first preliminary results of the 2001 Census, published in May 2002, the number of resident aliens has risen significantly since the 1998 regularization process: The number of recorded aliens has reached a total of **797,093²⁶ (7,3%)** of a total population of **10,964,080**. In the Athens Metropolitan Area the recorded aliens are **376.732 (10%)** in a total population of **3.761.810.²⁷**

However, the use of Census data for the purpose of monitoring is still problematic because on the one hand of the large number of unregistered migrants and on the other hand of the high mobility of the Albanian migrants (forming the majority of the migrant population) who may frequently leave the country to return days, weeks, months or years later.

We are dealing therefore with a highly mobile immigrant population that is either not adequately monitored²⁸ - concerning those that cross the borders legally - or not monitored at all - concerning those that cross the borders illegally.

Another indicator of the number of foreign migrants are the results of the two migrant registration processes in 1998 and 2001. In 1998 **371,641²⁹** migrants registered for residence and work permits with the National Manpower and Employment Organization³⁰ (OAED), but the National Institute of Labour (EIE)³¹ estimated that more than **150,000** did not register mostly because they could not secure the necessary documentation (minimum number of work days certified officially by social security or tax authorities) or because were prevented by their employer under threat of dismissal. Official data concerning the 2001 registration process are not yet available, since the processing of applications will not be finished before the end of December 2002, but the Ministry of the Interior³² announced in December 2001 that approximately **351,000** migrants applied for residence and work permits by the end of the deadline - some of whom may have applied unsuccessfully during the earlier period. Thus we can assume that the number of both registered (approximately **720,000**) and unregistered (200,000 – 300,000) migrants is about **900,000** that roughly corresponds to the findings of the 2001 Census taking into account that many unregistered migrants preferred not to participate in the Census for a variety of reasons, mainly fear of deportation. The migrant population constitutes, then, roughly **8,5% - 9%** of the total population. It should also be added that a

²⁵ Such estimates from both academics and policy makers are occasionally published in newspaper articles.

²⁶ Including refugees and asylum seekers. In relation to economic migrants the number of refugees and asylum seekers is very small. UNHCR data show that since 1980 and until 2001 Greece awarded refugee status to a total of 6,460 persons with a refusal rate of over 90%.

²⁷ National Statistical Service (2002), Census 2001 Data, available at [http://www.statistics.gr/new_site/Hellenic/gr_tables/S1100_SAP_1_pinakas1b_i.HTM?code=\(12/05/2002\)](http://www.statistics.gr/new_site/Hellenic/gr_tables/S1100_SAP_1_pinakas1b_i.HTM?code=(12/05/2002))

²⁸ Data concerning visas held by the border authorities (Ministry of Public Order) are not correlated or crosschecked with data concerning residence & work permits (Ministry of the Interior). Therefore it is not possible to have data on the number of migrants residing in the country. Existing data refer to rough estimations.

²⁹ Kavounidis J. and Hatzaki L., (2000) "Alien Applications for Residence and Work Permits", Athens: National Institute of Labour, available at http://www.eie.org.gr/Greek/contents_keimena_ergasias2.htm (12/05/2002)

³⁰ More information mostly in Greek from www.oaed.gr (03/03/2002)

³¹ More information mostly in Greek from www.eie.org.gr (13/03/2002)

³² The Ministry of the Interior has replaced the Ministry of Labour and the National Manpower and Employment Organization as competent public authority according to law 2910/2001.

rising number of migrants are beginning to form families characterized by high fertility in contrast to the Greek population³³.

→ Asylum seekers & refugees

Demographic data concerning asylum seekers and refugees in Greece are collected by the Ministry of Public Order, but are not publicly available. However, the UNHCR office in Greece releases such data in Greek through its website³⁴.

The total number of refugees in Greece, as of 31 December 2001, was 6,948, of whom 60% are Turks and Poles. During the year 2001, 5,499 asylum applications were submitted, mainly by Iraqis, Turks and Afghans, 1,312 of which were examined. 147 persons were granted refugee status, while another 148 were granted residence permits for humanitarian reasons. Of the total number of applications, 306 concerned unaccompanied minors³⁵.

During the first seven months of 2002, 2,838 asylum requests were submitted and 2,810 were examined (including earlier pending cases). 25 persons were granted refugee status and another 34 were granted humanitarian status. The main countries of origin for asylum applications are Iraq (1,190 – 41.93%) and Afghanistan (841 – 29.63%). 429 asylum seekers withdrew their applications probably, because they had already remained in Greece long enough to be able to apply for a residence permit as migrants.

→ Illegal entry of migrants and asylum seekers

Data by the Ministry of Public Order concerning the numbers of migrants and refugees arrested for entering the country illegally are impressive. During 2001, 219,598 immigrants were arrested for illegal entry into the country, 167,168 of whom by the Border Guard (constituting 76% of the total, compared with 50% in 2000) and the rest by the Police, while the Coast Guard arrested 6,864. It should be noted that Chinese nationals were for the first time among those arrested during 2001.

Ministry of Public Order data³⁶ concerning arrests for illegal entry indicate that the main entrance points for asylum seekers are the river Evros, border between Turkey and

³³ “The question of low fertility was also raised in relation to the relatively recent immigration flows into Greece. This discussion focused on the differential fertility between immigrants and nationals. The publication of the SOPEMI 1999 report, and in particular the point raised that in several countries the percentage of births in the immigrant population is higher than the percentage of immigrants within the total population, has generated further discussion on this topic. Despite the lack of reliable statistical data in Greece, it has been estimated that during 1999 30% of all live births came from immigrants. In addition, it has been argued that if the actual patterns of immigrant fertility continue for the next 20 years, 150,000 births will come from the immigrant population. For further information see the report by the European Observatory on Family Matters (2001), Bagavos Ch., “Focus Monitoring 2000: Fertility, Greece: ”General context in relation to the perception and discussion of demographic trends and family needs”.

³⁴ Ministry of Public Order data available from UNHCR available at http://www.unhcr.gr/exec/article_1.htm (12/09/2002)

³⁵ Ministry of Public Order data available from UNHCR available at <http://www.unhcr.gr/research.htm#i> (03/09/2002)

³⁶ Newspaper “Eleftherotypia” (29/5/2002), available at http://www.enet.gr/online/online_p1_text.jsp?dt=29/05/2002&c=112&id=8062760 (01/09/2002)

Greece (22.3% of the total), the island of Mytilene lying very close to the Turkish mainland (21.7%), the greater area of Volos (13.3%), the island of Chios (9.71%) and Evia (8.9%).

A recently published Panteion University study “Comparative Research of the Relationship Between Organised Crime, Illegal Immigrants and Undeclared Labour”, conducted by sociology professor Constantinos Koskinas, psychology professor Stamos Papastamos and tutor of sociology George Alexias, found that, of the total number of aliens arrested for illegal entry into the EU, 24.8% were arrested entering through Greece.

II. Roma

A. Legal definition

There is no legal definition of the Roma; a generally acceptable definition would be: “members of a social group sharing certain common ethnic – linguistic – cultural characteristics that may differ according to their tribe or clan.”

B. Demographic data

It is virtually impossible to obtain reliable demographic data on the Roma population since there is no relevant ethnic or linguistic category recorded by the Census. The last Greek Census that contained linguistic data in 1951 recorded 7,500 individuals speaking Romani. However, several studies³⁷ show that the number of Roma was always far higher than that.

Existing research on selected samples in certain municipalities indicates that they number 150,000³⁸ – 300,000³⁹ loosely organised in “tribes” that are distinguished by features not always identifiable by the non-Roma. The demographic situation becomes even more complicated in view of the entry into the country of Roma from neighbouring Balkan countries after the Bosnian and Kosovo wars.

Until 1955 the Roma were stateless. Since then gradually until 1978 they were all granted Greek citizenship, but many still do not register with either the police in order to acquire an identity card or with a municipality in order to receive social benefits⁴⁰.

The problem of recording the Roma population accurately presents unique difficulties on the one hand because a significant number continues to lead a nomadic life and on the other because many settled Roma refuse to be recorded as such due to the stigma attached. In interviews with Roma representatives we were told of several cases of educated and settled Roma who keep their Roma identity secret for fear of losing their jobs or the respect of their colleagues and non Roma friends.

³⁷ Vaxevanoglou, A. (2001), “Greek Gypsies: Marginalised and family men”, Athens: Editions Alexandria, p. 17

³⁸ Komis, K. (1998): “Gypsies: History, Demography, Culture”, Athens: Editions Ellinika Grammata

³⁹ EETAA (2001): “Integrated Action Plan for the Greek Roma”, Athens: EETAA, p.45

⁴⁰ ROM Network, (2000) “Panhellenic Census Study investigating the social, housing conditions and needs of Greek Roma Citizens”, unpublished, available on request from the ROM Network <http://www.romanet.gr>

III. Religious Minorities

A. Legal definition

Muslim inhabitants of Western Thrace are considered to be all Muslims established in the region to the east of the frontier line laid down in 1913 by the Treaty of Bucharest.⁴¹

The legal term “religious minority” is used to refer exclusively to the autochthonous Muslim minority in Thrace whose legal status and rights are governed by the 1923 Lausanne Treaty and other subsequent bilateral agreements.

Other religious groups are Jews, Catholics, Jehovah’s Witnesses and Evangelicals who are not legally defined as a religious minority per se.

B. Demographic data

Muslims: According to the 1951 general Population Census, there were 92,443 Turkophones, 7,429 Gypsies, and 18,671 Pomaks, for a total of 118,533. After the 1951 Census, the Greek National Statistical Service removed the categories national/ethnic origin, language use and religion for reasons of national policy.⁴² Today the Muslim minority of Thrace, depending on estimates, numbers between 80,000 -120,000, roughly the same as the number in the 1951 census, which taking into account their high birth rate indicates that a significant number has left the country during the past decades. The Muslim minority is composed of three ethnic groups, namely Turks, Pomaks and Roma, but the largest group by far is constituted by ethnic Turks. It is not possible to acquire more specific demographic data concerning the ethnic composition of the Muslim minority as many Pomaks and Roma have come to identify themselves as ethnic Turks, while speaking less the Romani and Pomak languages than Turkish.

Jews: According to the Central Jewish Council⁴³ approximately 5,000 Jews live in eight communities in Greece today.

Catholics: According to the Catholic Church⁴⁴ in Greece the number of Catholics is approximately 50,000.

Jehovah’s Witnesses: According to the records of their Church⁴⁵ their number is approximately 25,000.

Evangelicals: There are no reliable data available on their number.

⁴¹ *Convention Concerning the Exchange of Greek and Turkish Populations (Appendix A, Article 2), Lausanne January 30, 1923 between the Government of the Grand National Assembly of Turkey and the Greek Government.* English text available at <http://www.hri.org/docs/lausanne/> (09/09/2002)

⁴² Rozakis Ch. (1996), “The international protection of minorities in Greece,” in Featherstone K. and Ifantis K., eds, “Greece in a Changing Europe: Between European Integration and Balkan disintegration?”, Manchester: Manchester University Press, p. 98

⁴³ More information available at <http://www.kis.gr> (15-06-2002)

⁴⁴ More information available at <http://www.cathecclesia.gr> (12-02-2002)

⁴⁵ More information available at <http://www.watchtower.org> (12-02-2002)

IV. Repatriated” ethnic Greeks from the NIS and migrant ethnic Greeks from Albania

*Repatriated ethnic Greeks (palinnostountes omogeneis) are residents of the New Independent States of the former Soviet Union of Greek ethnic descent who have the right to apply for the acquisition of Greek citizenship, if their nationality cannot be established by the procedures laid out by the Ankara and Lausanne Treaties. Citizenship is granted on the basis of the findings of a special committee appointed jointly by the Minister of the Interior and the Foreign Minister on the basis of an interview and examination of all or any of the following original documents: passport, birth certificate, marriage certificate, family status certificate, identity card or internal passport or any other document that can prove Greek descent.*⁴⁶

*Migrant ethnic Greeks (omogeneis) are Albanian citizens of ethnic Greek descent. They are entitled to a special residence and work permit of three year duration that is issued by the Aliens Department of the Greek Police after examination of all or any of the following original documents: passport, birth certificate, marriage certificate, family status certificate, identity card or internal passport or any other document that can prove Greek descent.*⁴⁷

There are no reliable demographic data concerning the number of repatriated ethnic Greeks from the NIS or ethnic Greeks migrants from Albania⁴⁸. It should be noted that the demographic situation of both groups is considered to be a politically highly sensitive issue.

Repatriated Greeks from the NIS: Since the collapse of the Soviet Union and the outbreak of violence in several former socialist republics a large number of ethnic Greeks⁴⁹ migrated to Greece. According to a demographic study made by the General Secretariat of Repatriated Greeks (Ministry of Macedonia and Thrace) with the help of repatriate NGOs in the regions of Macedonia and Thrace, approximately 135,000 ethnic Greeks have entered the country since 1980.⁵⁰

Several legal provisions were instigated since then to facilitate their acquisition of Greek citizenship: According to the 24755/6-4-1990 Joint Ministerial Decision (Ministry of the Interior and Ministry of Defence) repatriated Greeks could enrol on the municipal registers and remain in Greece indefinitely without providing the necessary documentation. In 1993 according to law 2130/1993 the concept “repatriation” became a legal term and ethnic Greeks were distinguished from other foreign nationals in the acquisition of Greek citizenship by a special rapid process. By 1998 more than 95,000 repatriates had acquired Greek citizenship status. A

⁴⁶ Greece, N. 2790/2000 (FEK 24A/16-02-2000)

⁴⁷ Greece, Ministerial Decision 4000/3/10-e (FEK234B - 15/04/1998)

⁴⁸ For example the following source quotes a far smaller number than indicated by Greek sources for repatriate Greeks from the NIS. CEMES (1998), Ethnobarometer Working Paper No. 2, Codagnone C.: “New Migration and Migration Politics in Post-Soviet Russia”, available at http://www.cemes.org/current/ethpub/ethnobar/wp2/wp2_ind.htm (13/06/2002)

⁴⁹ Another smaller group from both the NIS and CECs were political refugees who had fled Greece after the 1946-49 civil war.

⁵⁰ More information available in Greek from the website of the General Secretariat of Repatriated Greeks that is part of the Ministry of Macedonia and Thrace available at www.mathra.gr (21/06/2002)

Committee of Inquiry⁵¹ that investigated the special process of repatriate citizenship acquisition discovered many irregularities.

The issue of the exact number of ethnic Greek repatriates from the NIS and the special process of citizenship acquisition applicable especially to them has been repeatedly discussed in Parliament as both major parties have accused each other of falsely attributing citizenship status when in power in order to influence electoral results.

Migrant Greeks from Albania: Official Albanian statistics puts the number of ethnic Greeks at 35,000, while various Greek sources claim that 200,000 – 400,000 ethnic Greeks reside in regions of Southern Albania. Greece has discouraged Albanian ethnic Greeks from acquiring Greek citizenship, while distinguishing them from other foreign nationals through a special residence and work permit of unlimited duration. In this way Greece can still claim the existence of a substantial ethnic Greek minority in Albania. However, as it has been argued repeatedly in the Greek Parliament the process of issuing these special permits was flawed and many ethnic Albanians have fraudulently also acquired such permits. Official data concerning the number of these permits is not publicly available, but various estimates put it at 80,000.

⁵¹ Karamanlis Foundation (2001): “Findings of the Electoral Committee of Inquiry on the 2000 National Elections”, available at http://www.idkaramanlis.gr/html/arxeio/anal_eklog.html (10/09/2002)

5. PUBLIC BODIES COMBATING DISCRIMINATION

A. The Ombudsman

The most active institution monitoring human rights violations is the Ombudsman, an independent body established by law 2477/1997⁵². The Ombudsman provides its services free of charge and receives more than 17,000 complaints per annum at a continuously growing rate. The Ombudsman investigates individual administrative actions or omissions or material actions taken by government departments or public services that infringe upon the personal rights or violate the legal interests of individuals or legal entities. Before submitting a complaint to the Greek Ombudsman, the complainant should first come into contact with the public authority involved. Only if the problem is not resolved in this way should a complaint be submitted to the Ombudsman.

Complaints are accepted from anyone, regardless of nationality, who has a problem with a Greek public authority. The Ombudsman mediates between public authorities and individuals in order to protect citizens' rights and combat maladministration. Having received a written complaint by any directly concerned person, or union of persons or legal entity (e.g. private company), the Greek Ombudsman investigates if there has been an administrative act or omission or material action which infringes on the complainant's rights or violates his or her legal interests.

The Ombudsman has one of its four sections dealing exclusively with human rights issues. It investigates individual complaints against public authorities provided these are not pending before law courts, and makes recommendations to the competent authorities for the satisfaction of complaints found to be justified. The Ombudsman also publishes an Annual Report on Human Rights, as well as other reports on specific issues of human rights. During 2001 such reports included inquiries on the conditions of detention of migrants in police cells and detention centres on the islands of Chios and Kos and at the Attica General Police Headquarters in Athens. It also published a report concerning the discriminatory character of the alternative civilian service for conscientious objectors (August 1999) and a detailed report and recommendations concerning the provisions of law 2910/2001 and the problems related to its implementation.

The jurisdiction of the Ombudsman follows the principle of the absolute separation of powers and therefore, since it is considered an administrative authority, the Ombudsman cannot interfere in any way with justice. That means that it has no jurisdiction either over the administration of justice or over the court decision processes. The absolute exclusion from the supervision of justice was a political decision of the Greek legislator, based not only upon theoretical arguments regarding the independence of justice, but also on practical issues, that any intervention to the delivery of justice may raise. Furthermore, the founding law of the Ombudsman gives priority to courts, even if the Ombudsman has started mediation. In these

⁵² Greece, N. 2477/1977 (FEK 59A/18-04-1997)

cases, an appeal to the court is a legal impediment for the Ombudsman's investigation and therefore such cases are not considered.

The Ombudsman's role is to control any possible misuse of power by the executive. Therefore the Ombudsman's activity is explicitly limited by law to acts or omissions of the public administration.

B. The National Commission of Human Rights

The National Commission of Human Rights was founded by law 2667/1998⁵³. The NCHR is the statutory National Human Rights Commission having a consultative status with the Greek State on issues pertaining to human rights protection. The creation of NCHR emanated from the need to monitor developments regarding human rights protection on the domestic and international plane, to inform Greek public opinion about human rights-related issues and, above all, to provide guidelines to the Greek State aimed at the establishment of a modern, principled policy of human rights protection. A source of inspiration for the creation of NCHR was the "Paris Principles" adopted by the United Nations and the Council of Europe.

The NCHR has the following substantive competences:

1. The study of human rights issues raised by the Government, by the Convention of the Presidents of the Greek Parliament, by NCHR members or by NGOs;
2. The submission of recommendations and proposals, elaboration of studies, submission of reports and opinions for legislative, administrative or other measures which may lead to the amelioration of human rights protection in Greece;
3. The development of initiatives for the awakening of the public opinion and the mass media on issues related to the respect for human rights;
4. The cultivation of respect for human rights in the national education system;
5. The maintenance of permanent contacts and co-operation with international organizations, similar bodies of other states, as well as with national or international NGOs;
6. The submission of consultative opinions regarding human rights-related reports which Greece submits to international organizations;
7. The dissemination of the NCHR positions in any appropriate manner;
8. The drawing up of an Annual Report on human rights protection in Greece;
9. The organization of a Human Rights Documentation Centre;
10. The study of the harmonization of national legislation with international standards on human rights protection, and the subsequent submission of recommendations.

In accordance with Article 2 of law 2667/1998, the members of the NCHR are:

1. The Chairperson of the Special Parliamentary Committee for Institutions and Transparency;
2. A representative of the General Confederation of Workers;
3. A representative of the Supreme Administration of Civil Servants' Unions;

⁵³ Greece N. 2667/1998 (FEK 281A/18-12-1998)

4. Representatives from the Greek section of Amnesty International, the Hellenic League for Human Rights, the "Marangopoulos Foundation for Human Rights and the Greek Council for Refugees;
5. Representatives from all parliamentary political parties;
6. One Justice of the Council of State proposed by its President;
7. One Justice of the Court of Cassation proposed by its President;
8. The Greek Ombudsman;
9. Representative from the Personal Data Protection Authority proposed by its President;
10. One member from the National Radio and Television Council proposed by its President;
11. One member from the National Commission for Bioethics proposed by its President;
12. Two personalities widely recognized for their expertise in the field of human rights, designated by the Prime Minister;
13. One representative from the Interior Ministry, The Education Ministry, Labour Ministry and the Press and Mass Media Ministry with no voting right;
14. Three Professors or Associate Professors of Public law or Public International law from the University of Athens, Faculty of Political Science and Administration, the University of Thessalonica, Faculty of Law and the University of Thrace, Faculty of law;
15. One member of the Athens Bar Association.

The NCHR operates five Sub-Commissions:

1. Sub-Commission for Civil and Political Rights;
2. Sub-Commission for Economic, Social and Cultural Rights;
3. Sub-Commission for the Application of Human Rights to Aliens;
4. Sub-Commission for the Promotion of Human Rights;
5. Sub-Commission for International Communication and Co-operation.

According to the Rules of Procedure⁵⁴, each Sub-Commission holds at least one meeting per month. The Sub-Commissions' work consists of the preparation of reports on issues related to their specific field of action. All these reports are subsequently submitted to the NCHR in plenary for discussion and final decision. Since 15 November 2000 the NCHR employs two Legal research officers, a secretary and is funded by the Greek Parliament.

⁵⁴ Greece, Prime Minister Decision Y138 (FEK 475B/09-04-2000)

6. PRESENTATION AND ANALYSIS OF LEGISLATION

1. INTERNATIONAL FRAMEWORK ADOPTED BY GREECE

The following International Conventions have been signed and/or ratified by Greece so far:

- Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment ratified in 1985;
- Convention on the Elimination of All Forms of Discrimination against Women ratified in 1982;
- Convention on the Rights of the Child ratified in 1990;
- International Convention on the Elimination of All Forms of Racial Discrimination signed in 1966 and ratified in 1970 by Law 494/1970;
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families has not been ratified.
- International Covenant on Civil and Political Rights signed in 1996;
- International Covenant on Economic, Social and Cultural Rights signed in 1997;
- Optional Protocol to the Convention of the Rights of the Child on the sale of children child prostitution and child pornography signed in 2000;
- Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women signed in 1999;

2. CONSTITUTIONAL PROVISIONS

The Constitution of the Hellenic Republic⁵⁵ contains the basic principles for the respect of human rights and the rejection of all forms of discrimination. From the combination of the relevant constitutional provisions, one may conclude that there is a prohibition of discrimination on the basis of racial or ethnic origin and religion or belief.

In particular: Article 5.2 states that “All persons living within Greek territory shall enjoy full protection of their life, honour and freedom, irrespective of nationality, race or language and religious or political beliefs. Exceptions shall be permitted only in cases provided for by international law.” In Article 28, there is a significant provision stipulating that international law and conventions form an integral part of domestic legislation and take precedence over domestic legislation in cases of conflicting provisions. In addition to this, Article 4.1 contains a constitutional principle of equality stating that “All Greeks are equal before the law”. Therefore, any legislative provision which eventually contains unfavourable distinctions among Greeks would contradict the Constitution and would be deemed invalid. Article 5.1 also states that “Every person shall have the right to develop his or her personality freely and

⁵⁵ Greece, The Constitution of the Hellenic Republic (FEK 85A – 18/04/2001)

to participate in the social, economic and political life of the country insofar as it does not infringe upon the right of others or violate the Constitution and current moral values”.

The Constitutional reform of March 2001 introduced an important innovation extending the protection of human rights in respect to discrimination in the legal relations between private legal persons. Consequently the anti-discrimination constitutional provisions concern also discrimination and infringement of human rights by for example individual employers or companies towards their employees. Nevertheless, in practice, without specific laws enforcing this new constitutional principle, first instance and appellant courts will probably have difficulties applying it.

Article 11 guarantees the political right to peaceful and unarmed assembly only for Greek citizens. Likewise, Article 12 ascribes only to Greeks the right to form a trade syndicate or any non for profit association. Both articles indicate that the constitutional scope concerning the protection of civil rights is linked to citizenship. Therefore, it could be argued that the Constitution distinguishes clearly between Greek and foreign nationals as far as rights and privileges in employment, trade union and political activity are concerned. However, legal experts have argued that this cannot justify discrimination, because the relevant Articles of Constitution guarantee a minimum of fundamental rights for Greek citizens, and they can not- and should not- be interpreted as a constitutional interdiction for full provision of rights by the common legislation or international treaties. In any case the Constitution does not prevent legislation from including foreigners in the scope of such rights, but it also does not force it to do so.

It is important to note that Article 116.2, actually provides a platform on which positive anti-discrimination legislation and administrative provisions could be based. The above constitutional provision stipulates that affirmative action in favour of women does not constitute discrimination on the basis of sex. Moreover it provides that the state “*shall attend to the elimination of inequalities actually existing, especially to the detriment of women*”. Even though the article refers to the promotion and protection of women’s rights (**gender equality**), the wording of Article 116.2 is all-inclusive, laying down a state obligation to act through positive measures for the elimination of all kinds of “inequalities”, a term that should pertain to discrimination on racial or ethnic grounds as well.

Religious freedom is guaranteed by Article 13. However, according to Article 13.2, religious **procelelysm** is forbidden. This provision that is not be found in any other European constitutional provision has led to repeated convictions of Greece by the European Court of Human Rights for imposing unacceptable legal restrictions on religious freedom. Despite suggestions by constitutional law experts, political parties and NGOs the above article was not changed during the 2001 constitutional reform. Furthermore, the Constitution does not define the concept of “procelelysm”. According to the Ministry of Justice, this prohibition applies only to “preaching” in its “negative” sense and not to the “normal” dissemination of

religious beliefs⁵⁶. Practice, nevertheless, has proven oftentimes this not to be the case. In his 1996 Report, the UN Special Rapporteur noted that since the practice of proceletysm is inherent in any religion this prohibition may hinder the religious freedom of minorities. However, proceletysm in Greece -theoretically of any religion, though in fact the prevailing religion preaches without restrictions- remains a criminal offence. Proceletysm is punishable by imprisonment, fines and deportation.

A number of other constitutional provisions guarantee other human, civil and political rights for every individual on Greek territory. The most important of these provisions are the following:

- Article 5A, a new provision (2001) regarding the right to “information” and participation in the “information society”.
- Article 6 regarding the right to personal liberty.
- Article 9A, a new provision (2001) regarding the right to be protected from the collection, processing and use, especially by electronic means, of personal data.
- Article 14.5, a new provision (2001) providing that “every person offended by an inaccurate publication or broadcast has the right to reply, and the information medium has a corresponding obligation for full and immediate retraction. Every person offended by an insulting or defamatory publication or broadcast has also the right to reply, and the information medium has a corresponding obligation for immediate publication or transmission of the reply.”
- Article 22.1 regarding the right to work including a prohibition of any kind of discrimination in employment and the right to equal pay for work of equal value.

3. ANTI-RACIST AND ANTI-DISCRIMINATION LAWS

Law 927/1979⁵⁷ is the only anti-racist criminal law punishing by imprisonment of up to two years or a fine or both:

1. Whoever intentionally and publicly instigates, either orally or in the press or through written texts or illustrations or through any other means, acts or activities capable of provoking discrimination, hate or violence against individuals or groups because of their racial, ethnic, and by virtue of an amendment in law 1419/1984⁵⁸, religious origin;
2. The establishment of, and membership in, organizations which proceed to organized propaganda or other activities aimed at racial discrimination;
3. Public, oral and written, expression of offensive ideas aimed at racial discrimination;
4. The act of refusing to sell goods or supply services, or subjecting the aforementioned activities to special conditions, on racial grounds.

⁵⁶ The terms “negative” or “normal” have not been defined or elaborated.

⁵⁷ Greece, N. 927/1979 (FEK 139A/28-06-1979)

⁵⁸ Greece, N. 1419/1984 (FEK 28A/14-03-1984)

Until 2001 when another amendment -appended to law 2910/2001- allowed the public prosecutor to bring charges *ex officio*, the law was practically not enforceable, since it required the victim to actually file a complaint to the state prosecutor. Even so, such cases are also very difficult to prove in a court of law, as several reports⁵⁹ have stressed and therefore the law was never tested in court.

According to article (1) discrimination is limited to acts described in article (3). However, article (1) has an inclusive character and should consequently be interpreted more widely, since it is a human rights provision that should be able to provide effective protection. At the same time, though, article (1) is also restrictive in the sense that it intends to punish racial discrimination if that is the sole ground for the relevant action or activity. The law nonetheless would be more effective if it provided for the punishment of racist acts or activities whose ground (sole or in conjunction with other grounds) is racial discrimination. Article (2) forbids any expression of ideas offending persons or groups of persons on the ground of the latter's racial or ethnic origin or religion. The penalty provided for in this case is a maximum imprisonment of one year and/or a fine. In contrast to article (1) whose purpose is to protect "public order and peace", article (2) aims at safeguarding the honour of individuals from the expression of ideas which offend persons on any of the aforementioned grounds. However, since freedom of expression is a fundamental right guaranteed by the Constitution (Article 14), the criminal provisions in the law may be applied in a restrictive manner.

In reference to the transposition of the Race Directive (42/2000/EC) the act of instruction to discriminate, as it is described in the article 2.4 of the Directive, is not expressly covered by law 927/1979. It may though be covered by articles 1 (incitement) and 3 (non supply of services or goods) of the law if they are appropriately interpreted. It is therefore imperative to amend the law so as to define clearly the concept of "racist instruction". Incitement to discriminate is expressly covered by article (1), as was already mentioned, and may also, in practice, cover instruction to discriminate.

The law refers only to the private sector, concerning the supply of services. Regarding services provided by public authorities article 27.3 of law 2683/1999⁶⁰ (Greek Civil Servants' Code) states that civil servants: "are not allowed to discriminate in favour or against citizens on the ground of the latter's political, philosophical or religious beliefs". Violation of article 27.3 carries disciplinary penalties. However, the above provision does not cover cases of racial/ethnic discrimination. Another similar general provision can be found in article 7.1 of law 2690/1999⁶¹ (Code of Administrative Procedures) introducing the principle of "impartiality of administrative bodies".

The statutory purpose of the anti-racist law is to safeguard "public order"; it is therefore directly related to a general criminal provision, namely Article 192 of the Greek Penal Code.

⁵⁹ Annual Report 2001, Ombudsman; Annual Report 2001, National Commission of Human Rights, National Focal Point Analytical Study on Racial Violence, National Focal Point Final Data Collection Report 2001, etc.

⁶⁰ Greece, N. 2683/1999 (FEK 19A/09-02-1999)

⁶¹ Greece, N. 2690/1999 (FEK 45A/09-03-1999)

Law 2472/1997⁶² in articles 2 and 7 expressly forbid the collection and processing of data related to the racial or ethnic origin and the religious, political or philosophical beliefs of individuals. Such data are termed “sensitive” and may be collected and processed only on the exceptional conditions prescribed in detail in article 7.2 of the law.

Law 1424/1984⁶³ ratified the “International Labour Office Convention No 111” concerning discrimination in respect of employment and occupation. By ratifying this ILO Convention Greece has undertaken to declare and pursue a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation (including vocational training), with a view to eliminating any discrimination in respect thereof. Discrimination grounds proscribed by this Convention refer, to race, religion and national or social origin (articles 1-2).

Law 1771/1988 allowed for the first time the appointment of non-Greek Orthodox Christian teachers in public schools as long as provisions are made for the presence for at least one Greek Orthodox Christian teacher responsible for religious instruction. Members of religious minorities were not allowed to teach, on the basis of a non-binding decision by the Legal Council of State (Decision 248/1973). However, the Ministry of Education based on Article 16 of the constitution defining as one of the objectives of education as “the development of a national and religious conscience”, has created various legal obstacles against the appointment of heterodox teachers at public schools. The issue was finally settled by the Administrative Appeal Court of the city of Patras, which in its judgement overturned a decision of the local Office of Secondary Education not to grant a teaching permit to the applicant (27/10/1994). Since then, no major legal problems have been encountered by heterodox teachers in their efforts to get a job.

Law 1710/1987 on Greek state radio and television prescribes in very general terms that radio and television programmes are to be based on the principle of respect of individuals’ personality and privacy. Of the same nature is the wording of the provision of article 3.1 of law 2328/1995 on private radio and television.

Law 2462/1997⁶⁴ ratified the UN International Covenant on Civil and Political Rights of 16 December 1996 improving the scope of anti-racist legislation.

⁶² Greece, N. 2472/1997 (FEK 50A/10-04-1997)

⁶³ Greece, N. 1424/1984 (FEK 29A/14-03-1984)

⁶⁴ Greece, N. 2462/1997 (FEK 25A/26-02-1997)

Presidential Decree 100/2000⁶⁵, transposing EC Directive 97/36/EC, provides for the right to redress in cases where they are offended by a radio or television programme, with regard, among others, to their “personality or honour”.

Greek Penal Code - Article 192 punishes any action “inciting disharmony among citizens”. Prosecution may be initiated ex officio. On the basis of this article groups claiming a Macedonian or Turkish ethnic identity or the right to use the Macedonian language have been prosecuted and convicted.

Article 192 punishes with a maximum imprisonment of two years, if any other more severe penalty is not provided for by another provision (like the above-mentioned article 1 of law 927/1979), anyone who publicly, in any manner, whatsoever provokes or incites citizens to act violently against each other, or to mutual discord and, as a consequence, disturbs public peace. The aim of this generic criminal provision is to prevent social upheaval. Legal doctrine has clarified that by “citizens” the above criminal provision means “groups of citizens whose bond is either a religious or political conviction or professional occupation or common interests or...even race or some conviction or conception other than religion or political ideology”.

Article 192 was used by the Greek Supreme Court in its judgment 208/1991. The Court ruled that two parliamentary candidates in the region of Thrace who during their campaign distributed leaflets where the terms “Turks” or “Muslim Turks” were used referring to “Muslim Greeks” in Thrace, aimed at the “instillation of hatred towards Greek Christians and disruption of the peaceful co-existence of Christian Greeks with Muslim Greeks”. The case was brought before the European Court of Human Rights which found that the above Greek case law was in violation of article 10 of ECHR (right of expression). This case is characteristic of the problems inherent in criminal legislative provisions such as Article 192, which has been used repeatedly in Greece in prosecuting ethnic minorities and their organisations.

Greek Penal Code - Article 196 punishes members of the clergy for “abuse of ecclesiastic office” with a maximum imprisonment of 3 years if, during the exercise of their duty or in their religious capacity, they provoke or incite citizens to “acts of intolerance” against other citizens or to enmity towards the state. Prosecution may be initiated ex officio.

Greek Penal Code - Article 186 punishes any provocation or incitement to commit a crime. In 1993 a relevant criminal prosecution was initiated ex officio against the ultra rightwing newspaper “Stochos”, that had published an article against Jews, accusing them of “being AIDS-carriers”. The newspaper was convicted in the first instance court.

⁶⁵ Greece, PD 100/2000 (FEK 98A/18-03-2000)

Greek Civil Code - Article 57 is a generic provision for the protection of the personality of individuals in cases of “unlawful harm”. This provision entitles the victim to ask for damages and to demand cease of the harm to their personality and not to be repeated in the future. The article could be used in the context of racial, ethnic or religious discrimination, but in practice it would be very difficult to prove “unlawful harm” in a court of law.

The Radio and Television Code of Conduct was submitted for approval in late 2002 to the Ministry of Press and Mass Media by the National Council for Radio and Television. The Council is an independent public authority responsible for supervising and regulating radio and television. Article 23 of the Code, entitled “vulnerable population groups”, forbids the transmission of, racist or xenophobic messages and characterisations as well as of intolerant statements. It is also prescribed therein that special attempt should be made by Greek radio and television so that no ethnic or religious minorities, or other “vulnerable or weak population groups”, are offended by any of its broadcasts. A non binding “Directive-Recommendation 5/1998” was issued on 27.03.1998 by the National Council for Radio and Television reacting to the use of sweeping statements by radio and television against Albanians in Greece, following a series of highly publicised crimes. The Council pointed out that a criminal offence should not be broadcast by Greek radio and television in a manner that leads to a generic condemnation of the “nation, race, people or any other social group to which the offender belongs”. Thus the Council laid down an important obligation of the Greek radio and television, stating that radio and television are to limit themselves to “objective information, as prescribed by the Constitution, not only avoiding any provocation, but also condemning any form of xenophobia and hate against specific nationalities or social groups”.

Athens Journalists’ Association Code of Conduct states that journalists should not be prejudiced by their, racial or cultural ideas or opinions. The Code also requires journalists to provide redress if they have published offensive information or comments.

Greek Civil Code – Article 4 stipulates that all persons on Greek territory enjoy the same civil law rights. From this general legal principle it has been established that aliens legally employed or working in Greece are subject to all Greek labour law provisions on the same conditions as Greek nationals. However, Greek labour law also contains provisions discriminatory for alien migrant workers, such as those regarding compensation in case of a work accident. According to the Decree of 24 July/25 August 1920, compensation owed to foreign workers depends on various conditions, such as their residence in Greece. Foreign workers are entitled to equal treatment with Greek nationals if there is a reciprocal agreement between Greece and the foreigner’s country of origin. This provision, however, is not compatible with the international social rights standards established, by the International Covenant on Economic, Social and Cultural Rights.

4. GENERAL LEGISLATION FOR MIGRANTS AND REFUGEES

Law 1975/1991⁶⁶ defined for the first time the legal situation of migrants and refugees: Migrant workers could receive resident and work permits for a maximum of 3 years; they could only enter the country if they had already secured a contract with a specific employer before leaving their country of origin and could only remain for the duration of their contract. Asylum seekers were, until law 1975/1991, granted temporary status directly by the UNHCR. The situation changed with the introduction of law 1975/1991 stipulating that the Greek state will be solely responsible for granting asylum. Three presidential decrees were issued further elaborating specific legal provisions for refugees: PD 189/1998⁶⁷ regulates the employment of asylum seekers and refugees; PD 61/1999⁶⁸ defines in detail the procedures for obtaining political asylum; PD 266/1999⁶⁹ regulates the operation of the Lavrion reception centre and matters concerning health care and social welfare.

Since the introduction of law 1975/1991 there have been long delays in processing the applications of asylum seekers that led many of them to apply and receive limited (annual, but renewable) residence permits under “humanitarian status”. Furthermore, the absence of adequate reception structures and information on the asylum procedures and the rights of refugees in border areas frequently leads to the deportation of asylum seekers who are treated as “illegal migrants”. Despite efforts by NGOs, such as the Greek Council for Refugees, Doctors of the World and others to inform prospective asylum seekers of their rights and the legal procedures for claiming political asylum every time massive arrivals take place, there are allegations that many refugees are turned back especially after the controversial bilateral “Re-admission Protocol”⁷⁰ between Greece and Turkey for the implementation of Article 8 of the Agreement on combating crime, especially terrorism, organised crime, illicit drug trafficking and illegal migration: The Protocol aims at the readmission of illegal immigrant being smuggled from Turkey back to that country within 14 days of arrival. Greece must provide proof that the migrants entered Greece from Turkey; asylum seekers and refugees will not be returned according to the Geneva Convention rules. NGOs and the UNHCR have voiced their concern about the possible implications of this agreement for genuine asylum seekers. According to a recently released official report of the Greek Office of the UNHCR, more than 230 persons are known to have been reprocessed to Turkey from the implementation of this protocol in November 2001 until June 2002. The date of implementation is clear. It is the date the Protocol was ratified by Greek Parliament through Law N. 3030/2002 (15/07/2002).

Nevertheless, according to a recent statement by the Public Order Minister, Turkey has not been cooperating with Athens in taking back illegal immigrants who cross into Greece

⁶⁶ Greece, N. 1975/1991 (FEK A184/04-12-1991)

⁶⁷ Greece, PD 189/1998 (FEK A140/25-06-1998)

⁶⁸ Greece, PD 61/1999 (FEK A63/06-04-1999)

⁶⁹ Greece, PD 266/1999 (FEK 217/20-10-1999)

⁷⁰ Greece, N. 3030/2002 (15/07/2002)

from Turkey, despite the bilateral repatriation agreement, Public Order Minister Michalis Chrysochoidis told the parliamentary equality and human rights committee yesterday. Turkey accepted only 14 of 2,500 applications by the Greek government to repatriate immigrants who entered Greece from Turkey - despite Greece offering to cover travel costs, the Minister noted. The minister also warned of "acute social problems", if the influx of migrants continues after the Olympics, when unemployment is expected to rise.⁷¹

Presidential Decrees 358/1997 and 358/1997⁷² regulated the first registration process carried out by the Manpower Employment Organisation in 1998. 371,641 migrants applied for either a "white" or a "green" card⁷³, but many could not secure the legal documents required.

Law 2790/2000⁷⁴ regulated for the growing number of ethnic Greeks migrating from the NIS the repatriation procedures and established special rights, privileges and social support structures for repatriates to facilitate their social integration.

Law 2910/2001⁷⁵ (amended by **Law 3013/2002**⁷⁶) replaced law 1975/1991 providing the basic legal framework for the regulation of residence, employment and naturalization conditions and processes for third country nationals. Furthermore, this law safeguards the fundamental social rights of documented migrants, such as social security and welfare provisions. The law also provided for a second regularization process for the remaining undocumented migrants. Although official data are not yet available, the Interior Ministry has stated that 351,000 migrants applied for residence and work permits. The Ombudsman's Report⁷⁷ and reports from several NGOs stressed certain negative aspects of the law noting especially serious problems with its implementation and especially the migrant registration process by the Prefectures (local authorities responsible for the registration process) who had not been properly prepared, organised or staffed. However, the most important negative aspect of the law is that it prescribes an unrealistic procedure for migrating legally to Greece requiring among else prospective migrants to secure a work contract before leaving their country and prospective employers to deposit a number of monthly salaries as guarantee.

The duration of the residence/work permits issued varies from one to three years at the discretion of the issuing authority. In practice, however, the overwhelming majority of permits issued are annual. It is important to note that the conditions for renewing the permit are stricter than those for applying first time: migrants must prove that they have worked

⁷¹ Newspaper Kathimerini, English edition, 16/04/2003 available at <http://www.ekathimerini.com/4dcgi/news/content.asp?aid=28687>

⁷² Greece, PD 358/1997 and PD 359/1997 (FEK A240/28-11-1997)

⁷³ Kavounidis J. and Hatzaki L., (2000) "Alien Applications for Residence and Work Permits", Athens: National Institute of Labour, available at http://www.eie.org.gr/Greek/contents_keimena_ergasias2.htm (12/05/2002)

⁷⁴ Greece, N. 2790/2000 (FEK 24A/16-02-2000)

⁷⁵ Greece, N. 2910/2001 (FEK 91A/02-05-2001)

⁷⁶ Greece, N. 3013/2002 (10/05/2002)

⁷⁷ Office of the Ombudsman, (2001) "Special report on the implementation of the registration procedures under law 2910/2001" Athens, Ref No 2013, available at http://www.synigoros.gr/reports/diavivasi_koinepstef.doc (15/09/2002)

legally, e.g. paying social security, for at least half of the time of the duration of their permit. Unfortunately, many migrants cannot find stable employment and employers willing to pay social security contributions. It is feared, therefore, that soon many migrants will not be in a position to renew their permits and will again be undocumented. Furthermore the law does not provide for the registration of migrants who have either entered the country after the deadline for their registration (September 2001) or who have not been able to collect all necessary documentation to renew their permits.

According to Article 5, Greek consulates abroad may issue visas of three months duration. Article 7 stipulates that a consulate may reject a visa application without justification, unless the applicant is a spouse, child or parent of a citizen of the European Union.

Moreover, Greek border authorities have the discretionary power to forbid the entry of any third country national, if in their opinion he/she plans to remain illegally in Greece or does not have the necessary financial means for the duration of their stay, unless a Greek national sponsors their stay by depositing in advance all expenses of a possible deportation.

Migrants who already have a visa may apply to renew it only for a specific reason two months before expiration. The application should be submitted to the Municipality of residence. The Municipality examines the application (concerning issues of public order) and sends it with a recommendation to the Regional Committee of Immigration, which invites the applicant for an interview and issues a recommendation to the General Secretary of the Region who accepts or rejects the application.

Procedures for legal immigration to Greece according to law 2910/2001:

- The Manpower Employment Organization (O.A.E.D.) must report during the last quarter of every year existing employment vacancies in each region that may be offered to foreigners because of lack of interest on behalf of Greeks.
- Based on this report, the Ministers of Labour, Foreign Affairs and Interior Affairs must agree on the maximum number of work permits that may be granted to foreigners annually, per country of origin and per type of work.
- This decision must then be sent to all Greek Consulates abroad. The Consulates announce the available positions, draw lists of applicants who wish to work in Greece, and send them to the Manpower Organisation and all prefectures.
- An employer may then apply to the Prefecture for migrant worker/s from this list. The employers' applications are examined and approved by the Manpower Organisation to ensure that the positions cannot be covered by Greeks. Then the employer may choose an employee from the above lists.
- The employer must also verify that he/she will cover all expenses of the migrant employee until the latter acquires a residence and work permit through a bank guarantee.
- The regional police examines the employer's application for reasons of public safety.

- The work permit is finally granted by the Prefecture with a duration not exceeding one year, but renewable on the condition of a valid work contract and fulfilment of all tax and social security obligations on behalf of the employee.
- The work permit is finally sent by the Prefecture to the Greek Consulate, so that an entry visa may be granted.
- Once the migrant is in Greece legally he/she may apply for a residence permit by submitting the following documents: the work permit, a valid contract (signed by both employer and employee), proof of medical insurance, a signed declaration concerning the place of residence, and a health certificate from a public hospital verifying that he/she does not suffer from a disease that according to the World Health Organisation standards may constitute a public health hazard. The cost of these procedures is paid by the migrant.
- The duration of the residence permit is equal to the duration of the work permit (annual). After six successive annual renewals residence permits are renewable biannually and after ten years of continuous legal stay a residence permit of indefinite duration may be granted. For a renewal the migrant has to prove that he/she has been employed full time for at least half of the working days during the period between the issue of the last permit of work and the submission of the application for a renewal. Furthermore, for any changes in the status of employment (e.g., new contract with another employer), the migrant should inform the Prefecture.

Family reunification provisions of law 2910/2001:

- Migrants who have resided legally for at least two years may reunite with their spouses and children after providing proof of a suitable residence and an adequate steady income to support all family members.
- Migrants who wish to bring their spouses and children to Greece have to submit an application to their municipality accompanied by a photocopy of their residence permit, a photocopy of their income tax declaration and marriage and birth certificates. Migrants must also submit a signed statutory declaration confirming that these persons will be living with them.
- Application fees of 147€ for the spouse and each of the children over 14 are also required.
- The municipality examines the application and documents submitted. The application is then forwarded to the General Secretary of the Region who, after consulting with the local police on public security issues, renders a decision. If the application is approved, Greek consular authorities abroad are asked to issue visas to the family members. However, consular authorities may, according to Article 7, reject a visa application for family reunification without justification, unless the applicant is a spouse, child or parent of a citizen of the European Union.

- In Greece, family members must apply for a residence permit. Children aged between 14 and 18 are issued their own residence permits, which expire when their parent's permit expires. Children under the age of 14 are covered by their parent's residence permit.
- Family members must apply for their own residence permit when they come of age (18) or in the case of abuse, divorce or when the migrant who had sought reunification dies. Family members have the right to apply for a work permit and must enrol their children in a Greek public school to complete compulsory education (9 years).

Other important provisions of law 2910/2001:

Articles 34-36 of law 2910/2001 describe in detail the conditions for entry, residence and work for many other categories of third country nationals: sportsmen, coaches, technicians, managers of multinational companies, board members of companies that have business activities in Greece, artists, intellectuals, members of music or dancing groups or circus, scientists specialized in new technology (especially computers), etc. All must prove to the authorities that they have signed employment contracts.

Articles 39-55 refer to the legal rights and duties of foreigners and other persons related to them. Generally foreigners residing legally enjoy the same rights and benefits as Greeks.

During his/her stay in Greece any third country national must declare within one month any change of residence, legal status (citizenship, wedding, divorce, birth of a child), loss of residence permit, loss or renewal of passport and any change in employment (e.g., denouncement of contract of work). The Prefectural Immigration Office keeps official records of all foreigners.

Upon expiration or non renewal of a residence permit any third country national must leave the country immediately. If he/she remains in Greece illegally for 30 days, he/she must pay the fees of the annual renewal multiplied by four, and if the time of illegal stay is more than 30 days the sanction amounts to the annual fee multiplied by eight.

Foreigners who live legally in Greece enjoy right of free movement within the national territory. Nevertheless, after proposal from the Ministers of Interior Affairs, Foreign Affairs, National Defence and Public Order a Presidential Decree may not allow third country nationals to reside in designated areas. Moreover, a third country national may be deprived of the right of free movement or the exercise of a profession for reasons of national security, public order or public health. Article 43 authorizes the General Secretary of a Region to revoke a residence permit for the above reasons or if the foreigner has committed offences or submitted falsified documents. Article 44 defines the conditions for an "administrative deportation" (without a court order). This type of deportation can be ordered by the local Chief of Police after 48 hours during which the person under deportation may submit a formal objection. Administrative deportations are ordered for criminal offences, such as rape, kidnapping, drug related offences, financial crimes, etc. But, usually, the main reason for an

administrative deportation is any violation of the migration or residence permit acquisition procedures.

Third country nationals under a deportation order may be imprisoned for a period that must not exceed three months. The deportation order may be appealed to the General Secretary of the Region. Furthermore, a deportation order may be suspended by the General Secretary for humanitarian reasons or reasons of public interest that concern the life or the health of the foreigner or his/her family. Also, after a request by the Public Prosecutor, a deportation order may be suspended, if the foreigner is a victim of trafficking.

Deportation is not allowed in the following cases:

- a) if the foreigner is under the age of 18 and his/her parents live legally in Greece;
- b) if the foreigner is a parent of a Greek person under the age of 18 and has legal custody;
- c) if the foreigner has completed the 80th year of age, unless he/she is considered to constitute a danger for public safety or public health.

The financial cost of deportation and the expenses for food during the period of detention should be borne by the person deported provided they have funds. Employers must pay the detention and deportation costs for any undocumented migrants they employ. Article 48 stipulates that during the detention period a foreigner should stay in designated rooms, under the care of the Greek Police, not in prison cells. In practice, however, all person waiting deportation are kept in cells under very bad conditions and extreme overcrowding.⁷⁸

According to article 50 anyone who enters or attempts to enter Greece illegally is punished with imprisonment of at least three months and a fine of 1500€. The Public Prosecutor has the discretionary power not to press charges against someone who is arrested for having arrived in the country illegally. In that case, the Prosecutor has to inform the local police authorities of the place of arrival as soon as possible (even by telephone), so that they can proceed with an immediate administrative deportation. If the authorities for any reason fail to deport the foreigner immediately, the Prosecutor is entitled, after three months, to revoke the previous decision for non prosecution and file charges. The Ministry of Public Order keeps record of “undesirable aliens”, under specific criteria defined by ministerial decision. If an undesirable alien enters the country illegally, he/she is punished with imprisonment of at least three months and a fine of 3000 €, an appeal does not suspend the penalty.

Public authorities must not provide any services to third country nationals who cannot provide proof of legal residence. Hospitals are exempt from this rule, if foreigners have an emergency medical problem or are underage. On 18/06/2001, the Authority for the Protection of Personal Data issued Opinion “No 86/2001” according to which, since the names of patients constitute “sensitive” personal data, differential legal treatment of foreigners should not be extended to fundamental human rights guaranteed by the Constitution, such as the “right to health” that is included to the scope of the “right to life”, being protected by the Article 5.2 of the Greek Constitution, since there is no doubt that this measure would dissuade

⁷⁸ For further details and other references please refer to the Analytical Study on Racial Violence, EUMC (2002) p. 19 and the website of the Greek Ombudsman in both Greek and English (www.synigoros.gr).

foreigners, under the fear of possible negative legal consequences, from asking help from hospitals. Moreover, after the recent changes in the Constitution, there is a new individual constitutional right applying to all persons on Greek territory for the protection of health. As for the right of hospitals and police authorities to keep or have access to health records, the Authority considered that the necessity for police control of third country nationals does not justify the existence of health records specifically for third country nationals, because the “principle of proportionality” (according to which, restrictions of human rights are constitutionally and judicially acceptable only if it is “absolutely necessary” for the promotion of other legal goals and there are no other less effective means to achieve them) is then clearly violated. The Authority suggests that either Parliament should change the above discriminatory provision or hospitals should apply its recommendation by taking the initiative to restrict notifications of the police only to those cases where there is a reasonable suspicion for the commitment of criminal acts.

The law also prescribes serious penalties for those aiding third country nationals to enter the country, reside and work illegally:

- Facilitating a third country national to enter the country illegally is punishable by law.
- Aiding (e.g. rents accommodation) a third country national resident in the country illegally is punishable by law.
- Employing a third country national residing in the country illegally is punishable by imprisonment of up to 3 months, a fine of up to 15.000 € for each person employed illegally and -by decision of the General Secretary of the Region- by the loss of the licence to operate for six months (first conviction), 12 months (second conviction) and indefinitely (subsequent conviction).

Finally, the law authorizes the Minister of Education to develop native language and culture courses for migrant children⁷⁹.

Implementation of law 2910/2001(2nd migrants registration process)

The implementation of the second migrant regularisation process proved to be a difficult and cumbersome process due to inadequate preparation and bad organisation of the competent authorities. The Ministry of the Interior and the local prefectures took over the task that had been carried out relatively effectively in 1998 by the Manpower Employment Organisation. Although more than 350 additional staff was hired to meet the needs of prefectures around the country it seems that the overall management of the procedure was ineffective and led to very long queues and delays. Since September 2001, when the application process ended, authorities have still not completed processing the applications. Consequently existing residence and work permits have been repeatedly granted automatic extensions. There are numerous press reports concerning the serious problems faced by migrants in their attempt to file applications.

⁷⁹ No such courses have as yet been planned.

The problems in the implementation of the law were highlighted in the Ombudsman's special report⁸⁰ to the Minister of the Interior and largely following its recommendations the government amended the law in May 2002 by law 3013/2002. The following are the most important changes:

1. All temporary residence and work permits are automatically extended until the end of 2002⁸¹.
2. Third country nationals applying for residence and work permits will only be interviewed, if it is deemed necessary by the competent authorities. Due to the large number of applications, it has proved impossible for the prefectural Committees of Immigration to conduct all interviews.
3. A 3-day limit is set on detention before issuing an administrative decision for deportation.
4. Third country nationals may be taken off the "Schengen undesirables list" provided they have been documented.
5. After six years of residence and employment, all work permits are renewed on a biannual basis. After ten years of residence and employment, the work permit may at the discretion of the competent authorities be renewed for an indefinite period.
6. The number of prefectural Committees of Immigration is increased to two.
7. Third country nationals resident legally in Greece and married to an E.U. citizen and their children under the age of 18 are granted a 5 year residence permit. The same applies to widows and wives and children of ethnic Greek repatriates.
8. Third country nationals may be allowed to extend their stay up to six months for humanitarian or other serious reasons provided they have financial means to support themselves.
9. Third country nationals of Greek descent who apply for Greek citizenship are exempt from paying the relevant fee. ***This practice could be regarded as discriminatory according to the spirit of the Venice Commission of the Council of Europe and its suggestions on the policy of kin states towards their minorities.***
10. In order to reduce the workload of the Ministry of Justice, a third country national may submit to the prefecture a signed declaration that he/she has not committed any criminal offence, instead of a copy of his/her penal record. The control is made afterwards by the Ministry of Justice. If he/she is subsequently found to have committed a criminal offence, his/her residence and work permit will be revoked.
11. An Institute of Migration is to be established.
12. For employment in farming and agriculture it will not be necessary to provide a formal employment contract, but simply a signed declaration.

⁸⁰ Ombudsman's Special Report and Recommendations on law 2910/2001 (Re: 2013-21/12/2001)

⁸¹ Subsequently on January 2, 2003 the permits were once more automatically extended for another 3 months as the Ministry has still not been able to complete processing the applications.

5. LEGISLATION CONCERNING THE EDUCATION OF MIGRANTS AND REFUGEES

Ministerial Decision (Ministry of Education: F3/716/C1/83) defines the conditions for school enrolment of migrant children: pupils may register in primary schools only on production of a birth certificate, according to Presidential Decree 201/1998. In practice, however, most headmasters enrol migrant children regardless of documentation.

Presidential Decrees 155/1978, 182/1984 and 86/2001 define the procedures for the recognition of studies and certificates of foreign schools and the integration of children to Greek schools through positive discrimination measures. For instance, Presidential Decree 86/2001 allows pupils from foreign schools who are in the first two grades of the Greek Senior High School to pass with an average grade of 7.5 instead of 10.

Ministerial Decision (Ministry of Education: F. 815.1/38/2.1/1093/21.4.1982) allows members of other religions to be exempt from examinations in the subject of Religious Instruction. However, parents still have to declare in writing that they do not wish their children to follow the course on religious instruction (Christian Orthodox catechism); this practice is in violation of legislation protecting personal data and the Personal Data Protection Authority has ruled that such a declaration should not be required, but the Ministry of Education has not as yet issued a circular to school authorities to refrain from requesting such declarations.

Ministerial Circular (Ministry of Education: C1/116/342/19.4.1991) requests headmasters to contact the Ministry when a foreign pupil is unable to submit official proof about the level of his/her previous studies in the country of origin, so that a respective level of the Greek educational system, necessary for his/her continuation, can be established.

Law 2740/1999⁸² regulates the acquisition of the Certification of Proficiency in the Greek Language for foreign citizens, since this is a precondition for employment in the public sector.⁸³

Ministerial Decision (Ministry of Education: F10/20/C1/708-1999)⁸⁴ regulates intercultural education, the creation and operation of “reception classes” and special courses. A one-year intensive language course in Greek should be followed by all schoolchildren entering the Greek educational system with a non Greek mother tongue followed by supportive language tuition in subsequent years. Schools with a foreign pupil population should run special courses 4 hours weekly after normal class. Courses on the language and culture of the country of origin are optional, but to our knowledge they have not been implemented in any

⁸² Greece, N. 2740/1999 (FEK 186A/16-09-1999)

⁸³ For more information see Greek National Focal Point (2002) “Analytical Study on Education”, EUMC

⁸⁴ Amending Ministerial Decision (Ministry of Education F21378/C1/1124/8.12.1994)

school. For a more detailed analysis please refer to the “2002 Analytical Study on Education” by the Greek National Focal Point.

Ministerial Circular (Ministry of Education: F/4115/C1/791-2001) informs teachers of all details of legislative provisions concerning the education of migrants and emphasizes that the main aim of schools should be the fight against school failure as a key factor against social exclusion and the overall improvement of social equality.

6. LEGISLATION ON NATURALISATION CONDITIONS AND PROCEDURES

Acquiring Greek citizenship through naturalisation is a long, expensive and complex process stipulated by the Articles 58-64 of law 2910/2001. Applications take several years to be reviewed and very few⁸⁵ are approved.

Ethnic Greek migrants from the NIS are treated separately and differently by law and several legal provisions facilitate their acquisition of Greek citizenship: According to the 24755/6-4-1990 Joint Ministerial Decision by the Ministry of the Interior and the Ministry of Defence repatriated Greeks could enrol in municipal registers and remain in Greece indefinitely without providing any further documentation other than proof of their ethnic descent. In 1993 according to Law 2130/1993 the concept “repatriation” became a legal term and ethnic Greeks were distinguished from other foreign nationals in the acquisition of Greek citizenship by a special rapid process. By 1998 more than 95,000 repatriates had acquired Greek citizenship status, but a Parliamentary Committee of Inquiry⁸⁶ investigating the special process of citizenship acquisition for repatriated ethnic Greeks discovered many irregularities. The issue of the exact number of ethnic Greek repatriates from the NIS and the special process of citizenship acquisition applicable especially to them has been repeatedly discussed in Parliament as both major parties have accused each other of falsely attributing citizenship status when in power in order to influence electoral results.

Generally to be eligible for the acquisition of Greek citizenship through naturalisation all foreigners (EU and non-EU citizens) must be over 18 and have a clean criminal record⁸⁷.

Based on law 2910/2001, applicants also have to fulfil a number of statutory requirements, including fluency in Greek, a total of 10 years residency in Greece in the 12 years preceding the date of the application. Refugees should have a total of five years' residency. The only exception to the residency requirement are foreigners who were born and raised in Greece, as well as those who are married to Greeks and have children with their Greek spouses. The application for Greek citizenship through naturalisation is submitted to the applicant's municipality accompanied by the following documents:

⁸⁵ Public authorities do not release data on naturalization and citizenship acquisition especially concerning ethnic Greeks.

⁸⁶ Karamanlis Foundation (2001): “Findings of the Electoral Committee of Inquiry on the 2000 National Elections”, available at http://www.idkaramanlis.gr/html/arxeio/anal_eklog.html (10/09/2002)

⁸⁷ Also no deportation order issued against them.

- * A statement of naturalisation signed in the presence of the mayor and two witnesses (Greek citizens);
- * A photocopy of the applicant's passport or valid travel document. A translation is required if the information on this document is not written in Latin characters;
- * A photocopy of the applicant's residence permit;
- * A photocopy of the applicant's birth certificate;⁸⁸
- * A photocopy of the applicant's most recent income tax return;
- * Applicants must also have their fingerprints taken at their local police station and include verification with their application;
- * A non-refundable processing fee of 1,470 €

The application and all the required documents are examined by the local prefecture and forwarded to the Regional General Secretary for approval.

If the application is approved, officials at the regional office request a copy of the applicant's Type A criminal record certificate from the Justice Ministry. The application is then forwarded to the Interior Ministry, where officials hold a personal interview with the applicant to determine his/her proficiency in the Greek language, character and personality. If the applicant does not show up at this interview, his/her request for citizenship is automatically rejected. If the application is approved, the decision is published in the *Government Gazette* and the applicant must within one year take an oath of allegiance⁸⁹. If the application is rejected, one may apply again after one year.

Non-nationals of Greek descent who reside abroad may also acquire Greek citizenship. They must submit an application to their local Greek consular office. Here are the application requirements:

- * A statement of naturalisation signed in the presence of the consul and two Greek citizens, who serve as witnesses;
- * A Type A criminal record certificate issued by authorities in his/her country of residence.

The application is then processed by the Interior Ministry.

7. LEGISLATION CONCERNING THE BORDER POLICE

Law 2800/2000⁹⁰ regulates the development and operation of the Border Police. Its primary mission is to protect the borders from illegal entries. Despite its title, though, the Border Police is in fact an "immigration police" since it operates not only on the border areas, but throughout Greece and especially in urban centres. Members of this force do not receive formal police training in the Police Academies and are contracted for a limited time period rather than

⁸⁸ This is not required for refugees

⁸⁹ "I swear to be true to my homeland, to obey the constitution and the laws of this country and to consciously fulfil my duties as a Greek citizen."

⁹⁰ Greece, N. 2800/2000 (FEK 41A/29-02-2000)

recruited as ordinary policemen through the state examination system. Consequently, as the police trade unions have repeatedly argued, they cannot be considered as properly trained in handling difficult and sensitive issues regarding illegal migration, trafficking and asylum applications.

8. LEGISLATION CONCERNING REPATRIATED ETHNIC GREEKS

Law 2790/2000⁹¹ regulates the repatriation of ethnic Greeks, citizens of the former USSR to Greece, the conditions for the acquisition of Greek citizenship and special provisions for their social integration. According to this law a clear distinction is made between ethnic Greeks and others concerning the procedures for naturalization.

According to the Article 1, an ethnic Greek may submit an application to the Greek Consulate of their country of residence. A passport, a birth certificate, a certificate of family status, and any other official document proving Greek descent are required. A special committee examines the documents and reports to the head of the Consulate who forwards the inquiry report to the General Secretary of the Region of the future residence of the applicant. On the basis of the inquiry report and a second report by a special committee of the Region that re-examines all documents and testimonies verifying the Greek descent of the applicant, the General Secretary decides whether to grant citizenship. The decision is published in the Government Gazette and the applicant acquires the Greek citizenship. Within one year the applicant must take an oath of allegiance in front of the Greek Consul.

If a person of Greek origin does not wish to apply for Greek citizenship⁹², authorities may provide him/her with a “Special Identity Card” that can be used as a residence and work permit within the Greek territory. Spouses of Special Identity holders receive automatically residence and work permits. For the acquisition of this Card all the documents mentioned above are required. Moreover, by decision of the Interior Minister, special committees may review all documents concerning the acquisition either of the Greek citizenship or the “Special Identity Card”.

The Interior Ministry is the competent authority for planning and implementing any governmental policy related to the reception, social support and incorporation of repatriated persons in Greek society.

9. LEGISLATION ON TRAFFICKING

Law 3064/2002⁹³ defines trafficking and prescribes the punishment for traffickers and various provisions of support for their victims. The law was drafted by the “Task Force against Trafficking in Human Beings” that was set up in 2001 as a response to severe criticism by

⁹¹ Greece, N. 2790/2000 (FEK 24A/16-02-2000)

⁹² This has been the case especially for ethnic Greeks from Albania who will automatically lose their Albanian citizenship if they acquire a second citizenship.

⁹³ Greece N. 3064/2002 (FEK 248A/15-10-2002)

national and international NGOs concerning trafficking and the sex industry in Greece. In general, the law reforms the current Penal Code regarding trafficking and sexual exploitation, by considering both as organized crimes. Also, the law deals more specifically with the issue of child pornography and the protection of minors. It is worthwhile to mention that public officials and legal experts (lawyers, professors of law) have realized the importance of the issue and, therefore, made a great effort to raise the awareness of Greek society. The law considers trafficking and sexual exploitation as acts strictly opposed to the right of every person to respect (right to dignity), the right to self-determination and free development of personality, the right to sexual freedom and the right to non submission to forced labour (interdiction of slavery). Those rights are related to the fundamental right of a person not to suffer from any inhuman or humiliating treatment, and are protected not only by the Constitution, but also by international treaties. Since this law is going to constitute a very important tool in the fight against trafficking that has provided the sex industry in Greece with thousands of victims for at least a decade, it is necessary to analyze in details its most basic provisions.

Article 9 modifies article 351 of the Penal Code on “trafficking of human beings” by defining trafficking as the “recruitment, transfer or acceptance of persons, under the threat or exercise of violence or other forms of constraint, abduction, deception or abuse of power”. According to the law, an intention of “sexual exploitation” constitutes a vital legal requirement for the penalization of the above acts. That explains why the new provisions refer to Chapter 19 of the Penal Code on “crimes against sexual freedom and crimes of financial exploitation of sexual life”. Sexual exploitation is the main kind of exploitation of victims of trafficking. Nevertheless, the latter may aim at other forms of exploitation as well, such as forced labour (e.g. street children working as beggars or peddlers) or abstraction of body organs. This is the reason why NGOs, such as the Human Rights Watch has criticised the amendments of the Penal Code for being only in partial compliance with international standards, whereas the Protocol of the United Nations about Prevention, Oppression and Punishment of Illegal Trafficking of Persons penalizes all forms of exploitation, especially those involving women and children.

Paragraph 2 of article 9 stipulates that trafficking remains an illegal act even if it takes place with the consent of the victim, as a result of “promises, gifts, payments or other benefits or the use of deceptive means. The penalties for the above crimes are harsher in the new law. Also, the Penal Code now punishes the use of “prostitution services” when the provider of such services is underage.

One of the most important innovations of the new law consists in the introduction of social assistance for the victims: housing, medical care, access to food, psychological support, general and vocational education and training. However, the implementation procedures for the above provisions, is to be determined by presidential decrees to be issued in the future, although it had been strongly suggested that they should be integrated into the law.

Paradoxically, another special crime concerning the “incitement to prostitution and to moral and material assistance of a person who has not started exercising prostitution yet” (article 341 of Penal Code) has been abolished by the legislation proposed by the new law. There is no provision concerning the assets of traffickers. The law abolishes also the crime of “exploitation of a prostitute”, which consisted in using the income of a prostitute by a third person. The law does not provide for any actions concerning the prevention of trafficking.

10. LEGISLATION CONCERNING REFUGEES & ASYLUM SEEKERS

The legal situation of refugees is regulated by law 1975/1991, amended by law 2452/1996⁹⁴, and Presidential Decrees 83/1993⁹⁵, 209/1994⁹⁶, 266/1999⁹⁷ and 61/1999⁹⁸. The procedures for asylum applications are the following:

If an asylum seeker arrives at a port or an airport without the proper documents to enter the territory and files an application for asylum, the application will be examined on the same day. The applicant must wait for the decision at the port or airport. All applications filed at ports and airports are examined through an accelerated procedure. Applications filed within the country can also be processed through the accelerated procedure if, after the first interview, the interviewer is of the opinion that the claim is “manifestly unfounded”⁹⁹. The case must be submitted to the Ministry of Public Order within ten days. In exceptional cases, if the person does not fulfil the legal conditions for entry into Greek territory or if he/she is found in an airport transit zone on his/her way to a third country, the claim, together with the relevant report and supportive documents, shall be submitted to the competent Directorate of the Ministry within 24 hours.

Each case is examined individually and the asylum seeker must not be expelled before a decision is made on whether or not the case is “manifestly unfounded”. The Head of the Division for Police, Security and Order at the Ministry makes this decision on the basis of a recommendation by the Department of State Security at the Ministry. If the application is rejected, the applicant has the right to lodge an appeal within ten days to the Secretary General of the Ministry. The Secretary General's decision which must be delivered within 30 days is based on the advice of an Appeal Board consisting of –among others- officials from the Ministry of Public Order, the Ministry of Foreign Affairs and officers of the UNHCR.

The regular status determination procedure are followed by most asylum seekers. A regular application for asylum can be lodged with any public authority in Greece. Not all

⁹⁴ Greece, N. 2452/1996 (FEK 283A/31-12-1996)

⁹⁵ Greece PD 83/1993 (FEK 123A/23-05-1993)

⁹⁶ Greece PD 209/1994 (FEK 131A/11-08-1994)

⁹⁷ Greece PD 266/1999 (FEK 217A/20-10-1999)

⁹⁸ Greece, PD 61/1999 (FEK 63A/06-04-1999)

⁹⁹ An asylum application is considered “manifestly unfounded” if: 1. The reason for the application does not fall within the 1951 Convention; 2. The asylum seeker has used false identity documents, given false information, or is considered to have “abused” the procedure in other ways; 3. The asylum seeker comes from what is considered to be a “safe country of origin” – There is no official list of “safe countries” and the presumption of safety can be overturned in the appeal procedure.

authorities, however, are qualified to handle asylum applications. Consequently, asylum seekers may, in practice, experience difficulties in even lodging an application. There is no time limit for filing an application. After an initial interview, the authority examining the asylum claim submits the application, with supporting documents and a report, to its supervisory Police Directorate or Aliens Sub-Directorate. The supervisory body gives its opinions on the proposals made by the interviewing officer and on whether to transfer the responsibility to examine the application to another EU Member State under the Dublin Convention. It then submits the application to the competent Directorate of the Ministry. The General Secretary of the Ministry makes the decision on the application, following relevant recommendations made by the Division of State Security of the Ministry.

The examination is conducted by the Aliens Sub-Directorates or Departments; the Security Departments of the State Airports and the Security Sub-Directorates of Departments of the Police Directorates.

Asylum applications must be examined by the above within three months following their submission. Applications filed at ports and airports, where asylum seekers remain until a decision has been made, are examined on the same day. Specialized police and civil personnel are assigned to examine the applications. Legal advice is not always available to the applicant, nor is information about the procedure in languages that the asylum seeker understands. Personal interviews are held and all interpretation costs are covered by the authorities. If an asylum seeker is recognized as a refugee, he/she is given a copy of the decision and a refugee identity card with a renewable residence permit valid for five years. If the application is rejected, the decision is announced to the applicant orally, in a language that he/she understands. The decision contains a reasoned justification for the rejection and explicitly mentions the time limit of 30 days for the right to file an appeal.

The UNHCR has access to asylum seekers throughout the procedure, including the appeal procedure and all decisions are communicated to the UNHCR. The appeals process is the same as in the accelerated process. An asylum seeker who is not granted refugee status can be granted an annual “temporary residence card” on humanitarian grounds. The Minister of Public Order grants the residence card on humanitarian grounds and there is no right to appeal a refusal. To renew the permit the person must, at least 15 days before the expiry of the card, submit an application to the locally competent police authority. The General Secretary of the Ministry decides on such applications.

In accordance with Presidential Decree 61/1999, asylum seekers are to be provided with an interpreter during their interview. However, authorities are usually unable to provide interpreters. Furthermore, most of the interviewers’ knowledge of foreign languages is limited and prevents them from directly accessing all available information on the country of origin. The Greek Council of Refugees¹⁰⁰, which was co-funded by the UNHCR may provide interpreters at interviews. Where necessary, alternatives are also explored. For example, locals with the required language skills may be called by the police, especially at border

¹⁰⁰ More information available at <http://www.gcr.gr> (23/01/2001)

areas, to assist with interviews.

Persons who are registered as asylum seekers by the authorities are given a leaflet containing information on the asylum procedure and their rights and obligations. Currently, this leaflet (published with partial funding from UNHCR) is available in Greek, English, Albanian, Arabic, French, Kurdish, Russian, Serbo-Croatian, Turkish and Farsi. The UNHCR has access to transit zones in airports. As for legal advice, there is no legal aid scheme funded by the Greek government, which nevertheless urges NGOs to offer free legal advice. The Police Academy offers courses on human rights, but not focusing on refugee law or refugee status determination procedures. There is, however, a training structure for border, customs, police and military officials in receiving children, and on special interview techniques to be followed when interviewing children. UNHCR's relevant guidelines relating to gender have been made known and explained to status determination officers.

Ministry officials also receive training on refugee protection and asylum procedures through specialized training offered by the UNHCR. There is no formal training for state officials handling asylum issues other than the School of Judges in Thessalonica through which the UNHCR sends refugee status determination material to public prosecutors and judges.

Once they have been admitted, asylum seekers can stay in the few inadequate refugee camps or seek their own accommodation provided the police is informed of their whereabouts. The residence permit for asylum seekers is valid for six months and is renewable. The State does not grant any financial assistance to asylum seekers. Very limited financial and material assistance is provided by NGOs. The number of places in the existing reception centres is very limited, and most asylum seekers have to rely on welfare agencies for shelter. There are no permanently established reception facilities at land border posts or on the islands. Since 2000 authorities have taken some steps to provide temporary shelter to new arrivals. This includes accommodating for group arrivals in hotels for a few weeks while the screening process is conducted. Most asylum seekers come in groups and are kept together, generally in precarious conditions concerning accommodation, health, and privacy. Detention conditions are also generally very poor apart from the detention facilities at the Athens International Airport that were recently renovated.

The 1998 law on social welfare includes general provisions for asylum seekers: Asylum seekers and refugees are explicitly mentioned as "vulnerable groups" for whom special projects can be designed. However, practically no measures have been taken to improve the situation.

According to Presidential Decree 266/99, state hospitals can only cover urgent medical needs. However, doctors that are members of NGOs are available at reception centres. Pursuant to Presidential Decree 61/1999, asylum seekers undergo routine medical examinations to prevent the spread of communicable diseases. These examinations do not include HIV testing. Asylum seekers who report that they are victims of torture are to be referred to specialist medical institutions by the police, as required by Presidential Decree

61/1999. NGOs play an important role in social counselling as well. As for education, Greek language courses are given at the refugee reception centre in Lavrio by the Ministry of Education. Children of asylum seekers have free access to education until the age of 16.

Asylum seekers are entitled to apply for a work permit for a specific job. Since Presidential Decree 189/1998, asylum seekers have had access to temporary employment, albeit with limitations. Asylum seekers may undertake employment on the condition that no Greek or EU citizen, recognized refugee or person of Greek descent expressed interest in the particular post. These restrictions coupled with competition with undocumented migrants have limited the asylum seekers' possibilities to find work.

Separated children between the ages of 14 and 18 may lodge asylum applications if they seem to have the necessary maturity. In all other cases, a prosecutor is appointed to act as legal guardian. There is no special status determination procedure for separated children, or any specific provisions regarding family reunification for them. The basic rules determining family reunification apply.

Separated children are entitled to special treatment including facilities for care, appointment of a legal guardian, counselling and the provision of interpretation. In particular, separated children are entitled to immediate medical and social care. In addition to being entrusted to special care centres for children without parents, or whose parents cannot be traced, separated children may be placed with foster families. The detention of separated children is extremely rare, although the detention of minors accompanying their parents is common. The Government has declared its intention to put homeless separated children in special institutions in the future until their cases are addressed.

Presidential Decree 61/1999 stipulates that female asylum seekers should be interviewed by female staff, including interpreters, if appropriate due to their cultural background and experiences. In practice, this is not always possible because of a chronic shortage of specialized staff. When female asylum seekers have difficulties in dealing with male asylum officers, due to prior traumatic experiences or cultural background, they have a right to be interviewed by female officers and to deal with female interpreters. Claims involving sexual violence, rape, forced sterilization and female genital mutilation, are examined carefully and with the necessary sensitivity. There are, however, very few cases where these grounds have been used to afford female asylum seekers protection.

Although the Greek government has maintained its reservation regarding article 26 of the 1951 Convention asylum seekers in the refugee status determination procedure are free to move within the country, but they are obliged to keep the Aliens Department of the Police informed of their whereabouts. During the determination procedure the applicant is obliged to remain in his/her stated address or in a place designated by the Ministry. Asylum seekers who submit applications while in a transit zone are normally required to remain there until the claim has been examined and a decision made.

The authorities hold some asylum seekers in detention, if they have been arrested for illegally entering Greece and have subsequently applied for asylum. They often remain in

detention pending a final decision. Those detained also include rejected asylum seekers and those who have failed to have their “humanitarian” or “temporary protection” status renewed. The duration of detention varies but may last several months.

11. LEGISLATION CONCERNING MINORITIES

The Lausanne Treaty of 24 July 1923¹⁰¹ constitutes the main legal provision for the Minority of Thrace and is the legal basis for any debate concerning minorities in Greece. Although the minority has a religious status, the expression “exchange of Greek and Turkish populations” in the very title of the Treaty leaves no room for misinterpretation. Despite the different approaches of the two states on the whole matter, all subsequent agreements between Greece and Turkey relied upon this Treaty, which regulates every aspect of the relationship between the Greek state and the ethnic minority of Thrace.

The 5th Part of the Treaty, which refers to the “protection of minorities”, provides both the Christian (Greek) minority of Turkey and the Muslim (Turkish) minority of Greece in Thrace with specific rights. Apart from the right of religious freedom, the Treaty settles also issues of linguistic diversity. Article 38 includes a basic “clause of interdiction of discrimination based on language”, as far as the protection of life and liberty of a person is concerned. Article 39 accords to minority members the right to use their language in their private and commercial relations, through their press, and during their participation in religious ceremonies or in public meetings. Article 41 guarantees the right of a minority member to use his/her native language during a judicial process. The government is obliged to provide teaching of the native language of Muslims¹⁰² in the public primary schools of Thrace. The Treaty also protects the right of minority members to establish and manage private schools and educational foundations.

Law 694/1977¹⁰³ is the basic law regulating the education of the Muslim minority. The legal nature of this regulation is mixed: there is a coexistence of legal provisions of both public and private character. In order to establish a Minority school, a special permit from the Prefecture is required, after a submission of application to the Inspector of Minority schools on behalf of parents. The Head of Prefecture issues the permit after approval by the Ministry of Education.

Law 2341/1995¹⁰⁴ introduced the notion of affirmative action in favour of a socially excluded minority: According to the provisions of the law a specific number of places at every university

¹⁰¹ *Convention Concerning the Exchange of Greek and Turkish Populations (Appendix A, Article 2), Lausanne January 30, 1923 between the Government of the Grand National Assembly of Turkey and the Greek Government.* English text available at <http://www.hri.org/docs/lausanne/> (09/09/2002)

¹⁰² The language taught is Turkish, although part of the minority defines itself as Pomak speaking a Bulgarian dialect.

¹⁰³ Greece, N. 694/1977 (FEK 244A/01-09-1977)

¹⁰⁴ Greece, N. 2341/1995 (FEK 208A/06-10-1995)

department are reserved for Muslim minority students.

Necessity Act 1672/1939 still regulates the establishment of non-Christian Orthodox places of worship. According to the law the Ministry of National Education and Religious Affairs is the competent authority for issuing a permit to operate a place of worship. However, such approval requires, in turn, authorization by the local Orthodox Bishop, as well as a request by at least 50 families of the area. Any church or place for religious assembly built and operated without authorization is liable to closure, and those responsible may be prosecuted, imprisoned and required to pay a substantial fine. Since religious minorities are often denied permission due to the opposition of the Orthodox Church, they tend to use flats or shops as places of worship. The European Court of Human Rights has repeatedly dealt with violations of religious freedom that will be further elaborated in the chapter on Jurisprudence.

7. PRESENTATION AND ANALYSIS OF SELECTED CASE LAW

A. The case of the reference of religion on the identity cards of Greek citizens

All Greek citizens must at the age of 14 acquire identity cards issued by the Greek Police. Identity cards contain the full name, photograph, signature, fingerprint of the right index finger and descriptive information of the physical appearance, residence, occupation and religious affiliation of the bearer.

In 2000 the Personal Data Protection Authority issued the legally binding Decision N^o 510/17/15-5-2000 ordering the removal of the religious affiliation from identity cards according to the provisions of law 2472/1997. Consequently N^o 8200/0-44210/17-7-2000 common Ministerial Decision by the Minister of Public Order and the Finance Minister abolished any mention of religious affiliation from identity cards.

The Greek Orthodox Church reacted strongly against this decision arguing that since religious affiliation and ethnic identity are related data on religious affiliation should at least optionally be allowed to exist on identity cards. Greek citizens supporting the views of the Greek Orthodox Church submitted a formal application to the Supreme Administrative Court (Council of State) in order to nullify the above decisions claiming that they insult their religious affiliation.

The Supreme Administrative Court rejected the application by Decision 2283/2001 arguing that the constitutionally guaranteed freedom of religious conscience includes the right of a person not to reveal his/her religious belief. Therefore any law stipulating any reference, compulsory or optional, of religious affiliation on identity cards violates Article 13 of the Constitution and law 2472/1997. According to the decision, "no one can be forced to disclose, directly or indirectly, his/her religious convictions, especially through formal acts or omissions that would possibly lead someone else to conclude their very existence or non existence. No public authority is allowed to intervene in this constitutionally inviolable field of individual conscience and investigate belief or, even worse, impose its public manifestation. Any different interpretation will definitely result in the violation of the negative aspect of the religious freedom of those persons who are reluctant to manifest their religious beliefs".

B. The case of quotas against women for access to professional training

A woman that passed the state examination for the Police Academy in the academic year 1995-1996 was not allowed to enrol since the 10% quota¹⁰⁵ for women had been filled. She filed a complaint to the Supreme Administrative Court (Council of State), requesting that article 1.2 of law 2226/1994, article 1.1 of Ministerial Decision F.151/B3/6127/30.8.1995 and Police Chief Decision 6000/2/630-xe/6/12/1995 granting the police the right to set annual quotas for the admission of female candidates in the Police Academy to be nullified.

¹⁰⁵ Greece, Regulation 6500/2/4-g/31/1/1995, Ministry of Public Order

The Court ruled in her favour stating that any deviation from the constitutionally guaranteed principle of “gender equality” should be justified by specific reasons that should serve serious purposes, which cannot be fulfilled otherwise. Specifically, the Court argued that the “overall mission of the Greek Police is not incompatible with female capacities, because gender does not play a crucial role in all the activities of the Police, according to common experience”, and, therefore, decided that gender quotas are not constitutional.

Furthermore, in 2001, the Court changed its jurisdiction stating that women should not only be allowed to occupy any position in the Police Forces without any restriction, but should also be entitled to preferential treatment through affirmative action.

However, the Ministry of Public Order announced that in the future no gender restrictions or quota will apply, but men and women must both satisfy the same criteria for physical minimum requirements (height, weight and athletic performance), which obviously puts women at a clear disadvantage. It is expected that this will also be challenged in court.

C. The case of compulsory character of religious oath

A Greek Christian Orthodox graduate of the University of Athens’ School of Theology asked to be exempted from the obligatory religious oath during the graduation ceremony (prescribed by law 5343/1932). Instead of the oath, he proposed to give his personal word of honour. The Rector of the School rejected his application, and the student filed a complaint with the Supreme Administrative Court (Council of State), which ruled on the issue of the compulsory character of a religious oath as a precondition for the exercise of a civil right, with regard to religious freedom.

According to the Court, a substantial dimension of the religious freedom is the inviolability of the religious conscience according to Article 13 of the Constitution. The “negative aspect” of the constitutionally guaranteed freedom of religion consists in the “non enforcement to make certain acts or omissions against a person’s free will, especially when these acts or omissions contradict their religious beliefs”. The Court claims that paragraph 5 of Article 13, which gives the legislator the authority to define in which cases an oath is legally permitted, should be interpreted only in the light of the paragraph 1 of the same Article, which refers to the respect of the inviolability of the religious conscience. From the combination of the above constitutional provisions, the Court concluded that the compulsory character of religious oath is opposed to the right of religious freedom, since it insults its “negative” content: the non oppression of religious conscience.

D. The case of the Catholic Church vs. Greece

The Roman Catholic Church of the Virgin Mary built in 1213 by Venetians, is the cathedral of the Catholic Diocese of Crete. In June 1987 two people living next to the church demolished a wall surrounding it and made a window looking onto the church in the west wall

of their own building. On 2 February 1988 the church brought an action in the district court seeking an order for restoration to the previous state. On 18 October 1988, the district court ruled in the church's favour, and ordered the neighbours to rebuild the wall. It had dismissed an objection to admissibility to the effect that the church lacked "legal personality" and, therefore, had no standing to bring or defend legal proceedings.

On appeal, however, the Chania Court of First Instance, sitting as an appellate court, accepted the defendants' arguments that the Catholic Church, established in Greece since the setting up of the Greek state in 1830, had never acquired the legal personality required by Greek legislation for bringing or defending legal proceedings. The Diocese had contended that its legal personality had been recognized in the London Protocol of 3 February 1830. On 18 May 1989, the Court of First Instance quashed the judgment of 18 October 1988. On 14 December 1990, the church appealed on points of law, but on 2 March 1994 the Third Division of the Court of Cassation upheld the judgment of the Court of First Instance.

The case was taken to the European Court of Human Rights, which ruled on 16 December 1997 unanimously that the applicant Church's inability to conduct legal proceedings as a result of the civil court's refusal to acknowledge that right was in violation of Article 6.1 (right of access to a court of law) and Article 14 (prohibition of discrimination) of the European Convention on Human Rights. The Court also held unanimously that it was unnecessary to consider the applicant Church's complaints under Article 9 of the Convention (freedom of thought, conscience and religion) and Article 1 of Protocol Number 1 (protection of property), each taken alone or together with Article 14 of the Convention.

Moreover the Court ruled that it was apparent that the legal personality of the Greek Catholic Church and its Dioceses had never been called in question since the creation of the Greek State, either by public administration or by the courts. The Catholic Church engages routinely in selling and buying of movable and immovable property and conducts civil transactions, whose validity has never been in question.

E. Cases concerning the use of the word "Turkish" in associations

Twelve teachers were acquitted on appeal on 6 June 2000. They had been found guilty and sentenced to eight months' imprisonment, suspended for three years, on 7 June 1997 for participating in the "Union of Turkish Teachers" in Western Thrace that was proclaimed illegal for inciting ethnic hatred by using the word "Turkish" rather than "Muslim" teachers, and for urging Muslim teachers and pupils to boycott classes in minority schools.

In December 2000 the Greek Supreme Court ruled that the "Turkish Union of Xanthi" could not be prosecuted for the use of the word "Turkish". The Greek government responding to criticism of UN bodies and NGOs argued that, "...Greek authorities subscribe to the international standards... the above right [to self-determination] cannot be exercised arbitrarily, but should be based on the existence of objective criteria relating to the national identity of individuals. The Greek Government does not deny the application of this principle

to persons who belong to the Muslim minority. In fact every member of this minority is free to declare his/her ethnic origin (be it Turkish, Pomak or Roma), speak and learn his or her own language and exercise his or her own religion, customs and traditions. The attempt, however, to identify the entire Muslim minority of Thrace as “Turkish” is, in the view of the Government, unjustifiable and goes against existing realities. Despite the many problems that undeniably exist, the Greek Government makes every effort to preserve and promote the identity of the Muslim minority of Thrace and the special characteristics of the identity of its members.”

F. The case of non recognition of the union “Shelter of Macedonian Culture”

On 12 June 1990 56 Greek citizens proclaiming themselves as ethnic Macedonians, applied to the civil Court of First Instance of Florina for the official registration of their association according to Greek Civil law. The statutes of the association stated the following aims: a) The cultural, spiritual and art education of its members, along with the development of a spirit of cooperation, solidarity and love among them b) The cultural decentralization and the preservation of the spiritual and cultural traditions, manifestations and monuments of the local civilization and its further promotion c) The protection of the natural and cultural environment of the area.

The court rejected the application ruling that the real purpose of the association was not the one described in its statute, but the promotion of the view that there is an ethnic Macedonian minority in Greece. The Appeal Court of Thessalonica rejected the appeal of the applicants adding that the term “Macedonian” is used in a way that threatens the territorial integrity of Greece. The Greek Civil Supreme Court approved the decision of the Appeal Court.

The case was taken to the European Court of Human Rights that ruled the Greek State had violated the right to free association, as it is guaranteed by Article 11 of the European Convention of Human Rights and awarded moral damages of 44,000 € to every applicant. The Greek State claimed that its action aimed at protecting national security, public order and Greek historical and cultural symbols. The Court rejected the claim, because “the exceptions from the right to free association should be interpreted narrowly and such a reason is not included in the Article 11”. Furthermore, the European Court rejected the arguments of the Greek Appeal Court, since “its conclusions about the dangerous intentions of the applicants were based on mere suspicions”. Moreover, according to Greek law (Article 12 of Constitution and article 81 of the Civil Code), only a control of the “conformity” of the statutes to the law, and not of its “real intentions”, is acceptable.

G. The cases of the appointment of religious leaders of the Muslim Minority

The legal status of religious leaders (Mufti) of the Muslim Minority are defined by law 1920/1991 (substituting law 2345/1920). The earlier law provided for the election of Muftis by

the local communities, although in practice the Greek government had always appointed the Mufti in cooperation with the Muslim Members of Parliament. The Mufti is legally a civil servant administering real estate property, mosques and religious schools. He also has judicial competence concerning marriages, divorces, custodies, testaments and many other issues of family and heredity law. For all the above competences he is constitutionally regarded as a judge.

On 28 December 1990, Serif was elected as Mufti by a number of Muslims and in February 1991 he started conducting religious ceremonies. He was tried for "impersonating religious authority" according to the articles 175 and 176 of Penal Code and condemned to 8 months imprisonment. His appeals were rejected and the Civil Supreme Court in its 495/1997 decision, stressed that "the applicant was not deprived of his freedom to perform his religious duties but only of the illegal exercise of the religious office of Mufti".

The case was taken before the European Court of Human Rights which ruled that Greece was in violation of Article 9 (protecting freedom of thought, conscience and religion) of the European Convention on Human Rights stressing that "religious freedom is one of the foundations of a democratic society according to the European Convention". The Greek government claimed that the existence of a second Mufti caused social conflict. However, the European Court ruled that "...the role of a government should not consist in the prevention of a crisis through the elimination of pluralism, but through the promotion of a mutual tolerance between competing groups". In the frame of religious freedom, "anyone can become religious officer of any group of persons as far as there is no deception of believers with regard to his eventual judicial competences". Nevertheless, only a Mufti who is appointed officially by the government can be competent with regard to acts having legal results. According to the facts of the case, there was no proof that Mufti Serif deceived Muslims that he could exercise judicial competences. The Greek government acknowledged the ruling of the European Court and announced its willingness to implement the decision and find ways to solve this sensitive problem in cooperation with the minority.

In May 1993, in a similar case, the Appeal Court of Lamia found Mehmet Emin Aga, elected Mufti of Xanthi, guilty of "usurping the function of a religious minister". He was sentenced to a total of 132 months imprisonment, which, after appeal, was reduced to 94 months. In 1995, Mehmet Emin Aga served six months in prison. All other sentences, as provided by Greek law, were reducible to fines. Until now, the Greek Supreme Court has rejected Mehmet Emin Aga's all but one of appeals and upheld a total of 38 months' imprisonment.

8. SUMMARY

Our analysis of the existing legislation combating discrimination, racism and xenophobia shows that Greece has on the one hand developed an adequate legal protection of basic human rights, but on the other hand lacks the necessary comprehensive legislative framework to combat daily practices of discrimination and racism relying largely on the well intentioned interpretation of vague definitions in existing laws and constitutional provisions.

Furthermore, the legal framework regulating migration clearly designed to dissuade anyone contemplating legally migrating to Greece has had the opposite effect to its intentions leading to an increase in illegal migration. Additionally, it has proved in practice impossible to implement due to the cumbersome bureaucratic procedures involved in applying for residence and work permits.

Also, legislation concerning naturalisation clearly discriminates in favour of persons of ethnic Greek descent and both by complex, arduous and long processes as well as by imposing an unreasonably non-refundable and excessive application fee aims at dissuading applicants.

No legal provisions exist for the prevention of racial, ethnic, cultural or religious harassment and discrimination on a practical basis. Neither is there any provision for monitoring and receiving complaints for discrimination and harassment apart from the Ombudsman, who is nevertheless not mandated to deal with complaints against individuals and private legal persons. More importantly there are no penalties for discriminatory practices.

Since 1997 member states have been urged to strengthen their anti-discrimination legislation and the adoption of the Race and Equality in Employment Directives in 2000 indicates that the EU considers discrimination and racism serious issues that should affect the development of all national legislations.

The Greek Ministry of Justice established only in late September 2002 a legislative preparatory committee for the transposition of the Directives into the Greek legal order. The NGOs and the official public bodies combating discrimination had not even been informed of the existence of this committee before the National Round Table on the transposition of the EU Directives on December 2 & 3, 2002 co-organised by the EUMC and its National Focal Point. This is a common governmental practice in Greece, but is in contrast to the practice of consultation stressed by the Directives themselves.

The Greek government has not amended as yet any national provisions pursuant to the Directive, even though the Greek National Commission for Human Rights in December 2001 submitted relevant proposals, as already noted, to the competent authorities. Transposition of the Directive will necessitate the co-operation and co-ordination of action of various Ministries and state agencies, requirements that traditionally put the very slow and cumbersome Greek state mechanism under particular strain or, worse, lead to state inertia.

Judge M. Vrontakis, Council of State Vice-President and chairman of the above

committee, in his speech during the EUMC National Round Table, committed himself that until the end of January 2003 the committee will have completed its task, but added that only few amendments to the Greek legislation are necessary for the adjustment to the new Directives because the Greek Constitution and Article 57 of the Civil Code (protection of personality) are deemed sufficient. The most important innovation seems to consist in the introduction of the “reversal of burden of proof” for civil and administrative cases, so that in matters related to discrimination the defendant would have to prove that his/her motive is not of a racist nature.

However, other legal experts find that a more comprehensive reform is needed to transpose the Directives. Otherwise many cases will be led to the courts, which will be obliged to examine ad hoc every time whether the Directives have been violated or not. This will undoubtedly create instability and uncertainty about the legal system, and it will not guarantee the certain, full and permanent application of the Directives with obvious negative impacts on the victims of discrimination.