

Equal Treatment between Persons Irrespective of Racial or Ethnic Origin: The Transposition in Greece of EU Directive 2000/43

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ABSTRACT Greece since the late 1980s has been witnessing her transformation from an imagined mono-ethnic/mono-cultural to a de facto multi-ethnic and multi-cultural state, mainly due to the increase of legal and illegal alien immigration. The anti-racism Directive 2000/43 of the European Communities, which should have been implemented by all EU Member States by July 2003 (article 16 of the Directive), was passed at a period which is crucial for the development of the Greek society and the EU 'polity'. The present study deals with the main current ethnic/racial equality questions arisen in the context of modern Greek society, law and policy. It then proceeds to a detailed analysis of the compatibility of current Greek race equality law and policy with the provisions of the Directive, pointing out the major issues of incompatibility of Greek law and policy with the Directive. The article concludes by underlining the main points of legislative and political action that the Greek state is to undertake for the effective implementation of the Directive and for the necessary development of a long-term, holistic anti-racism law and policy.

The Greek Ombudsman in his latest annual reports has stressed that 'the most serious human rights violations keep affecting, as a rule, individuals belonging to marginal population groups such as, among others, alien economic immigrants [and] Roma. . . [while] the number of complaints from aliens to the Ombudsman is continuously on the increase'.¹ In 1998–99 the complaints by alien immigrants, especially those subject to regularisation or detention, to the Human Rights Department of the Greek Ombudsman constituted 25 per cent of the complaints' total. In 2000–2001 the relevant percentage reached 33.5 per cent.² The European Parliament in its 2000 Report on Human Rights expressed its particular concern at incidents of racist violence directed especially against alien immigrants and Roma in many EU states, including Greece. The same Report has pointed out that such racist violence originates not only in state organs, such as police forces, but also in citizens of EU states.³ Similar concern was expressed by the Commissioner for Human Rights of the Council of Europe in his visit report on Greece (June 2002).⁴

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The National Level

The National Situation

In 1999 and in 2001 there were unprecedented, particularly violent acts of Greek citizens and of police forces against alien immigrants residing legally in Greece, as well as against Roma.⁵ The recent increase of incidents of unreasonable police violence, especially against alien immigrants, actually prompted the Greek Ministry of Public Order to issue in July 2001 a special circular on the conduct of police personnel towards individuals subject to police control, under arrest or in detention, with a view to eradicating police violence.⁶ In a special report of Amnesty International and the International Helsinki Federation for Human Rights (September 2002) evidence was once again produced of the fact that 'certain groups [in Greece, such as Roma and immigrants] are particularly exposed, by virtue of their race or ethnic origin, to police ill-treatment in various forms'.⁷

The inflows of large numbers of third-country immigrants, especially from the Balkans, since the late 1980s had their own repercussions on modern Greek society, a part of which has certainly become hostile, that is xenophobic, to this new (il)legal population.⁸ The large number of undocumented immigrants (probably exceeding half a million in a country with a population of 11 million) and their presence in Greece as a very active labour force has become one of the most controversial public issues.⁹ The Greek mass media, especially post-1990 private TV channels through news bulletins, have so far contributed to the maintenance, if not exacerbation, of a general public climate unfavourable towards alien immigrants or particular social groups and social or ethnic minorities.¹⁰ A particular immigrant group which has severely suffered from Greek mass media 'demonisation' is the Albanians, constituting, for more than a decade now, the majority of third-country (il)legal immigrants in Greece.¹¹

The rise of racist political parties in Europe, brought to the forefront again by the French elections of 21 April 2002, has prompted other EU countries, including Greece, to cautiously deliberate on their own domestic socio-political developments. A recent poll carried out in Greece demonstrated a serious trend of xenophobia and the existence of strong anti-immigrant sentiments among the Greek population.¹² The poll showed, inter alia, that 32.6 per cent of the research target group was in favour of the establishment of a Greek political party that 'would aim at the expulsion of all illegal immigrants from the country'. Also 32 per cent of the research target group expressed 'insecurity' because of the 'presence of immigrants in the country'. In Greece there are also small political parties and organisations with an overt xenophobic or racist agenda gaining publicity from time to time.¹³ In a more recent Eurobarometer poll (May 2002) Greeks were the most anxious people in the EU with regard to immigrant inflows from central and eastern Europe, as a result of the forthcoming enlargement of the EU.¹⁴

A particularly sensitive issue regarding alien immigrants in Greece is the position of alien immigrants' children. This is an especially vulnerable group that, despite some efforts of the Greek state, remains marginalised and subject to hardship in the areas of welfare and education.¹⁵ The United Nations Committee on the Rights of the Child have expressed their concern at the disadvantaged position of immigrants' children in Greece especially in the area of education where there has been reported 'xenophobia among teachers and students'.¹⁶ This situation is related to the increase of alien immigrant children in primary and secondary education in Greece and especially the concentration of these immigrant pupils in specific areas near the centre of Athens that has attracted the majority of the immigrant population in Greece.¹⁷ The Greek state is only now starting to pay special attention to the important issue of immigrant children in Greek education, setting up inter-cultural public schools (primary and high schools), Greek-language learning classes, coupled with a programme of Greek-language learning for adult immigrants.¹⁸

Alien immigrants themselves and relevant empirical research have time and again exposed the serious dimensions of the immigrants' social exclusion that prevails in Greece, especially in large urban areas, such as (inner and greater) Athens, always attracting the majority of immigrant and refugee population. The main characteristics of alien immigrants in these areas have been 'insecurity, instability, marginalisation and low social status'.¹⁹ By contrast, alien immigrants in areas out of greater Athens seem to enjoy a much higher social status with better working and living conditions.²⁰ In June 2002 it was characteristically reported that approximately 2,500 migrant agricultural workers in Marathon (north-east of Athens), from Pakistan, India and Bangladesh working mainly as vegetable and fruit pickers, went on strike. They demanded '30 euros in daily wages, as well as an eight-hour workday (as opposed to the current 12–15-hour day), overtime and days off'.²¹ Inside Athens *de facto* 'immigrant ghettos' have been created, that is, quarters where specific immigrant nationalities reside, especially in areas with a very high density of population (near or at the centre of the Greek capital) or with very low-cost lodging. This situation has resulted in the creation of 'racially recognisable' areas in the Greek capital. At the same time, the lack of an efficient social welfare and immigrant reception regime contributes to the social, *inter alia*, stagnation and discrimination of the majority of the alien immigrant population that keeps arriving in Athens.

The socio-political exclusion of alien immigrants in Greece has been a serious issue that has not been brought to the forefront, as it should, either by the Greek state or by the Greek and immigrant 'civil society' which is still in its infancy. The Greek state could not have done so due to the lack of a holistic view of immigration and the politicians' ignorance of the new reality and challenges of the *de facto* multinational modern Greek society. On the other hand, the vast majority of NGOs in Greece have not as yet managed to establish a political presence, remaining peripheral, without the clout necessary to bring forward new ideas and exert influence both on the executive and on the public at large. The socio-political exclusion of alien immigrants becomes an element of brief public debate from time to time, usually by voluntary immigrant associations or by some centre-left politicians on the occasion of an electoral process, such as that of the Greek local elections of 13–20 October 2002, when the issue of alien immigrants' vote in local elections came to the surface.²² Even though non-EU immigrants currently do not have the right to vote in Greece, the socialist-backed candidate Mayor of Athens in October 2002 was the first to recruit a naturalised black American on his ticket, a move that was followed by three more mayoral candidates.²³ The former has stressed the need to safeguard 'security for the migrants...in a context of social solidarity'.²⁴ However no serious public debate on this subject has ever been initiated by any Greek political party, or any NGO, fearful of a strong reaction from most Greek politicians and their voters. The Greek Minister of Interior announced his Ministry's decision to put into effect in 2003 a special long-term (2003–2006) programme aiming at the integration of alien immigrants in Greece.²⁵

All these facts show the need for the Greek state to prepare and introduce, *inter alia*, new integrated legislation and clear, coherent policy for the protection from and the prevention of racism in Greece. The need for amending, *inter alia*, Greek criminal, civil and administrative law, so that they correspond to contemporary forms and challenges of racism, intolerance and xenophobia, was particularly stressed by the European Commission against Racism and Intolerance (ECRI) in its latest Report on Greece.²⁶

However, despite the above factual background regarding the rise of xenophobic or clearly racist incidents in Greece and the recommendations of, among others, ECRI to the Greek state, there has not been yet (as of 2002) any serious public debate on the

issues regarding the fight against racism. According to communications the present author had with the Greek Ministry of Justice a special, legislative preparatory committee was put in place, in late September 2002, in the above Ministry in order to transpose the Directive in Greece. No consultation process at national level was initiated by the Greek government. A Bill for the transposition of the Directive was submitted to the Greek Parliament in May 2004.

A potentially key actor in this respect is the Greek National Commission for Human Rights (NCHR).²⁷ On 20 December 2001 NCHR issued a report on anti-racism legislation, including proposals²⁸ with a view to promoting, inter alia, the transposition of the Directive into the Greek legal order. The report was forwarded by NCHR to, among others, the Ministries of Justice, of Public Order and the Legal Office of the Prime Minister. No Greek authority has as yet responded in any manner whatsoever to the above document of NCHR.

In August 2002 the issue of racial discrimination through the Greek press was publicly raised by the Greek Helsinki Monitor and the Refugee Association of Greece. On 1 August 2002 the above NGOs lodged a complaint with the Public Prosecutor of the Athens Magistrates' Court against three Greek national newspapers (*To Vima*, *Eleftherotypia* and *Ta Nea*) on the ground of inciting racial hatred and discrimination through published material.²⁹ The three newspapers are among the most popular ones in Greece and belong to the centre-left political spectrum. The material published by these newspapers related to letters of readers to the newspapers, expressing strong anti-immigrant and anti-Jewish sentiments, using at the same time characterisations obviously offensive to the above social/ethnic groups. Moreover one of the newspapers, according to the complaint, 'routinely' published advertisements ('want ads') containing the specification 'no foreigners'.

These newspapers were indicted on 13 August 2002 by the Public Prosecutor for violating articles 1 and 2 of anti-racism Law 927/1979 (see below). In the indictment procedure also finally involved the Minority Rights Group-Greece as a witness. The representatives of all three NGOs stressed in their testimonies:

the accountability of democratic newspapers that chose among the multitude of letters they receive, many of which they don't publish, to publish letters with this sort of racist content, without any disclaimer, and thereby create the impression that such opinions are acceptable in democratic discourse. In this way, they are contributing to the development of a climate of racial hatred and discrimination.

It is also noteworthy that the above testimonies called upon the Prosecutor to indict the newspapers' publishers as perpetrators of the violation of anti-racism Law 927/1979. However, the indictment finally referred to them as accessories.³⁰ These criminal proceedings met with the disapproval of some journalists who viewed them as a form of press censorship.³¹ Otherwise the prosecution was not widely publicised in Greece.

The issue of racism in Greece was also put forward by two other NGOs, Citizens' Movement against Racism and SOS Racism, during the local elections of 13–20 October 2002.³² On the initiative of the above NGOs, an 'anti-racism charter of local administration' was signed by a large number of candidate Mayors and Prefects from all over Greece. This initiative also never gained wide publicity in Greece.

As is obvious from the following section on legislation, the only expressly anti-racism legislation currently in force in Greece dates back to 1979. Law 927/1979 (as amended by Law 1419/1984 and Law 2910/2001) is a statute containing four short articles of a purely criminal law character, aiming at the punishment of overtly discriminatory practices on racial, ethnic or religious grounds. This Law has never been effectively applied by Greek courts.

As a consequence, it is imperative for the Greek state to adopt a modern, holistic legislative attitude against racism, living up to current societal challenges unforeseen two decades ago. Greece needs to urgently overhaul and modernise her legislation against racial discrimination. Racist motivation should constitute a general aggravating circumstance applicable to racist acts or activities, which are or will be dealt with by Greek law. At the same time, the Greek state should move towards the establishment of a long-term plan for the continuous awareness and education of the Greek public with regard to issues of racial discrimination. Particular emphasis should be placed on education, through specially planned programmes for the youth, especially in primary and secondary schools. Concurrently special human rights education projects should be established and included in curricula of schools of public servants and law enforcement personnel coming from the state, local administration or even the private sector.

International Instruments

There is a long series of international human rights treaties by virtue of which the Greek legal order and practice are to provide for effective respect of the principle of non-discrimination on, inter alia, racial or ethnic grounds. Despite the large number of international human rights instruments ratified by Greece, only two of them have so far exerted a major influence on the application of Greek human rights law: The European Convention on Human Rights (ratified in 1974) and the International Covenant on Civil and Political Rights (ratified in 1997).

However, even these international instruments have only started to be effectively applied by Greek courts in the 1990s.³³ What is more important though, in practice, is the effective application of ratified human rights instruments by the executive organs of the Greek state. Greece occasionally has been rightly criticised for not securing the consistent implementation of safeguards contained in international human rights treaties, even in those against torture and ill-treatment.³⁴ As a consequence, the application of most of the treaties mentioned below may not be regarded as successful. The main reason for this failure is the very limited human rights law education in Greek Law Schools, in the Bars and in the School of Judges, as well as the lack of or insufficient human rights education in Greek schools and in the curricula of training schools for public servants and law enforcement personnel.

Greece is bound by the following major treaties:³⁵

First, the 1966 *International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)*, ratified by Legislative Decree 494/1970. Thus Greece has incorporated into its legal corpus the definition of racial discrimination provided for by article 1.1 of the above Convention: 'any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life'. Greece, however, has not as yet (2002) made the declaration under article 14 of ICERD regarding the competence of CERD (the Committee of ICERD) to receive and consider communications from individuals or groups of individuals.³⁶

The second major international human rights treaty by which Greece is bound is the 1966 *International Covenant on Civil and Political Rights (ICCPR)*, ratified with its Optional Protocol as late as 1997 by Law 2462/1997. Article 2.1 of ICCPR enjoins states parties to respect and to ensure to all individuals within their territories and subject to their jurisdiction the Covenant rights without distinction of any kind, such as, inter alia, race or national origin. 'All persons' equality before, and equal protection

of, the law, on the other hand, are prescribed by article 26 ICCPR. According to this provision race or national origin, inter alia, may never provide the basis of discrimination in the legal framework of a state party to ICCPR.

On the European level, Greece is bound by the *European Convention on Human Rights (ECHR)*, ratified by Legislative Decree 53/1974, and, consequently, by the non-discrimination provision of article 14 ECHR. Hereby is proscribed any discrimination by states parties regarding the enjoyment of the rights enshrined in ECHR on the basis of, inter alia, race, national origin, or association with a national minority. Greece has also ratified the first (Legislative Decree 53/1974), sixth (Law 2610/1998) and seventh (Law 1705/1987) protocols to ECHR. Greece has also signed, but not as yet ratified, the anti-discrimination Protocol No. 12 to ECHR.³⁷

With regard to equality vis-à-vis social, economic and cultural rights, Greece is bound by two major subject-specific treaties: the 1966 *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, ratified by Law 1532/1985, and the 1961 European Social Charter (ESC), ratified by Law 1426/1984. Article 2.2 of ICESCR enjoins states parties to guarantee that the rights enunciated in its corpus will be exercised without any discrimination of any kind as to, inter alia, race or national origin. In the same vein, ESC has emphasised in its *consideranda* that the enjoyment of social rights should be secured by the contracting states parties without any discrimination on grounds of, inter alia, race or national extraction.³⁸ Greece also ratified the 1988 *Additional Protocol to the ESC* (Law 2595/1998) and the *Additional Protocol to the ESC providing for a System of Collective Complaints* (Law 2595/1998), as well as the 1964 European Code of Social Security (Law 1136/1981). Greece signed (3 May 1996) but has not yet ratified the *Revised ESC*.

Greece also ratified a series of *ILO Conventions*: C1 (Hours of work, Law 2269/1920) and C80 (Final articles revision, Law 2082/1952) C11 (Right of association – agriculture, Law 2077/1952), C14 (Weekly rest – industry, Law 2990/1922), C17 (Workmen’s compensation – accidents, Law 2078/1952), C19 (Equality of treatment – accident compensation, Legislative Decree of 30.10.1935), C52 (Holidays with pay, Law 2081/1952), C87 (Freedom of association and protection of the right to organise, Law 4204/1961), C95 (Protection of wages, Law 3248/1955), C98 (Right to organise and collective bargaining, Legislative Decree 4205/1961), C102 (Social security – minimum standards, Law 3251/1955), C106 (Weekly rest, Law 1174/1981), C111 (Discrimination – employment and occupation, Law 1424/1984), C122 (Employment policy, Law 1423/1984), C135 (Workers’ representatives, Law 1767/1988), C141 (Rural workers’ organisations, Law 1855/1989), C151 (Labour relations – public service, Law 2405/1996), C 154 (Collective bargaining, Law 2403/1996), C159 (Vocational rehabilitation and employment – disabled persons, Law 1556/1985).

Two other relevant Council of Europe treaties signed by Greece are:

First, the 1995 *Framework Convention for the Protection of National Minorities*, signed by Greece on 29 September 1997 but not as yet ratified. Article 4.1 of this Convention categorically laid down the principle of non-discrimination based on belonging to a national minority, as a consequence of the principle of equality before the law and of equal protection of the law, expressly referred to in the same provision. States parties are also bound by para. 2 of the same article to adopt measures for the promotion, in all areas of economic, social, political and cultural life, of ‘full and effective equality’ between persons belonging to a national minority and those belonging to the majority population.

The second relevant European Convention is the 1997 *European Convention on Nationality*, signed by Greece on 6 November 1997 but not as yet ratified. This Convention contains in article 5.1 a specific non-discrimination provision, according

to which the states parties' rules on nationality shall not contain distinctions or include any practice which amounts to discrimination on the grounds of, inter alia, race or national or ethnic origin. According to the same treaty there is to be no discrimination between nationals by birth and those who have acquired a state's nationality subsequently (article 5.2). These provisions conflicted, until 1998, with article 19 of the Greek Citizenship Code, which permitted the withdrawal of Greek citizenship from individuals of non-Greek origin ('alloyenis') who had left the country 'with no intention of returning'.³⁹ Article 19 was repealed by Law 2623/1998 (article 9.14).

Work Methodology

The present study is based on extensive research carried out by the author, using primary and secondary research sources from Greece and abroad. Primary research sources originated in organs of the United Nations, the European Union, the Council of Europe and in the Greek administration. These sources have been acquired by the author by research through the internet, the libraries of the University of Athens and the Athens Bar. Greek Ministries that have been contacted by the author are those of Public Order, Justice, Interior, Foreign Affairs, Education, Health and Welfare and Labour and Social Security. The author has also been in contact with a number of human rights NGOs in Athens, including the Greek Helsinki Monitor, an NGO which has shown particular interest in the application of existing Greek anti-racism legislation and in the development of a stronger anti-racism legislative framework in the country. The author, as Legal Research Officer of the Greek National Commission for Human Rights (NCHR),⁴⁰ is the drafter of a special report of NCHR (20 December 2001) which contained proposals to the Greek government with a view to modernising Greek anti-racism legislation, paying particular attention to the transposition of the Directive in Greece.

Greek Legislation and Practice

*ARTICLE 1 (of the Directive)*⁴¹

Respect and protection of the 'value of the human being' is one of the fundamental principles and a 'primary obligation' of the Greek state, according to article 2.1 of the Greek Constitution of 1975/1986/2001.⁴² Despite its subsidiary legal character, the above provision has retained a crucial deontological value in the human rights protection system of the Greek legal order. Accordingly, article 4.1 of the Constitution lays down all Greek citizens' 'equality before the law', as a primary constitutional principle.

The Supreme Administrative Court of Greece (Council of State), elaborating on the principle of equality in its judgment 3587/1997 (First Chamber)⁴³ stressed that, in accordance with article 4.1 of the Greek Constitution, uniform treatment is to be provided by law to all Greeks whose legal and/or factual status is of the same or similar nature. The meaning of this principle is that any arbitrary differentiation among Greek nationals by the Greek state is proscribed.⁴⁴ The above Supreme Court emphasised in the same case that the constitutional principle of equality is directly employable by, and thus binding upon, the legislature, the executive and the judiciary.

The Greek Constitution has expressly proscribed racial discrimination through article 5.2.a, which reads as follows: '*All persons living within the Greek territory shall enjoy full protection of their life, honour and liberty irrespective of nationality, race or language and of religious or political beliefs. Exceptions shall be permitted only in cases provided for by international law*'. This provision was especially tailored in the early 1970s for the

protection of some aliens' fundamental civil rights while on Greek territory. Race, inter alia, is regarded by Greek law as a totally arbitrary ground for differentiation. The above-mentioned principle of 'equality before the law' acts in a complementary manner with regard to the proscription of racial discrimination. They are in fact two interrelated and interpenetrating principles of Greek law.

Article 5.2.a of the Constitution provides for the enjoyment, in principle, by every alien in Greece of personal freedom *stricto sensu*. It is true that the restrictive letter of the Constitution has limited in effect the latter's protective ambit to aliens' personal liberty and security, leaving aside the protection of aliens' social and economic rights. This grammatical, restrictive interpretation, however, may not stand up any more, especially after the 2001 amendment and the introduction of new wording into article 25.1 of the Constitution: *'The rights of man as an individual and as a member of society and the principle of the constitutional welfare state are guaranteed by the state. All agents of the state shall be obliged to ensure the unhindered and effective exercise thereof. These principles also apply to relations between private individuals to which they pertain'*.

Following the 2001 amendment the Greek Constitution has acquired a universalistic and special welfare character aiming at the protection of civil and social rights of every person irrespective of their racial or ethnic, inter alia, characteristics. The novel anti-discrimination character of the amended Greek Constitution was reinforced by the new provision of article 5.5 of the Constitution which provides for all persons', without any distinction whatever, entitlement to protection of, inter alia, their health.⁴⁵

There are also a number of other constitutional provisions of a universalistic nature enshrining human 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 to the participation in the 'information society'.
- Article 6 regarding the right to personal liberty.
- Article 9A, another 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, also 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 and all workers', with no distinction whatever, right to 'equal pay for work of equal value'.

However, the above significant deontological provisions of the Constitution may not be regarded as able in and of themselves to provide effective protection against racial discrimination. In practice, constitutional provisions alone may not provide protection if they have not been accompanied (given effect) by ordinary (statutory) legislation. The existing anti-racism legislation, dating back to 1979 (see below, article 2), is elliptic and inadequate, as already stressed by the European Commission against Racism and Intolerance in 2000⁴⁶ and by the Greek National Commission for Human Rights (2001).⁴⁷ No measures have as yet been adopted by the Greek government for the amendment of the above legislation, in accordance with the above proposals and the Directive.

ARTICLE 2

Current Greek statutory (criminal) legislation expressly combating racism may be regarded as covering solely direct discrimination (article 2.2.a of the Directive), harassment (article 2.3 of the Directive) and (indirectly) instruction to discriminate (article 2.4 of the Directive). The grounds of discrimination referred to by Greek law are race, ethnic origin and religion. Indirect discrimination (article 2.2.b of the Directive) has not as yet been covered by Greek statutory legislation.

The sole expressly anti-racism statute in Greece remains that of Law 927/1979, as amended by Law 1419/1984⁴⁸ and Aliens (Immigration) Law 2910/2001.⁴⁹ Law 927/1979 is a criminal law statute entitled 'on punishment of acts or activities aiming at racial discrimination'. The substantive provisions of this Law consist of three articles which refer to different but interrelated subject-matters:

Article 1 of Law 927/1979 provides for the penalty of maximum imprisonment of two years and/or pecuniary penalty of *anyone who publicly, orally or in writing or through pictures or any other means intentionally incites people to perform acts or carry out activities which may result in discrimination, hatred or violence against other persons or groups of persons on the sole ground of the latter's racial or ethnic origin or religion*. The above-mentioned penalties are dealt with by the same provision in cases where *someone establishes or participates in organisations that aim at organising propaganda or activities of any form whatsoever, leading to racial discrimination*.

The term 'discrimination' included in this provision may be interpreted so as to include a wide range of acts or activities that the legislator has left in fact undefined. According to some Greek doctrine, discrimination of article 1 of Law 927/1979 is limited to the acts proscribed by article 3 of Law 927/1979 (see below).⁵⁰ However the letter and spirit of article 1 of Law 927/1979 is rather of a catch-all nature and should consequently be interpreted in a wide, teleological manner, given the fact that it is in effect a human rights provision that should be able to provide effective protection. At the same time, however, article 1 of Law 927 is 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 in practice if it provided for the punishment of a racist act or activity whose ground (sole or in conjunction with other grounds) is racial discrimination.

The statutory purpose of the above provision is to safeguard 'public order' and is consequently directly related to a general Greek criminal provision, that of *article 192 of the Greek Penal Code*. Article 192 provides for the penalty of 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), of anyone who publicly in any manner whatsoever provokes or incites citizens to act violently against each other, or to mutual discord (intolerance) and, as a consequence, they disturb public peace. The aim of this generic criminal provision is to prevent the creation of a climate of intolerance that would break the fabric of the domestic society otherwise able to safeguard the equal co-existence of all its members. Greek 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'.⁵¹ The term 'citizen' is not restricted in this case to Greek nationals but relates to an 'indefinite number of persons who live peacefully in a certain social space'.⁵²

Article 192 of the Penal Code was applied by Areios Pagos (Greek Supreme Civil and Criminal Court) in its judgment 208/1991.⁵³ Areios Pagos by this judgment upheld the judgment of the Court of Appeal that had found against the appellants, two parliamentary

candidates in Thrace, on the ground that during their campaign they distributed leaflets where the terms ‘Turks’ or ‘Muslim Turks’ were used with regard to the ‘Muslim Greeks’ in Thrace, aiming at the ‘instillation of hatred towards Greek Christians’. The above campaign was regarded by the Court as having resulted in violence between Christians and Muslims at Komotini, Thrace, and in disruption of the peaceful co-existence of ‘Christian Greeks’ with ‘Muslim Greeks’.⁵⁴ The case was brought before the European Commission of Human Rights, which found that the above Greek case law was against article 10 of ECHR (right of expression). The European Court of Human Rights did not examine the merits of the case on the grounds of non-exhaustion of domestic remedies.⁵⁵ This case provides evidence of the dangers inherent in criminal provisions of the kind of Article 192 of the Penal Code. This provision has been rather abused in Greece through prosecutions against ethnic minorities and their organisations.⁵⁶

Of relevance is also *article 196 of the Greek Penal Code* which typifies another more specific act, that is, the ‘abuse of ecclesiastic office’. This provision provides for a severe penalty of maximum imprisonment of three years for clergymen who, during exercise of their work or when they publicly use their religious capacity, provoke or incite ‘citizens’, in the generic above-mentioned sense, to acts of intolerance towards other ‘citizens’ or to enmity towards the state. In both articles 192 and 196 of the Greek Penal Code prosecution may be initiated *ex officio*.⁵⁷

Article 2 of anti-racism Law 927/1979 is of a different nature compared to article 1 of the same Law. It proscribes the expression, in any manner whatever, 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 imprisonment of a maximum of one year and/or pecuniary penalty. Contrary to article 1, whose actual purpose is to protect ‘public order and peace’, article 2 of Law 927/1979 aims mainly at safeguarding the honour of individuals in cases of expression of ideas which offend persons on any of the aforementioned grounds. There is no doubt that due to the penalisation by article 2 of Law 927/1979 of these extreme forms of offensive expression, similarly to article 1 of the same Law, and to the fact that the right to freedom of expression is a right enshrined in, *inter alia*, the Greek Constitution (article 14), the above criminal provisions of Law 927/1979 are to be constructed and applied in a restrictive manner.⁵⁸

Finally, Article 3 of Law 927/1979 typifies another illegal act that may be deemed to be of the same criminal law genus as those described in article 1 of the same statute. Article 3 proscribes in fact the refusal by (private) professionals to provide their services or goods to persons, or conditioning this provision on conditions related to grounds of racial or ethnic origin or religion. The penalty provided for in these cases is imprisonment for a maximum of one year and/or pecuniary penalty. This provision is a specific, limited type of direct discrimination such as that provided for by article 2.2(a) in conjunction with article 3.1(h) of the Directive. The acts and activities proscribed by both articles 1 and 2 of Law 927/1979 may be categorised as direct discrimination (article 2.2.a of the Directive) and harassment in accordance with article 2.3 of the Directive.

The act of instruction to discriminate of article 2.4 of the Directive is not expressly covered by Law 927/1979. It may though be covered by articles 1 and 3 of this Law if they are appropriately interpreted. As a consequence, it is submitted that it is necessary that Greek law clarify the notion of racist instruction in the relevant legislation.

The main defect of anti-racism Law 927/1979 is that its scope is limited to criminal law punishment and prevention, setting aside civil and public law aspects that racist acts may have in practice.⁵⁹ Also indirect discrimination (article 2.2.b of the Directive) has so far remained unregulated.

Of direct relevance to Greek anti-racism legislation is also the following 'hard' and 'soft' legislation: Law 2472/1997 on the protection of individuals from the processing of personal data. Articles 2 and 7 of that statute expressly proscribe, in principle, the collection and processing of data related to, *inter alia*, the racial or ethnic origin of individuals. These data are considered by the same Law as 'sensitive' and may be collected and processed only on the exceptional conditions enumerated in article 7.2 of Law 2472/1997, referring to, *inter alia*, the written consent of the person whose sensitive data are collected and processed and safeguarding the above person's 'vital interests'. A special Independent Administrative Authority has been established by the same Law for supervising the implementation of the aforementioned statute. This Authority has the statutory power to impose administrative sanctions, including fines, while the above Law provides also for criminal penalties and civil law compensation.

Greek legislation on radio and television also contains provisions that safeguard and protect human dignity from programmes of radio and television, without any distinction whatever. Thus article 3.2 of Law 1710/1987 on Greek state radio and television prescribes that radio and television programmes are to be based on the principle of respect of, *inter alia*, the individual's 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. Also article 9 of Presidential Decree 100/2000, incorporating into Greek Law the EC Directive 97/36/EC, provides for every person's, without any distinction, right to redress in cases where they are offended by a radio or television programme, with regard, *inter alia*, to their 'personality or honour'.

Relevant soft law is also the new Code of Conduct ('Kodikas Deontoloyias') for radio and television submitted for approval in 2002 to the Ministry of Press and Media of Mass Information by the Greek National Council for Radio and Television (GNCRT). The GNCRT is by Law 1866/1989 another Independent Administrative Authority responsible for supervising and regulating Greek radio and television. Article 23 of the above Code (dated 7 March 2000),⁶⁰ entitled 'vulnerable population groups', proscribes the transmission of, *inter alia*, racist or xenophobic messages and characterisations as well as of intolerant statements. It is also prescribed therein that special efforts should be made by Greek radio and television so that no ethnic or religious minorities, or other 'vulnerable or weak population groups', are offended.⁶¹

On 27 March 1998 the GNCRT issued Directive-Recommendation 5/1998,⁶² as a reaction to the use of sweeping statements by radio and television against particular ethnic groups in Greece, following the commission of criminal offences by aliens in Greece. By the above Directive-Recommendation (with no binding force) the GNCRT pointed out that a criminal offence should not be utilised 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 GNCRT 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'.

In the same vein, the Code of Conduct of the Athens Journalists' Association⁶³ contains a provision (article 1) which enjoins journalists to impart information without any prejudice related to their, *inter alia*, racial or cultural ideas or opinions. The same provision provides for the journalists' obligation to provide redress in cases where there has been transmitted information offending an individual's honour or personality.

From the above it may be concluded that current Greek statutory (criminal) legislation expressly combating racism may be regarded as covering solely direct discrimination

(Article 2.2.a of the Directive), harassment (Article 2.3 of the Directive) and (indirectly) instruction to discriminate (Article 2.4 of the Directive). In relation to direct discrimination (Article 2.2.a of the Directive), Greek law (Law 927/1979), as previously analysed, does not take into account the fact that the person discriminated against may suffer discrimination not only on the grounds of their own racial or ethnic origin but also on account of persons with whom the victim is associated in any manner whatever.

The act of instruction to discriminate of 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 this Law if they are appropriately interpreted. As a consequence, it is submitted that it is necessary that Greek law clarify the notion of racist instruction in the relevant legislation by means of a separate provision. Incitement to discriminate is expressly covered by article 1 of Law 927/1979, as already mentioned, and may also, in practice, cover instruction to discriminate. Indirect discrimination (article 2.2.b of the Directive) has not as yet been covered by Greek statutory legislation. No measures have as yet been adopted by the Greek state in order to enhance the ambit of Greek anti-racism legislation, in accordance with article 2 of the Directive.

ARTICLE 3.1

Even though current Greek statutory anti-racism legislation does not expressly provide for racial or ethnic equality in the fields enumerated in article 3.1 of the Directive, relevant Greek legislation may not be regarded, in general, as flawed on the grounds of including racially/ethnically discriminatory clauses or provisions.

With regard to *equality in employment*, Areios Pagos (Greek Supreme Civil and Criminal Court) in its judgment 550/2001 reiterated its jurisprudential thesis according to which, following the wording of article 22.1.b of the Greek Constitution, 'all persons working [in Greece], irrespective of sex or any other distinction, are entitled to equal pay for work of equal value that they have provided'.⁶⁴ Areios Pagos expressly stated, in the same judgment, that payment in these cases includes family benefits such as marriage or children benefits.

Article 4 of the Greek Civil Code stipulates that aliens enjoy the same *civil law rights* as Greek nationals. From this general Greek legal principle it has been concluded and established in Greek law that aliens legally employed or working in Greece are subject to *Greek labour law* on the same conditions as Greek nationals (*article 3.1.a and c of the Directive*). Law 1876/1990 on free group labour negotiations covers every person employed in the private sector.⁶⁵ However, Greek labour law contains provisions discriminatory for alien immigrant workers such as those regarding compensation in case of a work accident. According to (amended) Decree of 24 July/25 August 1920, compensation owed to alien workers is conditioned on various conditions such as their residence in Greece.⁶⁶ According to the same Law alien workers are entitled to national treatment on condition that there is reciprocity between Greece and the aliens' country of origin by virtue of a relevant interstate agreement. These provisions raise serious questions of compatibility between the above Greek legislation and international social rights standards established, inter alia, by the International Covenant on Economic, Social and Cultural Rights.

It is worthy of note that Law 1414/1984 has been a special, ad hoc statute aimed at promoting and applying the principle of gender equality in private law (wage-earning) employment and self-employment (excluding the public sector). This statute could be easily used as a prototype for the creation of another statute focusing on race equality, including *all* employment sectors, thus covering the scope of *article 3.1.a.b.c.d of the Directive*.

Greece has also ratified, by Law 1424/1984, *ILO 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, inter alia, to race, religion, national extraction or social origin (articles 1–2). Moreover the principle of non-discrimination is included in ‘National General Labour Collective Agreements’ such as the one for 2000–2001 whose article 20 guarantees equality of treatment in the areas of health and safety at work, ‘protection from any form of discrimination in employment on grounds of gender, nationality, race or beliefs, minimum employment age, maternity protection, access to training or refresher training, respect for the right to organise and for collective action and facilitation of access to social security and education systems’. Also article 22 of the above Agreement provides that ‘the contracting parties agree that all efforts should be made to ensure respect for all workers, irrespective of race, nationality, culture or religious beliefs and to facilitate their adjustment to the working environment’.⁶⁷

With regard to *vocational training* (article 3.1.b of the Directive), article 6 of Law 709/1977 (as amended by Law 2224/1994) on vocational training of aliens of Greek descent and of aliens in general provides for the right to vocational training only with regard to:

- (a) aliens of Greek descent (‘omoyeneis’);
- (b) nationals of a state member of the Council of Europe having signed the European Social Charter, on condition that these persons reside or work legally in Greece;
- (c) aliens born and residing legally in Greece. The above statute is obviously discriminatory with regard to aliens who reside legally in Greece but do not fall into any of the above categories.

However, the Greek Labour Force Employment Organisation (OAED) put into effect, in 1997, a long-term ‘Operational Programme to combat exclusion from the labour market’ that covers ‘immigrants from third countries, refugees, persons repatriated from Western European countries, persons repatriated from countries other than Western European ones, Pomaks and Romas’. Beneficiaries of this project are to be ‘unemployed persons or persons with no steady employment’. The project aims at providing vocational training and facilitating the above groups’ access to the labour market.⁶⁸

A particular category of aliens discriminated against in the field of *employment* in Greece is that of asylum seekers who reside in the Lavrio asylum seeker centre and are excluded from the exercise of the right to be employed in order ‘to cover their immediate living expenses’ (article 4.1.a of Presidential Decree 189/1998). This right though is recognised in favour of asylum seekers not residing in the Lavrio reception centre and to humanitarian refugees. In any event, all these special alien categories may be employed on condition that the relevant job may not be covered by a Greek citizen, an ‘EU citizen’, a recognised Convention refugee or an alien of Greek origin (‘omoyenis’, article 4.1.c, Presidential Decree 189/1998).

With regard to membership and involvement in *professional organisations* (article 3.1.d of the Directive), article 7.1 of Law 1264/1982 provides for the right of aliens who are legally employed in Greece to be members of professional associations of any kind whatsoever. What in the past caused problems is the alien workers’ right to establish themselves and direct professional associations. According to article 107 of the Introductory Law of the Greek Civil Code executive board members of non-profit associations (‘somateia’) are to be in principle Greek nationals. The restrictive nature of this antiquated

provision was supported by case law⁶⁹ but is not any more. Modern Greek case law interprets the above provision in conjunction with article 11 ECHR (freedom of association) and article 14 ECHR (non-discrimination clause). Thus article 107 has been adjudged in effect illicit in the framework of contemporary human rights law, especially ECHR which, as a ratified treaty, prevails over any contrary provision of Greek law according to article 28.1 of the Greek Constitution.⁷⁰

With regard to *social protection, including social security and healthcare of alien workers (article 3.1.e of the Directive)*, all third-country nationals employed in Greece are to be insured by the main state insurance organisation (IKA, covering health insurance and social security), according to Law 1902/1990. Alien workers are also entitled to unemployment and maternity insurances, similarly to Greek nationals.⁷¹ Article 1.2 of Law 2646/1998 on the development of the national social welfare system, expressly states that the provision of social care is a state responsibility. It also stipulates that everyone legally residing in Greece and in a state of emergency is entitled to social care by the Greek national welfare system. The right to social security and protection of all aliens legally residing in Greece was reaffirmed by article 39, paras 1 and 2 of Aliens Law 2910/2001. According to the first para. of article 39, aliens legally residing in Greece are insured by the relevant insurance organisations and have the same insurance rights as nationals. The second para. of article 39 stipulates that the poverty/emergency provisions of Legislative Decree 57/1973 on social protection are to be applied also to aliens legally residing in Greece.

As for *healthcare*, the Greek Constitution, as amended in April 2001, provides that ‘everyone’ has a right to health protection (article 5.5). Health protection nonetheless is enjoyed in principle by aliens who are on Greek territory legally. In the case of illegal aliens these are entitled only to emergency health care in hospitals and clinics, according to article 51.1 of Aliens Law 2910/2001. Minor aliens are entitled to healthcare in all circumstances according to the same provision.

However Greek Aliens Law 2910/2001 contains a discriminatory provision (article 54.2) according to which directors of hotels, resorts, clinics and hospitals are obliged to report to the police or the aliens and immigration department the arrival and departure of aliens. This provision has been criticised as contrary to the Greek Constitution by the Greek Authority for the Protection of Personal Data (GAPPD) which has also proposed the abrogation of the aforementioned provision.⁷²

Law 2646/1998 on the development of the National System of Social Care includes a definition of *social care* (article 1.1) defined as ‘protection provided to persons or groups through programmes of prevention and rehabilitation which aims at creating the conditions for these persons equal participation in the economic and social life and safeguard their decent standard of living’. According to article 1.2 of Law 2646/1998 provision of ‘social care’ is the state’s responsibility and *every person* legally residing in Greece who is in a state of emergency is entitled to social care by the institutions of the national system according to the above Law. Article 3.3 of the same Law expressly provides that services of social care are provided *without any distinction*, according to the particular personal, family, economic and social needs of the beneficiaries.

With regard to *social advantages (article 3.1.f of the Directive)*, Greek law contains provisions that are of a discriminatory character. Article 27 (‘Measures of social policy’) of Law 3016/2002 provides for three kinds of social benefits, citing three categories of individuals considered vulnerable and worthy of special protection/support by the Greek legislator:

- (a) long-term unemployment benefit for Greek and EU nationals, insured against unemployment, who are constantly unemployed for a period longer than 12 months

- (b) yearly income support for families of Greek and EU nationals residing in mountainous and under-privileged areas, as defined by Directive 85/148/EC
- (c) yearly income support for families of Greek and EU nationals who have minor children studying in state schools and whose yearly income does not exceed €3,000. This case has been specifically regulated by inter-ministerial decision 2/37645/0020 of 8 July 2002 (*OJHRB* 902, 17 July 2002).

Third-country nationals are obviously excluded from the above social advantages and are discriminated against by Greek law.

Also it is noteworthy that a case has been recorded where even though relevant Greek law does not contain any discriminatory clause, this has been interpreted by case law in an overtly discriminatory manner. In particular, article 1 of Law 1078/1980 provides for the exemption from ownership transfer taxation in cases where the real estate constitutes the first home of a single adult buyer or of a married buyer or their spouse or minor children. Even though the wording of the above Law does not exclude non-Greeks this statute has been interpreted by the State Legal Council (opinion 491/2001)⁷³ in an extremely restrictive way, excluding from its beneficiary ambit aliens, including even recognised refugees according to the Geneva Refugee Convention, contrary to the recommendation of UNHCR.

The right of alien residents to *education* (article 3.1.g of the Directive) was also enshrined for the first time in article 40 of Aliens Law 2910/2001. According to this provision, minor aliens residing in Greece are subject to compulsory (primary and secondary) education of nine years like Greek nationals (article 16.3 of the Constitution). Article 40.4 of above Law provides for the promulgation of interministerial decision that will regulate the 'optional teaching' in schools of 'mother tongue and culture' to minor students, if there is a sufficient number of them.

Article 3 of anti-racism Law 927/1979 (see above) expressly covers the *private sector*-related aspects of article 3.1(a) and (h) of the Directive. With regard to *services provided by public servants* article 27.3 of Law 2683/1999 (Greek Public Servants' Code) prescribes that public servants, when on duty, 'are not allowed to discriminate in favour or against citizens on the ground of the latter's political, philosophical or religious beliefs'. The term citizens in this provision covers every individual on or outside of Greek territory dealing with Greek public servants. Violation of article 27.3 has as a consequence the imposition of 'disciplinary penalties' on public servants (articles 106 et seq of Law 2683/1999). The above provision is however defective since it does not provide for cases of racial/ethnic discrimination as prescribed by the Directive. A relevant provision is also that of article 7.1 of Law 2690/1999 (Code of Administrative Procedures), a generic provision that enshrines the principle of 'impartiality of administrative organs'.

Apart from the above-mentioned definition of social care, Greek law does not contain specific, clear interpretations of the rest of the concepts listed in article 3.1 of the Directive, although most of them are included in the Constitution. The interpretation of these concepts is in practice left with the jurisprudence (courts) and doctrine. The Greek state has not as yet initiated any overhaul of Greek law touching upon the issues mentioned above.

ARTICLE 3.2

As of 2002 there are no new adopted measures in Greece or measures in discussion going beyond the Directive.

ARTICLE 4

It is arguable that there is a need for Greek law to provide for the establishment of racial or ethnic characteristics as genuine and determining occupational requirements, on the conditions of legitimacy and proportionality. This could very well be the case, for example, in the new directorates and departments of aliens and immigration established by Aliens Law 2910/2001 (article 56) in the Interior Ministry and the regions of Greece ('Periferies').⁷⁴ These new state posts would benefit from the employment of individuals who are alien immigrants and also the service target groups of the aforementioned new immigration directorates and departments. The Greek government has not as yet acted in order to adopt any measure in compliance with the Directive.

ARTICLE 5

Greece has not as yet maintained or adopted specific anti-racism legislative measures regarding prevention or compensation for disadvantages linked to racial or ethnic origin. The Greek Constitution of 2001, through its novel provision of article 116.2, provides a platform on which such legislative and administrative initiatives 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 main preoccupation of the Greek Constitution 2001 is obviously the promotion and protection of women's rights (gender equality), the above wording of new 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 undoubtedly pertains to discrimination on racial or ethnic grounds as well.

Greek case law, especially that of the Greek Council of State, even before the above novel provision of the Constitution, has accepted and established the legitimacy of legislative or administrative measures of affirmative action aiming at the advancement of gender equality in Greece. The majority opinion of the above Court in judgment 1917/1998⁷⁵ explicitly recognised that there may be cases showing that in practice a certain category of individuals have been discriminated against 'due to social prejudice', leading to just nominal equality. Concomitantly, the Court stated that the spirit of articles 4.1 and 4.2 of the Greek Constitution (the latter provision regards Greek men and women's equality 'of rights and obligations') allows, in principle, state 'affirmative action' which is appropriate and necessary, for a certain period of time, until the existing situation of inequality is ceased. The Greek Council of State concluded that, in principle, it would certainly be legitimate for the Greek state to adopt 'positive measures' for women, in so far as these measures aim at 'accelerating the restoration of de facto equality between men and women'.

This jurisprudence was affirmed by the same Court's judgment 1933/1998⁷⁶ where pro-women 'affirmative action' by the state was regarded as justified and founded not only on the Greek Constitution but also on the EU Council Directive 76/707 regarding equal professional and employment treatment of men and women (article 2.4), as well as on the (ratified by Greece) UN Convention on the Elimination of All Forms of Discrimination Against Women (1979, article 4.1). It is noteworthy that the wording of the Greek Supreme Administrative Court judgments is almost identical with that of the above UN conventional provision. This significant case law, along with the new constitutional provision of article 116.2, should certainly be regarded as a basis for the establishment of positive action by Greece in favour of racial and ethnic groups which are de facto and/or de iure discriminated against.

The Greek state has followed the practice of positive action in favour of the 'Muslim minority' (mainly of Turkish origin) in Thrace (NE Greece), a *sui generis* ethnic/religious minority population whose status is regulated in principle by Section III ('Protection of Minorities', articles 37–45) of the 1923 Lausanne Peace Treaty.⁷⁷ The Lausanne Treaty was a significant agreement aimed at the effective protection of the 'Moslem' minority in Greece and the 'non-Moslem' minority in Turkey. Despite the reference to a religious characteristic the above treaty provides in fact for the protection of ethnic groups, that is, of ethnic Greeks in Turkey and of ethnic Turks in Greece. Although the Lausanne Treaty belongs to the League of Nations' treaty category of the interwar period that ceased to apply after the Second World War, both Greece and Turkey have time and again declared their adherence to this instrument since it provides for the respect by both countries of their ethnic minorities' civil and political rights.⁷⁸

Under the Lausanne Treaty and by virtue of a series of Greek statutory provisions the 'Muslim minority' in Thrace has a special protective status in issues regarding their education and religion. According to Greek state data there are currently 227 primary minority schools in Thrace, with 422 Muslim teachers. There are also two minority secondary schools in the same area, while a 'special quota of 0.5% for the admission of minority students to Greek higher education institutions' has been established.⁷⁹ According to the Greek Ministry of Education this positive action ('positive discrimination' in the words of the Ministry) has led to an increase by 70 per cent of the rates of Muslim children in Greek state high schools: from 1,397 in 1997 to 2,395 in 2000.⁸⁰ At the same time the Ministry of Education reportedly attempts to recruit more Muslim teachers for the minority schools, a development that may well contribute to the work of these schools.

However Greece has not applied article 40 of the Lausanne Treaty, which provides for the right of the Muslim minority itself to establish minority schools.⁸¹ Also the existing minority schools have been rightly criticised for the low level of education they provide, which has had as a consequence a high degree of illiteracy of the minority population with regard to the Greek language, or even to the Turkish language.⁸² This is confirmed by the special educational programmes in favour of Muslim children, initiated by the Greek state in the late 1990s.⁸³ However a smaller (of non-Turkish origin) Muslim minority in Thrace, whose ethnic language has not been subject to any major positive action by the Greek state, is that of the Pomaks,⁸⁴ as well as the Muslim Roma in the same area. Similar 'identity-expression' difficulties have been encountered by Greeks with ethnic Macedonian identity (NW Greece).⁸⁵

Another significant issue related to the Muslim minority in Thrace is the jurisdiction of the Muftis (Islamic judges and religious leaders) and Muslim Greek citizens' right to a fair trial. The Greek National Commission for Human Rights proposed in 2001 the amendment of Greek legislation so that Muftis may not have any more judicial and administrative competence over Muslim Greek citizens but be limited strictly to their religious duties. This proposal was made in accordance with, *inter alia*, article 20 of the Greek Constitution (right to legal protection by courts of justice and right to prior hearing in administrative procedures) and article 6 ECHR (right to fair trial).⁸⁶

Another ethnic minority group in Greece whose status and situation needs special attention is that of *Roma*. The Greek National Commission for Human Rights in late 2001 pinpointed a series of issues relating to grave *de facto* discrimination of members of the Rom population in Greece in fields like housing, health, education and civil status.⁸⁷ Even though the Greek state initiated in 1996 a special protection programme promoting Roma social integration, attaching particular emphasis to education,⁸⁸ this has not proved as yet to have any significant positive effects on the quality of the life and human rights protection of Roma in Greece, remaining a rather marginalised ethnic group.

Measures of positive action have also been taken by the Greek state with a view to promoting the right to education of *alien immigrants, refugees and immigrants of Greek origin* in Greece. Law 2413/1996 introduced for the first time ‘inter-cultural education’ in Greece. As a consequence, in the academic year 2000–2001 there were 23 intercultural schools, 422 reception classes and 556 special education classes. The Ministry of Education has applied a protective policy for children of the above vulnerable social groups allowing registration in schools even in cases where children do not produce all necessary registration documents. Also with regard to mature aliens special language classes have been organised by the Universities of Athens, Thessaloniki, Patra, Ioannina and Crete.⁸⁹

Article 18 of Law 2646/1998 provides for the adoption by the Greek state of measures for the protection of vulnerable population groups ‘in situations of emergency’, such as Roma, Convention refugees, humanitarian refugees and asylum seekers. A special programme of ‘social solidarity’ covering the above-mentioned groups was initiated by the Ministry of Labour in 2001.⁹⁰

ARTICLE 6

The Greek government currently is not considering adopting measures on the national level going beyond the Directive.

ARTICLE 7.1

Greek law expressly provides for a criminal law means of defence in cases of discrimination on racial, ethnic or religious grounds solely within the framework of Law 927/1979 (see above).

Article 57 of the Greek Civil Code is a generic provision that provides for the protection of every person’s personality in cases of ‘unlawful harm’. This provision entitles the victim to damages and to the demand to cease the harm to their personality and for it not to be repeated in the future.

The Greek National Commission for Human Rights (NCHR) in 2001 proposed that Greek anti-racism legislation should expressly provide for vicarious liability in civil, administrative and criminal law.⁹¹ Vicarious liability is currently provided for only by article 922 of the Greek Civil Code by virtue of which an employer is held liable for any damage incurred by a third person due to action by the employer’s staff. With regard to civil and administrative procedures NCHR has also proposed that Greek law should provide for reparation for moral harm. With reference to criminal procedures NCHR proposed the introduction of an alternative penalty consisting of the obligation to perform social service.⁹²

ARTICLE 7.2

Greek law and jurisprudence do not ensure that associations, organisations or other legal entities with a legitimate interest may engage in any kind of legal procedures on behalf or in support of the complainant. In fact recent case law regarding intervention attempts of, inter alia, human rights NGOs in administrative and civil procedures in favour of one of the parties, has shown that Greek courts have interpreted Greek civil and administrative procedural law in an overtly restrictive manner. Greek courts have thus rejected the above NGO interventions on the ground that they had no ‘legitimate interest’ (‘*ennomo symferon*’) to act as interveners.⁹³

The Greek National Commission for Human Rights has proposed the establishment of special legal aid for victims of racism. According to the majority of the NCHR Plenary legal aid in these cases should be provided without examining the well-foundedness of the claim. One of the main reasons that Law 927/1979 has not been effectively applied in Greece so far is the lack of an efficient legal aid system.⁹⁴ Greece has so far twice been convicted by the European Court of Human Rights (ECtHR) because of the lack of legislative provision for the granting of legal aid in criminal cases concerning appeals to the Court of Cassation of Areios Pagos.⁹⁵ In both instances the appellants were aliens without means who had become involved in penal trials in Greece as the accused. In both cases the ECtHR held that Greece had violated Article 6, paras 1 and 3 (c) of the ECHR.⁹⁶ The ECtHR, based on its own case law, stressed that the presence of a lawyer is necessary in all proceedings where the national legislation applicable, particularly procedural legislation, is complex and/or the level of the penalties stipulated by the relevant legislation is high.⁹⁷

It is noteworthy that the following significant recommendations made to the Greek state by NCHR in 2001 with a view to establishing a legal aid system in Greece:⁹⁸

- (a) Legal aid should be available from the state to all persons without means without any discrimination.
- (b) Special attention should be paid to the legal assistance and protection of alien immigrants, asylum-seekers and refugees because of the particular social vulnerability of these individuals and of the recent convictions of Greece in this connection by the ECHR.
- (c) Legal aid to the above persons should in principle be provided before all the courts (civil, criminal and administrative).
- (d) Legal aid should in principle be provided in connection with all the procedures (advisory, pre-judicial and judicial) in which the provision of legal protection is necessary for the proper dispensation of justice and the effective functioning of a modern rule of law.
- (e) In the more particular case of proceedings before courts martial, the Ministries of National Defence and of Justice should collaborate on the provision of effective legal aid to litigants without means.
- (f) In order to avoid abuse of the institution of legal aid, it is thought desirable that the criterion of establishing whether the recourses of the applicants are in principle well-grounded ('screening'), as is the case in various states of the EU, where the provision of legal aid depends upon whether the recourse in question has a reasonable or well-founded chance of success, should be established.
- (g) As to cases involving a breach of anti-racism Law 927/1979, as amended by Law 1419/1984 and Law 2910/2001, two views have been expressed in NCHR: according to the first view, 'screening' should not be applied here, given that this concerns a particularly vulnerable category of persons, and because this law has never yet been implemented, chiefly because of difficulties in relation to the provision of legal aid. In the second view, there is no need for differentiation.
- (h) The outdated condition of reciprocity of Article 195, para. 1 (on legal aid) of the Code of Civil Procedure should be removed, in accordance with the mandates of modern human rights law.
- (i) It is desirable that the Ministry of Justice should take, in collaboration with the competent bar associations, the measures necessary to eliminate the malfunctioning which currently exists in the proprio motu appointment of advocates by the criminal courts.

- (j) Finally, it is also desirable that the Ministry of Justice should establish, in close collaboration with the competent bar associations, data bases to record the specialisation of lawyers who are willing to provide legal assistance, to ensure the efficient and effective working of the institution.

ARTICLE 7.3

Misdemeanours, including those provided for by Law 927/1979, may be prosecuted within a period of five years since the date on which they have been committed (article 111.3 of Greek Penal Code). See also above sections on articles 2, 7.1 and 7.2.

ARTICLE 8

There is a need for Greece to act in order to comply with the Directive's requirement of article 8 on the burden of proof. No measures have been taken as yet.

As noted above, the Greek National Commission for Human Rights (NCHR) has proposed the establishment of special legal aid for victims of racism. According to the majority of NCHR membership, legal aid in these cases should be provided without examining the well-foundedness of the claim. One of the main reasons that Law 927/1979 has not been effectively applied in Greece is the lack of an efficient legal aid system.⁹⁹

ARTICLE 9

The Greek government has not as yet acted in order to comply with the Directive's definition of victimisation.

ARTICLE 10

The Greek government so far has not taken any steps in order to ensure sufficient public awareness (targeting the persons concerned) on existing anti-racism legislation or any new provisions, such as that of article 39.4 of Aliens Law 2910/2001 that provides for the first time *ex officio* prosecution of the acts and activities proscribed by anti-racism Law 927/1979 (see above).

The Greek Ministry of Interior has created a special information site on the internet¹⁰⁰ on administration and citizens' rights, with a section on issues of gender equality. A similar section on aliens or ethnic minority rights has not as yet been included, as would be advisable, in this site.

ARTICLE 11

The Greek government has not yet taken any steps to encourage adequate measures promoting social dialogue between the two sides of industry with a view to fostering equal treatment, as required by article 11 of the Directive.

ARTICLE 12

The only Ministries that have initiated public contacts with alien immigrant associations in Greece are those of Interior and of Foreign Affairs. The Interior Minister held public meetings with alien immigrant associations on 18 December 2001,¹⁰¹ 4 September 2002, and 25 November 2002 with a view to exchanging information on the application of the new Aliens

Law 2910/2001 (amended by Law 3013/2002) and especially of the new regularisation procedure the former Law provides for. The Interior Ministry, by Law 2910/2001, is competent for issues relating to aliens' immigration. Before Law 2910/2001 all immigration issues were under the jurisdiction of the Ministry of Public Order (Police). The Ministry of Foreign Affairs has also initiated contacts with alien immigrant associations in Greece, even though this Ministry has no substantive competence with regard to immigration.¹⁰²

All these initiatives have not taken place in the context of any systematic, organised project of the Greek state in order to advance the fight against discrimination on the grounds of racial or ethnic origin, as envisaged by the Directive. The Ministry of Labour should also be urgently involved in all relevant social dialogue processes.

ARTICLE 13.1

The Greek government has not as yet acted in order to comply with the Directive's requirement of designating a body able to promote equal treatment of all persons without discrimination on the grounds of racial or ethnic origin. The Greek National Commission for Human Rights, if appropriately resourced by the Greek state, could be in a position to act in this direction. Another body that would have the potential to act for the promotion of racial equality would be the state-backed Research Centre for Gender Equality (KETHI)¹⁰³ which, since 1994, has been subject to the General Secretariat for (Gender) Equality of the Interior Ministry and has until now dealt exclusively with issues regarding gender equality.

ARTICLE 13.2

The Greek government has not taken any action so far in order to grant already existing bodies or bodies to be created the competencies required by article 13.2 of the Directive.

The Greek National Commission for Human Rights, in late 2001, suggested to the Greek government that they would be able to act as a coordinating organ of agencies in Greece able to act for the promotion of equal treatment¹⁰⁴. However the Greek government had not (as of 2002) provided any reply to this proposal of the Greek National Commission for Human Rights.

ARTICLE 14

The Greek Ministry of Justice in late September 2002 established a legislative preparatory committee for the transposition of the Directive into the Greek legal order. The work of this committee is still in its initial stages.

The Greek National Commission for Human Rights (NCHR) by its report and recommendation for the advancement of a new framework for legal aid in Greece has proposed the abolition of article 195.1 of the Greek Code of Civil Procedure that provides for legal aid to aliens on the condition of reciprocity, in violation of article 6.1 ECHR and contemporary human rights law principles.¹⁰⁵

NCHR in its report and proposals on freedom of religion in Greece has also proposed the abolition of the judicial and administrative competencies of the Mufti with regard to the Muslim minority population in Greece (see above article 5 of the Directive).¹⁰⁶

Finally the Greek Authority for the Protection of Personal Data (GAPPD) through its opinion 86/2001 has proposed the abrogation of article 54.2 of Aliens Law 2910/2001 that prescribes that directors of hotels, resort centres, clinics and hospitals notify the police or the aliens and immigration service about the arrivals and departures of all

aliens. The above Authority has rightly found that the aforementioned provision contravenes, *inter alia*, fundamental human rights standards of the Greek Constitution and is clearly discriminatory and consequently should be repealed.

The Greek government has not reacted as yet to the above-recommendations of NCHR and of GAPPD.

[See also other relevant shortcomings of current Greek legislation mentioned above – article 3.1 of the Directive].

ARTICLE 15

The Greek Ministry of Justice in late September 2002 established a legislative preparatory committee for the transposition of the Directive into the Greek legal order. The work of this committee is still in its initial stages.

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.

ARTICLE 16

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 mechanism¹⁰⁷ under particular strain or, worse, led to state inertia.

As pointed out by NCHR as well, Greek anti-racism legislation, limited basically to Law 927/1979, has been elliptical and inefficient for the main reason that it refers only to criminal prevention and punishment, disregarding the important aspects connected with civil and public, especially administrative, law.

Special new anti-racism provisions should be included in the Greek Code of Civil and Criminal Procedure providing for legal aid without any distinction. Legal aid has not been developed in Greece so far, and the Greek state has shown indifference, despite the recommendations of NCHR,¹⁰⁸ to developing a modern legal aid system.

Special anti-racism (criminal) provisions, as suggested by NCHR, should also refer to racism in sports.

Similar provisions should also be introduced in the Code of Public Servants (Law 2683/1999), organs that will play crucial role in the transposition of the Directive in the Greek legal order.

Greek civil, administrative and criminal procedural law should be amended enabling associations, organisations or other legal entities, with a legitimate interest in ensuring that the provisions of the Directive are complied with, to engage in legal procedures provided for the enforcement of obligations under this Directive (see also above article 7.2 of the Directive).

ARTICLE 17

The Greek government has not so far indicated which social partners and relevant NGOs will be able to bring their views on the national report to the Commission.

ARTICLE 18

The Greek government has not so far given any indication whatsoever for a timely entry into force of the Directive, even though the Greek National Commission for Human Rights

(having a consultative status with the Greek state) has urged, since December 2001, the Greek government to proceed, inter alia, to the implementation of the Directive.

Suggested Legislative and Political Action

The plethora of international human rights instruments signed or ratified by Greece and the various provisions of the Greek Civil and Criminal Codes and of anti-racism Law 927/1979, as amended, provide a picture of scattered pieces of a very large legislative mosaic unable to cope effectively, in practice, with the whole range of issues risen by the Directive. Greece needs to urgently move towards the preparation of a new, single and comprehensive statute (Law) that will be able to provide for effective anti-racism protection, in conjunction with a policy-making and implementation infrastructure that is long overdue.

The most significant shortcomings of current Greek law and policy requiring the Greek state's particular attention are the following:

- The only anti-racism Law 927/1979 (as amended by Law 1419/1984 and Law 2910/2001) constitutes a (purely criminal) piece of legislation expressly combating racism that covers in effect solely direct discrimination (article 2.2.a of the Directive), harassment (article 2.3 of the Directive) and (indirectly) instruction to discriminate (article 2.4 of the Directive). The act of instruction to discriminate (article 2.4 of the Directive) is not expressly covered by Law 927/1979. It may though be covered by articles 1 and 3 of this Law if the latter are appropriately interpreted. As a consequence, it is submitted that it is necessary that Greek law clarify the notion of racist instruction in the relevant legislation. The grounds of discrimination referred to by Greek law are race, ethnic origin and religion. Indirect discrimination (article 2.2.b of the Directive) has not as yet been covered by Greek statutory legislation.
- Racist motivation, as a specific aggravating circumstance, and vicarious racist liability are to be expressly mentioned in Greek criminal, civil and administrative law.
- In relation to direct discrimination (article 2.2.a of the Directive), Greek law (Law 927/1979) does not take into account the fact that a person may be discriminated against not only on the grounds of their own racial or ethnic origin but also on account of persons with whom the victim is associated in any manner whatever.
- Also article 1 of Law 927 is 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 in practice if it were amended and provided for the punishment of racist acts or activities whose ground (sole or in conjunction with other grounds) is racial discrimination.
- Greek labour law contains provisions discriminatory for alien immigrant workers, such as those regarding compensation in case of a work accident. According to (amended) Decree of 24 July/25 August 1920 compensation is owed to alien workers on condition that they reside in Greece. According to the same Law alien workers are entitled to national treatment on condition that there is reciprocity between Greece and the aliens' country of origin by virtue of a relevant inter-state agreement. These provisions raise serious questions of compatibility between the above Greek legislation and international social rights standards established, inter alia, by the International Covenant on Economic, Social and Cultural Rights.
- With regard to vocational training, article 6 of Law 709/1977 (as amended by Law 2224/1994) on vocational training of aliens of Greek descent and of aliens in general provides for the right to vocational training only with regard to: (a) aliens of Greek descent ('omoyeneis'); (b) nationals of a state member of the Council of Europe

having signed the European Social Charter, on condition that these persons reside or work legally in Greece; (c) aliens born and residing legally in Greece. The above statute is obviously discriminatory with regard to aliens who reside legally in Greece but do not fall into any of the above categories.

- A particular category of aliens discriminated against in the field of employment is that of asylum seekers who reside in the Lavrio asylum seeker centre and are excluded from the exercise of the right to be employed in order 'to cover their immediate living expenses' (article 4.1.a of Presidential Decree 189/1998). The above right is though recognised in favour of asylum seekers not residing in the above reception centre, and also humanitarian refugees. In any event, all these special alien categories may be employed on condition that the relevant job may not be covered by a Greek citizen, an 'EU citizen', a recognised Convention refugee or an alien of Greek origin ('omoyenis', article 4.1.c, Presidential Decree 189/1998).
- Article 107 of the Introductory Law of the Greek Civil Code should be amended so that non-Greeks may also be executive board members of non-profit organisations, as currently held by Greek case law.
- Greek Aliens Law 2910/2001 contains a discriminatory provision (article 54.2) according to which directors of hotels, resorts, clinics and hospitals are obliged to report to the police or the aliens and immigration department the arrival and departure of aliens. This provision should be amended by Law.
- With regard to social advantages, Greek law contains provisions that are of a discriminatory character. Article 27 ('Measures of social policy') of Law 3016/2002 provides for three kinds of social benefit for three categories of individuals considered vulnerable and worthy of special protection/support by the Greek legislator:
 - (a) long-term unemployment benefit for Greek and EU nationals, insured against unemployment, who are constantly unemployed for a period longer than 12 months
 - (b) yearly income support for families of Greek and EU nationals residing in mountainous and under-privileged areas, as defined by Directive 85/148EC
 - (c) yearly income support for families of Greek and EU nationals who have minor children studying in state schools and whose yearly income does not exceed 3,000 euros. This case has been specifically regulated by inter-ministerial decision 2/37645/0020 of 8 July 2002 (*OJHRB* 902, 17 July 2002).

Third-country nationals are obviously excluded from the above social advantages and are discriminated against by Greek law.

- Also article 1 of Law 1078/1980 provides for the exemption from ownership transfer taxation in cases where the real estate constitutes the first home of a single adult buyer or of a married buyer or their spouse or minor children. Even though the wording of this Law does not exclude non-Greeks this statute has been interpreted by the State Legal Council (opinion 491/2001) in an extremely restrictive way, excluding from its beneficiary ambit aliens, including even recognised refugees according to the Geneva Refugee Convention, contrary to the recommendation of UNHCR.
- Anti-racism positive action measures are currently non-existent in Greece.
- Greek law should ensure that associations, organisations or other legal entities with a legitimate interest may engage in any kind of legal procedures on behalf or in support of a complainant on grounds of racial/ethnic origin discrimination.
- Greece should urgently proceed to the establishment of legal aid according to the ECHR case law and the 2001 proposals of the Greek National Commission for Human Rights (above). The outdated condition of reciprocity of Article 195, para. 1 of the Code of

Civil Procedure should be removed, in accordance with the mandates of modern human rights law.

- Deadlines for prosecution of racist offences should be flexible enough so that effective protection is offered to the victims.
- Greek procedural law should provide that the burden of proof is to be on the respondent in racist cases (except criminal).
- Specific measures should also be taken for the protection of victims from any adverse treatment or adverse consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment.
- The Greek government should also take steps in order to ensure sufficient public awareness (targeting the persons concerned) on existing anti-racism legislation or any new provisions, such as that of article 39.4 of Aliens Law 2910/2001 that provides for the first time *ex officio* prosecution of the acts and activities proscribed by anti-racism Law 927/1979.
- The Greek government should take steps in order to take adequate measures promoting social dialogue between the two sides of industry with a view to fostering equal treatment, as required by article 11 of the Directive.
- There is no special programme of the Greek state in order to advance the fight against discrimination on grounds of racial or ethnic origin, as envisaged by the Directive. The Greek state should move towards the establishment of a long-term plan for the continuous awareness and education of the Greek public with regard to issues of racial discrimination. Particular emphasis should be placed on education, through specially planned programmes, of the youth, especially in primary and secondary schools. At the same time, special human rights education projects should be established and included in curricula of schools and the on-going education of public servants and law enforcement personnel coming from the state, local administration or even the private sector. Also, the Greek state is to prioritise and promote human rights law education in Greek Law Schools, in the Bars and in the School of Judges.
- The Greek state should take action in order to grant already existing bodies or bodies to be created the competencies required by article 13.2 of the Directive. The Greek National Commission for Human Rights and the Greek Ombudsman, if appropriately resourced by the Greek state, could be in a position to act in this direction. Another body that would have the potential to act for the promotion of racial equality would be the state-backed Research Center for Gender Equality (KETHI) which is subject to the General Secretariat for (Gender) Equality of the Interior Ministry and has until now dealt exclusively with issues pertaining to gender equality.

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Notes

¹Greek Ombudsman, *Annual Report 2000* (Athens: National Printing Office, 2001) (in Greek), p.51. See also Greek Ombudsman, *Annual Report 2001*, pp.75–100 (in Greek, electronic version accessed through the Greek Ombudsman's site, www.synigoros.gr, March 2002).

²See Greek Ombudsman, *Annual Report 2001*, pp.75–6 (in Greek, accessed through www.synigoros.gr, March 2002).

- ³European Parliament, *Report on the situation as regards fundamental rights in the European Union (2000)*, final, Doc A5-0223/2001 Rev, 21 June 2001, pp.64–5.
- ⁴Council of Europe, Office of the Commissioner for Human Rights, *Report by Mr Alvaro Gil-Robles on his visit to the Hellenic Republic, 2–5 June 2002*, Doc CommDH(2002)5, Strasbourg, 17 July 2002, paras 31 and 37 (accessed through www.commissioner.coe.int).
- ⁵Greek National Commission for Human Rights (NCHR), ‘Main aspects of racial discrimination in Greece – Proposals for the modernisation of Greek law and practice’, 20 December 2001, in NCHR, *Report 2001* (Athens: National Printing Office, 2002) (in Greek) pp.201–2. An increase of xenophobia in Greece has been documented also in US Department of State, *Country Reports on Human Rights Practices – 2001 – Greece*, 4 March 2002 (accessed through www.state.gov), section on national/racial/ethnic minorities.
- ⁶Ministry of Public Order, Greek Police Headquarters, Head of Greek Police, Circular no 6014/10/21, 12 July 2001 (unpublished, on file with the author).
- ⁷Amnesty International and International Helsinki Federation for Human Rights, *Greece – In the Shadow of Impunity – Ill-treatment and the Misuse of Firearms* (London, Vienna: September 2002), p.27.
- ⁸See, inter alia, L. Labrianidis and A. Liberaki, *Albanian Immigrants in Thessaloniki* (Thessaloniki: Paratiritis Publishers, 2001), Greek National Centre of Social Research (ed.), *Macedonia and the Balkans – Xenophobia and Development* (Athens: Alexandria Publishers, 1998), pp.131–272, Unicef, Greece and Kapa Research SA, *Research on Discrimination-Racism-Xenophobia and Greek Education System* (Athens: Unicef, Greece, February 2002) (all in Greek).
- ⁹See inter alia, R. Fakiolas, ‘Socio-economic Effects of Immigration in Greece’, *Journal of European Social Policy*, Vol.9 (1999) 211, pp.220–222.
- ¹⁰Research study of NCHR and the University of Athens, Department of Communication and Mass Media, *Human Rights and Greek Television News Bulletins*, Athens, February 2002 (study commissioned by the Fourth Sub-Commission of NCHR, unpublished, in Greek).
- ¹¹A. Triandafyllidou, ‘Greece’, in EUMC, ERCOMER, *Racism and Cultural Diversity in the Mass Media* (Vienna: February 2002), pp.163–4; G. Lazaridis, ‘The Helots of the New Millennium: Ethnic-Greek Albanians and ‘Other’ Albanians in Greece’ in F. Anthias, G. Lazaridis (eds.), *Into the Margins: Migration and Exclusion in Southern Europe* (Aldershot: Ashgate, 1999), pp.105–21.
- ¹²See poll of the Greek daily *Hemerisia*, 27 April 2002 (www.imerisia.gr).
- ¹³As xenophobe may be characterised, the political party ‘LAOS’ whose leader as a candidate Prefect of Attica and Piraeus, gained approx 13% of the votes in the first round of the Greek local elections of 13 Oct. 2002. Clearly extreme racist groups are, inter alia, political groups such as ‘Chrisi Avgi’ and ‘Elliniko Metopo’: G. Tsias, ‘The European Extreme Right’, *To Vima – Vimagazino* (Greek daily), 19 May 2002, pp.40–48 (in Greek).
- ¹⁴*Eleftherotypia* (Greek daily), 30 May 2002, p.16 (in Greek).
- ¹⁵See UN Committee on the Rights of the Child, *Concluding Observations on the Greek Report*, 1 February 2002, UN Doc CRC/C/15/Add.170, paras 54–71.
- ¹⁶*Ibid.*, para. 66 (b).
- ¹⁷In 1995–1996 and 1999–2000 there were, respectively, 30,100 and 58,571 alien pupils in Greek primary education. The respective numbers in secondary education were 13,900 and 27,667. The current percentages of alien immigrants, aliens of Greek descent and Roma children are 12.3% in primary education and 3.8% in secondary education. See *To Vima*, 25 Nov. 2001, p.A44 and *ibid.*, 6 Oct. 2002, p.A56.
- ¹⁸*Athens News* (English-language weekly), 26 Oct. 2001, p.12; K. Tzilivakis, ‘Improving Education for Migrant Kids’, *ibid.*, 30 Aug. 2002, p.29.
- ¹⁹See Th. Iosifides, ‘Employment Conditions of Three Immigrant Groups in Athens’, in Ath. Marvakis et al. (eds.), *Immigrants in Greece* (Athens: Hellenika Grammata 2001) (in Greek), 227, p.239.
- ²⁰See Labrianidis and Liberaki (note 8), pp.251–4.
- ²¹*Athens News*, 9 Aug. 2002, p.10.
- ²²K. Tzilivakis, ‘Will Migrants Get a Voice?’, *Athens News*, 26 July 2002, p.12.
- ²³*Eleftherotypia – Epsilon magazine*, 22 September 2002, pp.50–56 (in Greek).
- ²⁴*Eleftherotypia*, 24 Sept. 2002, p.11 (in Greek).
- ²⁵Statement of the Minister of Interior Kostas Skandalidis in the conference on the application of Immigration Laws 2910/2001 and 3013/2002 organised by the Ministry of Interior in Athens on 4 Sept. 2002.
- ²⁶ECRI, *Second Report on Greece, adopted on 10 December 1999*, Strasbourg, 27 June 2000 (CRI 2000 32), pp.6–8.
- ²⁷NCHR was founded by Law 2667/1998 as a National Human Rights Institution according to the *Paris Principles* (see www.nhri.net) and has a consultative status with the Greek state as a National Human Rights Institution. NCHR membership consists, among others, of representatives of Greek NGOs, professional organisations, political parties, Ministries and Universities. NCHR has five Sub-Commissions whose work focuses on: Civil and Political Rights (First Sub-Commission); Social, Economic and Cultural

Rights (Second Sub-Commission); Aliens' Rights (Third Sub-Commission); Human Rights Promotion (Fourth Sub-Commission) and International Relations (Fifth Sub-Commission).

²⁸NCHR (note 5).

²⁹Greek Helsinki Monitor, press releases, 13 Aug. 2002 and 1 Sept. 2002 (accessed through www.greekhelsinki.gr).

³⁰Greek Helsinki Monitor, press release of 13 Aug. 2002.

³¹See Greek Helsinki Monitor, press release of 31 Aug. 2002 (www.greekhelsinki.gr). See also Greek Helsinki Monitor, press release of 19 Oct. 2002 regarding another case of the publication of an anti-Albanian immigrant letter of a reader to the Greek daily *Ta Nea*.

³²Greek Helsinki Monitor, 'Desmevontai antiratsistika', electronic news bulletin, 11 Oct. 2002.

³³E. Kroustallakis, 'The European Convention on Human Rights as a Catalyst for the Modernisation of Case Law', *Nomiko Vima* (Greek law journal) Vol.48 (2000), pp.1723–6 (in Greek).

³⁴See inter alia, Amnesty International and International Helsinki Federation for Human Rights (note 7), p.1.

³⁵According to article 28 para. 1 of the Greek Constitution international treaties ratified by statute form 'an integral part of Greek law and...prevail over any contrary provision of law'. According to the same provision the 'rules of international law and of international treaties shall be applicable to aliens only under the condition of reciprocity'. The condition of reciprocity though is not applicable to human rights treaties, see K. Ioannou et al., *Public International Law-Relations of International and National Law* (Athens: Ant. N. Sakkoulas Publishers, 1990) (in Greek) p.183; see also article 60 para. 5 of the 1969 Vienna Convention on the Law of Treaties (*UN Treaty Series*, 1155, 331).

³⁶See ICERD Committee, *Concluding Observations on Greece, 27/04/2001*, UN Doc CERD/C/304/Add.119, 27 April 2001. See also Report of Greece to the ICERD Committee, UN Doc CERD/C/363/Add.4, 30 May 2000.

³⁷Greece signed Protocol No.12 to ECHR on 4 Nov. 2000.

³⁸Greece has also ratified the 1988 Additional Protocol to the ESC (Law 2595/1998), the 1991 Protocol amending the ESC (Law 2422/1996), the 1995 Additional Protocol to the ESC Providing for a System of Collective Complaints (Law 2595/1998). Greece also signed on 3 May 1996 the 1996 Revised ESC.

³⁹See relevant case law of the Greek Council of State (Fourth Chamber), judgment 4262/1995, reported in *To Syntagma* (Greek law journal) Vol.22 (1996), p.494 (in Greek).

⁴⁰See note 5 above.

⁴¹The text of the Directive may be found at the end of the study as an annex.

⁴²D. TH. Tsatsos, XI I Contiades (eds.), *The Constitution of Greece 1975/1986/2001* (Athens: Ant. N. Sakkoulas Publishers 2001) (in Greek and in English). The third amendment of the post-1974 Constitution was completed in April 2001.

⁴³*Review of Public and Administrative Law*, Vol.41 (1997) (in Greek), 543.

⁴⁴See, inter alia, PI Pararas, *1975 Constitution – Corpus I* (Athens, Komotini: Ant N Sakkoulas Publishers, 1982), pp.31–2, P.D. Dagtolou, *Civil Rights – B* (Athens, Komotini: Ant. N. Sakkoulas Publishers 1991), p.1050 (both in Greek).

⁴⁵Article 5.5: 'All persons are entitled to the protection of their health and of their genetic identity. Matters relating to the protection of every person against biomedical interventions shall be specified by law.' See also N. Sitaropoulos, 'Refugee welfare in Greece: Towards a Remodelling of the Responsibility-shifting Paradigm?', *Critical Social Policy*, Vol.22 (2002), Special Issue: *Asylum and Welfare*, pp.436–55.

⁴⁶See above Chapter I.1.

⁴⁷Ibid.

⁴⁸Law 1419/1984 added religion to the grounds of racist activity.

⁴⁹According to article 39.4 of Law 2910/2001 prosecution of any of the proscribed acts or activities of Law 927/1979 may now be initiated ex officio. Until 2001 prosecution could be initiated only upon lodging of a relevant complaint.

⁵⁰Ch. Th. Anthopoulos, *Protection against Racism and Freedom of Information* (Athens: Papazisis Publishers, 2000), pp.130–31 (in Greek).

⁵¹A.G. Mangakis, 'The crime to incitement of citizens to intolerance under article 192 PC', *Pinika Chronika* (Greek law journal) Vol.13 (1963), p.385 at p.389 (in Greek).

⁵²I. Manoledakis, *Endangerment of Public Order* (Thessaloniki: Sakkoulas Publishers, 1994), 2nd edn, pp.186–7 (in Greek).

⁵³Reported in *Yperaspisi* (Greek law journal) Vol.1 (1991), p.827 (in Greek).

⁵⁴See relevant note in European Parliament, *Report of the Committee of Inquiry into Racism and Xenophobia* (by Glyn Ford) (Luxembourg: EEC, 1991), p.59.

⁵⁵Appl. no. 18877/91, *Ahmed Sadik* case, see Ch. Giakoumopoulos, 'The minority issue in Greece and ECHR', in K. Tsitselikis, D. Christopoulos (eds.), *The Minority Issue in Greece* (Athens: Kritiki Publishers, 1997), p.23 at pp.53–5 (in Greek).

- ⁵⁶See Greek Helsinki Monitor, Minority Rights Group-Greece (eds.), *Greece against its Macedonian Minority – The ‘Rainbow’ Trial* (Athens: Etepe Publishers, 1998) (in Greek and in English) concerning the case of prosecution by the public prosecutor in Florina (N. Greece) of the ‘Rainbow’ minority party, using article 192 of the Penal Code, on the ground of inciting ‘disharmony among citizens...with the argument...that...the use of the [Macedonian] language causes disharmony’, *ibid.*, p.14; see also Y. Kourtovik, ‘Justice and Minorities’ in K. Tsitselikis, D. Christopoulos (eds.) (note 55), p.245, p.249 ff (in Greek). The issue of self-description, or ‘self-determination’, of the ‘Muslim’ minority in Thrace as Turkish continues to produce serious friction and litigation in Greece and to lead to Greek court judgments that result in dissolution of Muslim/Turkish associations: see Three-Member Court of Appeal of Thrace, judgment 31/2002, 25.01.2002 (the Greek text of the judgment is accessed through the Greek version of www.greekhelsinki.gr) and K. Ch. Chrisogonos, *The Incorporation of ECHR in the National Legal Order* (Athens: Ant. N. Sakkoulas Publishers, 2001) (in Greek), pp.311–12.
- ⁵⁷Another provision of the Greek Penal Code which has been used for prosecuting racist offences is that of article 186 proscribing provocation or incitement to commitment of an offence. In 1993 a relevant criminal prosecution was initiated ex officio against a racist Greek newspaper, *Stochos* [Target] which had published an article against Jews, accusing them of ‘being AIDS-carriers’. The newspaper’s director was condemned in the first instance. On appeal the Appeal Court did not deal with the substance of the case for reasons relating to prosecution time-limits: ECRI, ‘National legal measures: Greece’, <http://www.ecri.coe.int/en/03/02/0214/01.htm>.
- ⁵⁸Ch. Th. Anthopoulos (note 50), pp.139–40.
- ⁵⁹See Greek National Commission for Human Rights (note 5), pp.205–6.
- ⁶⁰Reproduced in *Eleftherotypia* (Greek daily), 15 Feb. 2002, pp.4–5.
- ⁶¹Similar wording is contained in article 5 of Regulation 1/1991 of the GNCRT on journalists’ code of conduct in radio and television, *Official Journal of the Hellenic Republic (OJHR)* Series B 421, 21 June 1991. Racism is expressly proscribed also by article 4 of Regulation 3/1991 of the GNCRT on the code of conduct regarding commercials on radio and television, *OJHR* Series B 538, 18 July 1991.
- ⁶²Doc no.566/27 March 1998 (on file with the author).
- ⁶³www.esiea.gr/gr/lperi/deontology.html.
- ⁶⁴Judgment of Areios Pagos no.550/2001, unpublished, copy on file with the author.
- ⁶⁵I. D. Lixouriotis, *The Legal Status of Immigrant Employees in Greece* (Athens: Ant. N. Sakkoulas Publishers, 1998) (in Greek), pp.425–6.
- ⁶⁶I.D. Lixouriotis, *ibid.*, pp.435–7. See also Council of State judgments nos 2599/1982, 2637/1982, 1318/1990, affirming the above, reported in *Greek Yearbook of Refugee and Aliens Law – Year 1999* (GYRAL) (Athens: Ant. N. Sakkoulas Publishers, 2000), pp.160–66 (in Greek). See also Auditors’ Court judgment no 1617/1998 affirming the right of an alien widow of a Greek citizen, former public servant, to receive the pension of her deceased husband, *GYRAL*, p.182.
- ⁶⁷Greek Foreign Ministry, *Initial Report of Greece to the Committee on Economic, Social and Cultural Rights*, Athens, August 2002 (unpublished, copy on file with the author), p.11.
- ⁶⁸*ibid.*, p.30.
- ⁶⁹Athens First Instance Court judgment no 4311/1984, *Nomiko Vima (NV)* Vol.33 (1985) p.1222.
- ⁷⁰Athens First Instance Court judgments no 1834/1986, *NV* (1987) p.399, no. 3518/1993, *NV*(1994) p.231, no. 4300/1996, *NV* (1997) 253, no. 2380/1996, *GYRAL*, p.170, Thessaloniki First Instance Court judgment 6297/1993, *Armenopoulos* Vol.47 (1993) p.1131.
- ⁷¹I.D. Lixouriotis (note 65), pp.457–8. See also Law 2874/2000, article 10 that provides for unemployment benefits without any racial or ethnic origin distinction.
- ⁷²GAPPD opinion no 86/2001, *Piniki Dikaosyni* (Greek law journal) Vol.4 (2001), p.1016 (in Greek).
- ⁷³Copy on file with the author.
- ⁷⁴See N. Sitaropoulos, ‘The New Greek Immigration Law: A Step Forward?’, *Immigration and Nationality Law and Practice*, Vol.15 (2001), pp.228–34.
- ⁷⁵Greek Council of State judgment 1917/1998 (Plenary), *Review of Public and Administrative Law (RPAL)* Vol.42 (1998), p.577 (in Greek). Article 6 of Law 2839/2000 has also established, in principle, the quota of 1/3 in favour of women with regard to posts of boards of public and private law organisations.
- ⁷⁶*RPAL* (1998), p.585 (in Greek). On the right to equality see also Greek Council of State judgments 1156/2000, 2096/2000, *To Syntagma* Vol.26 (2000), p.927 and p.1288 respectively (in Greek).
- ⁷⁷Ratified by Greece by Legislative Decree of 25 Aug. 1923, reproduced in Ph. Constantopoulou (ed.), *The Foundation of the Modern Greek State – Major Treaties and Conventions (1830–1947)* (Athens: Kastaniotis Publishers, 1999), pp.123–45. See also L. Baltiotis and K. Tsitselikis (eds.), *The Minority Education in Thrace* (Athens: Ant. N. Sakkoulas Publishers, 2001) (in Greek), pp.33–7. See also F Asimakopoulou, ‘The Muslim minority of Thrace’, in F. Asimakopoulou, S. Christidou-Lionaraki, *The Muslim Minority in Thrace and Greco-Turkish Relations* (Athens: A.A. Livanis Publishers, 2002) (in Greek), p.209 ff.

- ⁷⁸See also use of articles 37–45 of the Lausanne Treaty by the Greek Supreme Administrative Court (Council of State) in its judgment 1333/2001, *To Syntagma*, Vol.27 (2001), 917 (in Greek).
- ⁷⁹Report by Greece to the United Nations Committee on the Elimination of Racial Discrimination, UN Doc CERD/C/363/Add.4, 30 May 2000 (*Greek Report*), paras 22–9.
- ⁸⁰Report of the General Secretary in charge of the Education of Aliens of Greek Origin and of Intercultural Education, Ministry of Education to the Green National Commission for Human Rights, 21 Feb. 2001 (in Greek, unpublished on file with the author).
- ⁸¹L. Baltsiotis and K. Tsitselikis (note 77), p.340.
- ⁸²*Ibid.*, pp.344–5.
- ⁸³*Greek Report*, para. 27.
- ⁸⁴F. Asimakopoulou (note 77), pp.322–3.
- ⁸⁵See conviction of Greece by the European Court of Human Rights in *Sidiropoulos et al v Greece*, judgment of 10 July 1998, on the ground that Greek courts refused to register an association aimed at promoting Macedonian culture (article 11 ECHR). See also ECRI, *Second Report on Greece* (note 26), para. 24.
- ⁸⁶Greek National Commission for Human Rights (NCHR), report on issues relating to freedom of religion, section c, NCHR, *Report 2001* (note 5), pp.101–3 (in Greek).
- ⁸⁷NCHR, report on the situation of Roma in Greece, *Report 2001* (note 5), pp.181–97 (in Greek).
- ⁸⁸*Greek Report*, paras 35–44.
- ⁸⁹Ministry of Education, information note, 5 July 2001 (in Greek, on file with the author).
- ⁹⁰Ministry of Labour, *Policy for Social Solidarity 2001–2004*, Athens, 5 April 2001 (mimeo, in Greek).
- ⁹¹NCHR report on modernising Greek anti-racism legislation, NCHR, *Report 2001* (note 5), p.211.
- ⁹²*Idem.*
- ⁹³Council of State judgment no. 575/2001, Athens First Instance Court judgment no 5208/2000, both unpublished, copies on file with the author.
- ⁹⁴NCHR, *Report 2001* (note 5) p.211; see also NCHR report on legal aid, *ibid.*, p.133 at p.142.
- ⁹⁵Case of *Twalib v. Greece*, appl. no. 42/1997/826/1032, Judgment of 9 June 1998, *Affaire Biba c. Grèce*, no. 33170/96, Arrêt du 26 septembre 2000 (www.echr.coe.int).
- ⁹⁶Article 6, para. 1, EHRC: ‘everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal’. Article 6, para 3 (c), EHRC: ‘to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require’ (emphasis added). The European Commission against Racism and Intolerance (ECRI) has also called upon the Greek authorities to ensure the right of aliens to fair legal proceedings, including legal defence, see ECRI (note 26), para. 10.
- ⁹⁷See also Case of *Perks and Others v. The United Kingdom*, appl. 25277/94, etc., Judgment of 12 October 1999, para. 76 (accessed through www.echr.coe.int). A similar case law position has been adopted by the Human Rights Committee of the International Covenant on Civil and Political Rights, see D. McGoldrick, *The Human Rights Committee* (Oxford: Clarendon Press, 1994), pp.428–9.
- ⁹⁸NCHR, *Report 2001* (note 5), pp.133–42.
- ⁹⁹NCHR *Report 2001* (note 5) pp.133–42 and at p.211.
- ¹⁰⁰www.polites.gr.
- ¹⁰¹*Eleftherotipia* (Greek daily), 19 Dec. 2001, p.60.
- ¹⁰²See speech of the Greek Foreign Minister George Papandreou to immigrant NGOS, Greek Foreign Ministry, 26 February 2002, accessed through www.mfa.gr.
- ¹⁰³www.kethi.gr
- ¹⁰⁴NCHR, *Report 2001* (note 5), p.212.
- ¹⁰⁵*Ibid.*, p.140 and p.142.
- ¹⁰⁶*Ibid.*, pp.101–3.
- ¹⁰⁷See Greek Ombudsman (note 1).
- ¹⁰⁸NCHR (note 5), pp.133–42.

Appendix

COUNCIL DIRECTIVE 2000/43/EC OF 29 JUNE 2000 IMPLEMENTING
THE PRINCIPLE OF EQUAL TREATMENT BETWEEN PERSONS IRRESPECTIVE OF RACIAL OR
ETHNIC ORIGIN*

*Official Journal of the European Communities, L 180, 19/07/2000 p.22–6

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular Article 13 thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Parliament²,

Having regard to the opinion of the Economic and Social Committee³,

Having regard to the opinion of the Committee of the Regions⁴,

Whereas:

- (1) The Treaty on European Union marks a new stage in the process of creating an ever closer union among the peoples of Europe.
- (2) In accordance with Article 6 of the Treaty on European Union, the European Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States, and should respect fundamental rights as guaranteed by the European Convention for the protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, as general principles of Community Law.
- (3) The right to equality before the law and protection against discrimination for all persons constitutes a universal right recognised by the Universal Declaration of Human Rights, the United Nations Convention on the Elimination of all forms of Discrimination Against Women, the International Convention on the Elimination of all forms of Racial Discrimination and the United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights and by the European Convention for the Protection of Human Rights and Fundamental Freedoms, to which all Member States are signatories.
- (4) It is important to respect such fundamental rights and freedoms, including the right to freedom of association. It is also important, in the context of the access to and provision of goods and services, to respect the protection of private and family life and transactions carried out in this context.
- (5) The European Parliament has adopted a number of Resolutions on the fight against racism in the European Union.
- (6) The European Union rejects theories which attempt to determine the existence of separate human races. The use of the term "racial origin" in this Directive does not imply an acceptance of such theories.
- (7) The European Council in Tampere, on 15 and 16 October 1999, invited the Commission to come forward as soon as possible with proposals implementing Article 13 of the EC Treaty as regards the fight against racism and xenophobia.
- (8) The Employment Guidelines 2000 agreed by the European Council in Helsinki, on 10 and 11 December 1999, stress the need to foster conditions for a socially inclusive labour market by formulating a coherent set of policies aimed at combating discrimination against groups such as ethnic minorities.
- (9) Discrimination based on racial or ethnic origin may undermine the achievement of the objectives of the EC Treaty, in particular the attainment of a high level of employment and of social protection, the raising of the standard of living and quality of life, economic and social cohesion and solidarity. It may also undermine the objective of developing the European Union as an area of freedom, security and justice.
- (10) The Commission presented a communication on racism, xenophobia and anti-Semitism in December 1995.
- (11) The Council adopted on 15 July 1996 Joint Action (96/443/JHA) concerning action to combat racism and xenophobia⁵ under which the Member States undertake to ensure effective judicial cooperation in respect of offences based on racist or xenophobic behaviour.
- (12) To ensure the development of democratic and tolerant societies which allow the participation of all persons irrespective of racial or ethnic origin, specific action in the field of discrimination based on racial or ethnic origin should go beyond access to employed and self-employed activities and cover areas such as education, social protection including social security and healthcare, social advantages and access to and supply of goods and services.
- (13) To this end, any direct or indirect discrimination based on racial or ethnic origin as regards the areas covered by this Directive should be prohibited throughout the Community. This prohibition of discrimination should also apply to nationals of third countries, but does not cover differences of treatment based on nationality and is without prejudice to provisions governing the entry and residence of third-country nationals and their access to employment and to occupation.
- (14) In implementing the principle of equal treatment irrespective of racial or ethnic origin, the Community should, in accordance with Article 3(2) of the EC Treaty, aim to eliminate inequalities, and to promote equality between men and women, especially since women are often the victims of multiple discrimination.
- (15) The appreciation of the facts from which it may be inferred that there has been direct or indirect discrimination is a matter for national judicial or other competent bodies, in accordance with rules of national law or

practice. Such rules may provide in particular for indirect discrimination to be established by any means including on the basis of statistical evidence.

- (16) It is important to protect all natural persons against discrimination on grounds of racial or ethnic origin. Member States should also provide, where appropriate and in accordance with their national traditions and practice, protection for legal persons where they suffer discrimination on grounds of the racial or ethnic origin of their members.
- (17) The prohibition of discrimination should be without prejudice to the maintenance or adoption of measures intended to prevent or compensate for disadvantages suffered by a group of persons of a particular racial or ethnic origin, and such measures may permit organisations of persons of a particular racial or ethnic origin where their main object is the promotion of the special needs of those persons.
- (18) In very limited circumstances, a difference of treatment may be justified where a characteristic related to racial or ethnic origin constitutes a genuine and determining occupational requirement, when the objective is legitimate and the requirement is proportionate. Such circumstances should be included in the information provided by the Member States to the Commission.
- (19) Persons who have been subject to discrimination based on racial and ethnic origin should have adequate means of legal protection. To provide a more effective level of protection, associations or legal entities should also be empowered to engage, as the Member States so determine, either on behalf or in support of any victim, in proceedings, without prejudice to national rules of procedure concerning representation and defence before the courts.
- (20) The effective implementation of the principle of equality requires adequate judicial protection against victimisation.
- (21) The rules on the burden of proof must be adapted when there is a prima facie case of discrimination and, for the principle of equal treatment to be applied effectively, the burden of proof must shift back to the respondent when evidence of such discrimination is brought.
- (22) Member States need not apply the rules on the burden of proof to proceedings in which it is for the court or other competent body to investigate the facts of the case. The procedures thus referred to are those in which the plaintiff is not required to prove the facts, which it is for the court or competent body to investigate.
- (23) Member States should promote dialogue between the social partners and with non-governmental organisations to address different forms of discrimination and to combat them.
- (24) Protection against discrimination based on racial or ethnic origin would itself be strengthened by the existence of a body or bodies in each Member State, with competence to analyse the problems involved, to study possible solutions and to provide concrete assistance for the victims.
- (25) This Directive lays down minimum requirements, thus giving the Member States the option of introducing or maintaining more favourable provisions. The implementation of this Directive should not serve to justify any regression in relation to the situation which already prevails in each Member State.
- (26) Member States should provide for effective, proportionate and dissuasive sanctions in case of breaches of the obligations under this Directive.
- (27) The Member States may entrust management and labour, at their joint request, with the implementation of this Directive as regards provisions falling within the scope of collective agreements, provided that the Member States take all the necessary steps to ensure that they can at all times guarantee the results imposed by this Directive.
- (28) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the EC Treaty, the objective of this Directive, namely ensuring a common high level of protection against discrimination in all the Member States, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and impact of the proposed action, be better achieved by the Community. This Directive does not go beyond what is necessary in order to achieve those objectives,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Purpose

The purpose of this Directive is to lay down a framework for combating discrimination on the grounds of racial or ethnic origin, with a view to putting into effect in the Member States the principle of equal treatment.

Article 2

Concept of discrimination

1. For the purposes of this Directive, the principle of equal treatment shall mean that there shall be no direct or indirect discrimination based on racial or ethnic origin.
2. For the purposes of paragraph 1:
 - (a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin;
 - (b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.
3. Harassment shall be deemed to be discrimination within the meaning of paragraph 1, when an unwanted conduct related to racial or ethnic origin takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States.
4. An instruction to discriminate against persons on grounds of racial or ethnic origin shall be deemed to be discrimination within the meaning of paragraph 1.

Article 3

Scope

1. Within the limits of the powers conferred upon the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:
 - (a) conditions for access to employment, to self-employment and to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;
 - (b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;
 - (c) employment and working conditions, including dismissals and pay;
 - (d) membership of and involvement in an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations;
 - (e) social protection, including social security and healthcare;
 - (f) social advantages;
 - (g) education;
 - (h) access to and supply of goods and services which are available to the public, including housing.
2. This Directive does not cover difference of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons on the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned.

Article 4

Genuine and determining occupational requirements

Notwithstanding Article 2(1) and (2), Member States may provide that a difference of treatment which is based on a characteristic related to racial or ethnic origin shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.

Article 5

Positive action

With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin.

Article 6

Minimum requirements

1. Member States may introduce or maintain provisions which are more favourable to the protection of the principle of equal treatment than those laid down in this Directive.
2. The implementation of this Directive shall under no circumstances constitute grounds for a reduction in the level of protection against discrimination already afforded by Member States in the fields covered by this Directive.

CHAPTER II

REMEDIES AND ENFORCEMENT

Article 7

Defence of rights

1. Member States shall ensure that judicial and/or administrative procedures, including where they deem it appropriate conciliation procedures, for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.
2. Member States shall ensure that associations, organisations or other legal entities, which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf or in support of the complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive.
3. Paragraphs 1 and 2 are without prejudice to national rules relating to time limits for bringing actions as regards the principle of equality of treatment.

Article 8

Burden of proof

1. Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.
2. Paragraph 1 shall not prevent Member States from introducing rules of evidence which are more favourable to plaintiffs.
3. Paragraph 1 shall not apply to criminal procedures.
4. Paragraphs 1, 2 and 3 shall also apply to any proceedings brought in accordance with Article 7(2).
5. Member States need not apply paragraph 1 to proceedings in which it is for the court or competent body to investigate the facts of the case.

Article 9

Victimisation

Member States shall introduce into their national legal systems such measures as are necessary to protect individuals from any adverse treatment or adverse consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment.

Article 10

Dissemination of information

Member States shall take care that the provisions adopted pursuant to this Directive, together with the relevant provisions already in force, are brought to the attention of the persons concerned by all appropriate means throughout their territory.

Article 11

Social dialogue

1. Member States shall, in accordance with national traditions and practice, take adequate measures to promote the social dialogue between the two sides of industry with a view to fostering equal treatment, including through the monitoring of workplace practices, collective agreements, codes of conduct, research or exchange of experiences and good practices.
2. Where consistent with national traditions and practice, Member States shall encourage the two sides of the industry without prejudice to their autonomy to conclude, at the appropriate level, agreements laying down anti-discrimination rules in the fields referred to in Article 3 which fall within the scope of collective bargaining. These agreements shall respect the minimum requirements laid down by this Directive and the relevant national implementing measures.

Article 12

Dialogue with non-governmental organisations

Member States shall encourage dialogue with appropriate non-governmental organisations which have, in accordance with their national law and practice, a legitimate interest in contributing to the fight against discrimination on grounds of racial and ethnic origin with a view to promoting the principle of equal treatment.

CHAPTER III

BODIES FOR THE PROMOTION OF EQUAL TREATMENT

Article 13

1. Member States shall designate a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin. These bodies may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals' rights.
2. Member States shall ensure that the competences of these bodies include:
 - without prejudice to the right of victims and of associations, organisations or other legal entities referred to in Article 7(2), providing independent assistance to victims of discrimination in pursuing their complaints about discrimination,
 - conducting independent surveys concerning discrimination,
 - publishing independent reports and making recommendations on any issue relating to such discrimination.

CHAPTER IV

FINAL PROVISIONS

Article 14

Compliance

Member States shall take the necessary measures to ensure that:

- (a) any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished;
- (b) any provisions contrary to the principle of equal treatment which are included in individual or collective contracts or agreements, internal rules of undertakings, rules governing profit-making or non-profit-making associations, and rules governing the independent professions and workers' and employers' organisations, are or may be declared, null and void or are amended.

Article 15

Sanctions

Member States shall lay down the rules on sanctions applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are applied. The sanctions, which may comprise the payment of compensation to the victim, must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by 19 July 2003 at the latest and shall notify it without delay of any subsequent amendment affecting them.

Article 16

Implementation

Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive by 19 July 2003 or may entrust management and labour, at their joint request, with the implementation of this Directive as regards provisions falling within the scope of collective agreements. In such cases, Member States shall ensure that by 19 July 2003, management and labour introduce the necessary measures by agreement, Member States being required to take any necessary measures to enable them at any time to be in a position to guarantee the results imposed by this Directive. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

Article 17

Report

1. Member States shall communicate to the Commission by 19 July 2005, and every five years thereafter, all the information necessary for the Commission to draw up a report to the European Parliament and the Council on the application of this Directive.
2. The Commission's report shall take into account, as appropriate, the views of the European Monitoring Centre on Racism and Xenophobia, as well as the viewpoints of the social partners and relevant non-governmental organisations. In accordance with the principle of gender mainstreaming, this report shall, inter alia, provide an assessment of the impact of the measures taken on women and men. In the light of the information received, this report shall include, if necessary, proposals to revise and update this Directive.

Article 18

Entry into force

This Directive shall enter into force on the day of its publication in the Official Journal of the European Communities.

Article 19

Addressees

This Directive is addressed to the Member States.

Done at Luxembourg, 29 June 2000.

For the Council
The President
M. ARCANJO

Notes

¹Not yet published in the Official Journal.

²Opinion delivered on 18.5.2000 (not yet published in the Official Journal).

³Opinion delivered on 12.4.2000 (not yet published in the Official Journal).

⁴Opinion delivered on 31.5.2000 (not yet published in the Official Journal).

⁵OJ L 185, 24.7.1996, p. 5.