



**International covenant
on civil and
political rights**

Distr.
GENERAL

CCPR/C/GRC/2004/1
15 April 2004

Original: ENGLISH

HUMAN RIGHTS COMMITTEE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT**

Initial report

GREECE*

[5 April 2004]

* This report is issued unedited, in compliance with the wish expressed by the Human Rights Committee at its sixty-sixth session in July 1999.

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List of abbreviations

AP	Areios Pagos, the Supreme Civil and Criminal Court
CAP	Code of Administrative Procedure
CPB	Central Prison Board
CC	Civil Code
CCivP	Code of Civil Procedure
CCP	Code of Criminal Procedure
CCPI	Code for the Collection of Public Income
CorrC	Correctional Code
CoS	Council of State, the Supreme Administrative Court
ECHR	European Convention on the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
GSGE	General Secretariat for Gender Equality
HDP	Hellenic Data Protection Authority
KETHI	Research Center on Equality Matters
LD	Legislative Decree
MFA	Ministry of Foreign Affairs
MIPAD	Ministry of Interior, Public Administration and Decentralization
MND	Ministry of National Defense
MPC	Military Penal Code
NCHR	National Commission for Human Rights
NRTC	National Radio and Television Council
OAED	Manpower Employment Organization
OKEA	Task Force for Combating Human Trafficking
OTA	Local Government Agencies
PC	Penal Code
PD	Presidential Decree

Introduction

Greece has the pleasure to submit her initial Report to the Human Rights Committee of the International Covenant on Civil and Political Rights. We regret for not being able to present this Report on time i.e. in 1998, one year after ratification of the Covenant by Greece. We would like, however, to emphasize that Greece attaches great importance to the United Nations treaty mechanisms on monitoring compliance of human rights and, in particular, to the reporting procedure under the ICCPR, entrusting the Human Rights Committee with the delicate task of considering state reports. We are confident that the submission of this Report will mark the beginning of a frank, constructive and fruitful dialogue with the Human Rights Committee.

This Report has been drafted by the Legal Department of the Ministry of Foreign Affairs, in close cooperation with the following Ministries: Ministry of Interior, Public Administration and Decentralization/Secretariat-General for Gender Equality, Ministry of Justice, Ministry of Labor and Social Security, Ministry of Public Order, Ministry of National Defense, Ministry of Health and Social Welfare, Ministry of National Education and Religious Affairs, Ministry of Press and Mass Media, Ministry of Merchant Marine.

In addition, we have received and incorporated in our Report, to the extent possible, valuable input by the National Commission on Human Rights, in which six major NGOs participate. We have also taken into account concerns raised during the last years by various NGOs.

This Report covers mainly the period 1997-2003, and places special emphasis on the revised in 2001 Constitutional provisions, as well as on legislation implementing the latter. In some cases, we deemed it appropriate to refer to legislation or case-law before 1997, in order to give a complete and accurate picture of the situation prevailing in Greece. In other areas, we included legislation adopted as recently as in 2004.

In drafting this Report, we followed as close as possible the “Consolidated Guidelines for State reports under the International Covenant on Civil and Political Rights (as amended at the seventieth session, October-November 2000 (CCPR/C/GUI/Rev.2))”. Furthermore, the Report dwells upon most of the issues highlighted in the different General Comments issued by the Human Rights Committee. Due to space constraints, however, cross-references were made to Reports already submitted by Greece to other treaty bodies, as well as to our Core report (HRI/CORE/1/Add.121 (2002)).

Greece ratified the Covenant, as well as its two Optional Protocols in 1997, by virtue of Law 2462/1997. As it is explained in our Report, the provisions of the Covenant have had a profound impact on our national legal order. The members of the judiciary have been made aware of the importance of this instrument. Today, national courts and independent authorities refer more and more frequently to the provisions of the ICCPR. The Covenant is bound to play a major role in the effort to harmonize our national legislation with the international legal order in the field of human rights.

Further down we would like to highlight the most important developments that took place after the ratification of the Covenant:

- Revision of the Constitution and adoption of legislation implementing the revised provisions;
- Adoption of measures with a view to ensuring compliance with the judgments of the European Court of Human Rights;
- Setting up of independent authorities and national institutions for the protection of human rights, guaranteed, in most cases, by the Constitution;
- Increased awareness on the part of competent authorities as regards the need to implement international human rights treaties and the findings of the competent monitoring organs;
- Efforts to improve the situation of vulnerable groups, such as Roma or migrant workers;
- Continuous effort to improve conditions of detention and to guarantee respect for detainees' rights;
- New legislation on the use of firearms in accordance with international standards;
- Legislation on the fight against trafficking in human beings and on the assistance to victims of this scourge;
- Legislation on transparency and pluralism in the media;
- New criminal legislation on minors, adapted to their needs;
- Measures further improving the situation of the members of the Muslim minority in Thrace;
- Constitutional guarantee of positive measures in order to attain effective gender equality; adoption of such measures by the legislator and acceptance thereof by the Courts;
- Harmonization with the Covenant of provisions concerning detention of individuals in case of inability to fulfill their contractual obligations;
- Enhancement of the safeguards for the free exercise of religious freedom.

Undoubtedly, the level of human rights protection in Greece has significantly improved during the last years. At the same time, areas of concern remain. We hope that the dialogue with the Human Rights Committee will assist our authorities in identifying gaps and in elaborating appropriate measures to further enhance the protection of human rights in Greece.

Article 1: Right to self-determination

A. Internal self-determination

Free choice of the form of government, of the social and political systems and holding of elections at regular intervals

1. The basic principles of the form of government of Greece are the following: the principle of popular sovereignty; the election of the Head of State by the Parliament; the principle of representative democracy; the parliamentary principle; the principle of the “welfare state based on the rule of law”. Of particular importance is article 1 (3) of the Constitution, which acknowledges that “all powers are derived from the People, exist for the People and the Nation, and shall be exercised as specified by the Constitution”.

2. The form of Government as a “presidential parliamentary republic” was designated, in a binding manner for the constitutional legislator, by the referendum of 8 December 1974. In the said referendum, the people were called upon to choose between Presidential and Crowned Democracy. By a majority of approximately 70 per cent, the Greek people voted in favor of Presidential Democracy. The relevant provision cannot be revised, according to article 110 (1) of the Constitution. Thus, the existing form of Government of the country has been consolidated on the basis of an express popular mandate and has been solidified by virtue of a pertinent express constitutional provision. Within this framework, the constitutional legislator is free to shape the institutional organization of the form of Government. The people take part in the procedure for the revision of the Constitution, as this procedure is not completed by the Parliament that has ascertained the need for revising the Constitution, but by the Parliament that follows it.

3. The people, within the framework of the institutions pertaining to parliamentary representative democracy, elect their representatives in Parliament at regular intervals. Article 53 of the Constitution provides that each parliamentary term is set for a period of four years. The people elect their representatives through direct, universal and secret ballot, as it is prescribed by the Constitution in article 51 (3), which also defines the legal qualifications that each voter must possess, as well as the cases that relate to the restrictions of his/her electoral right. Particular importance has been laid on article 52 of the Constitution, which provides that “the free and unfalsified expression of the popular will, as an expression of popular sovereignty, shall be guaranteed by all State officials, who shall be obliged to ensure such expression under all circumstances. Criminal sanctions for violations of this provision shall be specified by law”. These rules are applicable in the case of the holding of a referendum, as well as in the elections for the appointment of the authorities of local administration.

4. Since 1981, it has become an institution for the people in the Greek legal order to elect representatives to the European Parliament every five years. In implementation of relevant European Community Law provisions, Law 2196/1994 provides for the participation in the relevant ballot of citizens of other European Union member States established in Greece.

5. The Greek Constitution provides, although to a limited extent, for institutions of direct democracy. Article 44 (2) provides for the possibility of holding a referendum, which shall be proclaimed by the President of the Republic. Such a referendum shall be held in order for a

decision to be reached (a) on crucial national matters, following a resolution voted by the absolute majority of the total number of deputies taken upon proposal of the Cabinet, and (b) on bills passed by Parliament regulating important social matters, with the exception of fiscal ones, if this is decided by three-fifths of the total number of deputies, following a proposal put forward by the two-fifths of their total number, subject to the restriction that there shall not be introduced, in the same parliamentary term, more than two proposals to hold a referendum on a bill. The decision, which shall be taken by the people through a referendum, will be totally binding to all other organs of the State.

6. As regards the free choice of an economic system, it is to be noted that the Constitution safeguards economic freedom (articles 5 (1), 106), as well as the right to property (article 17), while enunciating the limits of private economic initiative (article 106 (2)) and enjoining the harmonization of economic development with the fundamental principle of the protection of the environment (article 24). Within this framework, the legislator and the Government, who enjoy direct or indirect popular legitimacy, are free to design the economic policy of the country.

Administration of local affairs - local administration: institution, notion, levels and powers of its organs

7. The Greek Constitution enshrines, in articles 101 and 102, the organization of the State on the basis of the decentralization system on the one hand, and the subject-matter competence of the local government agencies (hereinafter: OTA) to administer local affairs on the other. The following are relative to the application of the decentralization system in the administration of the country (art. 101 (1)).

8. The organization of the State in accordance with the principle of decentralization is consolidated by its division into administrative regions, which are designated on the basis of certain substantive criteria, such as the “geo-economic, social and transportation conditions” (article 101 (2) of the Constitution). According to this system, there shall be established and operate regional State agencies which shall have general decisive authority on matters concerning their region. The central services and organs of the State shall have, in addition to special powers, the general guidance, coordination and control of the legality of the acts of regional officers (article 101 (3)). In this way, the overall unity of the action of the (central and decentralized) administrative organs of the State shall be achieved.

9. With regard to the administration of local affairs, the Constitution expressly stipulates that the same shall belong to the subject-matter competence of the local government agencies. In this field, the Constitution stipulates the following:

10. The local government agencies shall have the exclusive authority to administer matters which are characterized as “local affairs” (article 102 (1) of the Constitution and Presidential Decree 410/1995 pertaining to the “Code on Municipalities and Communities”). The Constitution safeguards the presumption of competence in favor of the local government agencies to administer local affairs, and assigns to the law the task to determine the range and the categories of local affairs, as well as their allocation to the separate levels of local administration.

11. Affairs referring to a limited number of persons are characterized as “local”, i.e. they concern the advancement of the interests (from a social, cultural, spiritual, economic, and ecological point of view) of citizens falling within the competence of the local administration agencies, and the satisfaction of certain of their basic needs. Article 102 (1) of the Constitution provides that the exercise of competencies constituting a mission of the State may be assigned by law to local government agencies. According to the case law, it is accepted that, in view of the decentralized system of administration, it is only possible for central or regional competencies to be transferred to local government agencies, but not vice versa.

12. The constitutional revision of 2001 brought about some changes in this field. The Constitution now safeguards both the first level of local administration (municipalities and communities) and the second level relating to prefectural administration. Already prior to the constitutional revision, Law 2218/1994, as well as other relevant laws, set up the second degree of local administration, operating at the level of prefectures. The Prefectural Administration agencies have general competence over prefectural affairs. The institution of the elected prefect is relatively new for the Greek legal order, given the fact that citizens first came to elect local dignitaries at a prefectural level in 1994. It is to be noted here that the participation of citizens from European Union member States in the municipal and prefectural elections is provided for by Presidential Decree 133/1997.

13. The Constitution expressly endows the local government agencies with administrative independence, in other words with the power to pursue their goals by means of their own administrative organs. The authorities of the local government agencies shall be elected by universal and secret ballot (art. 102 (2)).

14. The Constitution further establishes the obligation of the State to provide for the securing of funds necessary to fulfill the mission of local government agencies, which enjoy financial independence (art. 101 (5)).

15. In addition, the Constitution provides for the exercise of supervision over the local government agencies by the bodies of the Central Administration of the State (art. 102 (4)). However, this supervision consists exclusively of the control of the legality of their acts, without impeding their initiative and freedom of action.

16. With a view to the more efficient operation and action of the first level local government agencies, a law was enacted to provide for wide-ranging associations of municipalities and communities (Law 2539/1997, entitled “Establishment of First Level Local Administration”, also known as the “Ioannis Kapodistrias Plan”).

**B. Right to free and unobstructed disposal and exploitation
of natural wealth and resources**

17. The natural wealth and resources of Greece are freely disposed of and enjoyed by the Greek State under the preconditions and constraints laid down by the Constitution and the respective laws.

**Articles 2 and 26: Domestic implementation of the ICCPR
and prohibition of discrimination**

Prohibition of discrimination

The general principle of equality in the Greek legal order

18. The general principle of equality before the law is established in article 4 (1) of the Greek Constitution, which provides that “Greeks are equal before the law” and is binding on both the legislator and the judiciary. According to the content of article 4 (1), equality is to be construed not solely as equal treatment of citizens in the implementation of the law, i.e. an obligation of the administration to apply the law in a non-discriminatory manner (equality before the law), but also as an obligation of the legislator to treat significantly similar situations in a similar manner, and significantly different situations in a different manner, when enacting a legal instrument (equal protection of the law). The Council of State (Greece’s Supreme Administrative Court, hereinafter: CoS) has repeatedly stated that, “according to the principle of equality..., persons that are under similar conditions shall be treated in a similar manner. This principle is binding upon the constitutional organs of the State, namely the legislative body as well as the administration, when regulating different situations or taking different measures of a normative character. Any violation of this principle shall be reviewed by the Courts”.

19. The special provision of Article 5 (2) of the Constitution supplements the general principle of equality before the law. This provision establishes the right of equal enjoyment of rights both for Greek citizens and aliens. According to the said provision, “All persons living within the Greek territory shall enjoy full protection of their life, honor and freedom, irrespective of nationality, race or language and of religious or political beliefs. Exceptions shall be permitted only in cases provided for by international law”.

Beneficiaries

20. According to the wording of article 4 (1) of the Constitution, beneficiaries of this right are solely Greek citizens, as well as domestic private legal entities, but not aliens. This means that certain forms of different treatment of aliens may be acceptable, under the condition, and 2 and 26 of the CCPR.

21. In principle, every person, irrespective of his or her nationality enjoys the civil and social rights guaranteed by the Constitution, unless the relevant constitutional provision reserves a specific right only to Greek citizens. This is the case of the following rights: the right to equality (article 4), the right to free exit and entry into the country (article 5 (4)), the right to assembly (article 11 (1)), freedom of association (article 12), the right to free education (article 16 (4)), the right to found political parties (article 29 (1)), the right to vote and to be elected as Member of Parliament (article 51 (3) and article 55).

22. However, the Constitution, in the instances mentioned above, does not prohibit the exercise and enjoyment of civil and social rights by foreigners, but it refers instead the pertinent matters to the common legislator. In any case, the legislator is bound to take into account the constitutional provisions pertaining to the protection of human dignity (article 2) and the protection of life, honor and freedom of all persons living within Greek territory, without making

any distinction whatsoever as to citizenship (article 5 (2)), as well as international treaties on the protection of human rights to the extent that these treaties do not make any distinction between nationals and foreigners. If there is not an express legislative provision, which, moreover, must be in conformity with the Constitution, as well as with international treaties, the Administration can not prohibit the exercise of an activity by foreign nationals.

23. In accordance with article 4 of the Civil Code (hereinafter: CC), a foreign national enjoys the same civil rights that are afforded to Greek citizens.

24. With regard to citizenship as a prerequisite for the eligibility for public service, see article 25 of the Covenant.

Favorable regulations for certain categories of persons

25. As already explained, the principle of equality implies that significantly similar situations are dealt with in a similar manner, and significantly different situations are dealt with in different manners. Some criteria of differentiation are dictated by the Constitution itself. These criteria are often associated with the protection of some important social rights. Thus, article 21 (1) provides for the protection of family, marriage, motherhood and childhood. According to the Constitution, some categories of persons deserve special care. These are disabled persons, families with many children, persons suffering from incurable bodily or mental ailments etc. (articles 21 (2), (3), (5) and (6)). The case-law of the courts proves that the aforementioned criteria of differentiation are indeed being applied, to the benefit of the persons concerned.¹

26. Any differential treatment must be based on reasonable and objective criteria or be justified by special circumstances or other specific reasons that will promote the general interest.²

27. Differential treatment is also allowed on the basis of local and temporal criteria. For example, differentiation in pensions is allowed on the basis of the years of service (temporal criterium).³ The aforementioned local criteria must be conducive to the promotion of decentralization and local government. However, the criteria for differentiation cannot be merely coincidental.

28. Areios Pagos, the Supreme Civil and Criminal Court (hereinafter: AP), accepts that any favorable regulation must be extended to all those who, while in a significantly similar situation, were not included therein without any reasonable justification. This jurisprudence concerns a variety of fields, such as gender equality, social benefits, wage allowances, etc. and is in fact followed not only by civil, but also by the Council of State, ordinary administrative courts, the Special Supreme Court and the Court of Auditors.⁴ The latest case-law of the CoS has accepted the extension of favorable regulations on the basis not only of the principle of equality, but also on the basis of other constitutional provisions, such as the protection of the institution of family (article 21(1)), the guarantee of the independence of justice (article 87 (1)), the right to judicial protection (article 20 (1)), as well as provisions of international human rights treaties (such as article 6(1) ECHR, and article 1 of the First Additional Protocol to the ECHR).

29. It is noteworthy that the effective application of the principle of equality is enhanced by the competence of the courts to deny the application of any provision of any law, which violates the principle of equality or the relevant provisions of international conventions that establish the principle of non-discrimination. The power of the courts not to apply a statute whose content is contrary to the Constitution is provided for in the Constitution itself (article 93 (4)).

The adoption of positive measures

30. For more details on the adoption of positive measures to ensure effective gender equality, see this Report, under article 3 of the Covenant.

Special aspects of equality

31. Special aspects of the principle of equality are provided for in various provisions of the Constitution:

(a) With regard to gender equality, see this Report under Article 3 of the Covenant;

(b) The equality of remuneration for work of equal value is provided for in article 22 (1) (b) of the Constitution. According to the jurisprudence of the Special Supreme Court, this provision is applicable solely on those employed in the private sector and not on those employed in the public sector or self-employed and entrepreneurs. Similar conditions of employment and provision of services, as well as similar qualifications constitute a prerequisite for the application of the principle of equality in the framework of an employment contract.⁵ It is self-evident that aliens are also beneficiaries of the right to equal remuneration;

(c) Equality in taxation means that all citizens have to contribute to public charges in proportion to their means (article 4 (5) of the Constitution);

(d) Article 4 (6) of the Constitution provides for equality in the obligation for military service. On the issue of alternative service for conscientious objectors, see this Report under article 18 of the Covenant.

Prohibition of discrimination against aliens

General remarks

32. Following the rapid transformation of Greece from a traditional emigration country to a pole of attraction of immigrants, the competent authorities have made many efforts in modernizing and rationalizing the former, relatively inadequate, legislative framework of migration policy. The need to take special measures for the large number of migrant workers residing in Greece for several years was quite pressing. In addition, explicit and transparent procedures had to be established regarding the issuing and renewal of residence permits on the one hand and the safeguard of migrants' rights on the other. For these reasons, the Parliament proceeded in the adoption of Migration Law 2910/2001, which aims at the implementation of a more rational immigration policy.

33. The implementation of the said Law revealed a number of practical and structural problems. The Ministry of Interior, Public Administration and Decentralization has proceeded, as the competent authority for the implementation of migration policy, to the gradual modification of the current legislative framework, in order, on the one hand, for the national law to be fully harmonized with EC law and on the other to settle certain issues, regarding the implementation of the principle of non-discrimination, the regulation of issues pertaining to specific categories of migrants and the satisfaction of legitimate demands made by migrants who are legally employed in Greece.

34. In addition, the Ministry of Interior, Public Administration and Decentralization, in cooperation with the Regions of the country, initiated a procedure for the registration of migrant workers and the construction of a relevant database, along with the issuing of uniform residence permits in the form of stickers placed on valid passports or other traveling documents, under the provisions of EC Regulation 1030/2002.

35. Various measures have been taken so far by different agencies or organizations in order to support migrants. The following should be mentioned: projects in the framework of the EC initiative EQUAL 2001-2006, projects for intercultural education, Greek language learning programs for adult migrants, projects supporting the access of legal migrants to health services and emergency support to migrants who reside illegally in the country or do not have a social security certificate.

36. Furthermore, an integrated policy on social integration of migrants is currently being developed. The Ministry of Interior, Public Administration and Decentralization has elaborated an action plan on the social integration of migrants for the period 2003-2006 with a budget of about € 260 million, which is covered by national and community funds. Indicative priority areas of the action plan are:

- Information, consultation and services;
- Development and promotion of opportunities for the integration of migrants in the Greek labor market;
- Cultural rapprochement between the Greek society and migrant groups and improved training opportunities for migrants;
- Upgrading of health services and preventive medicine for migrants;
- Creation of supportive structures to urgently cope with the reception and the temporary housing of migrants;
- Studies, technical and administrative support.

37. The Ministry of Interior, Public Administration and Decentralization is in permanent contact with migrants' organizations in the country so as to advance their rights and clarify their obligations. Starting from 2001, three conferences have been held with the participation of representatives of the organizations of migrants and the political leadership of the competent ministries.

Employment

38. As already explained, in accordance with article 4 CC, a foreign national enjoys the same civil rights that are afforded to Greek citizens.

39. Nationals of other EU Member-States have, in accordance with EC law, as implemented in particular by Presidential Decrees 499/1987 and 545/1983, the right to freely move and stay in Greece under the same prerequisites as those required for Greek nationals.

40. Nationals of non-EU Member-States who are holders of a work permit enjoy the same labor rights and have the same obligations as Greek workers with respect to remuneration, working terms and conditions, their social security rights and other financial obligations prescribed by the legislation in force.

41. According to the Law 2910/2001 foreign workers lawfully residing in Greece are obligatorily insured with the Social Security Organizations from the first day of work, while regulations on social protection are equally applicable to foreigners, as well as to Greek citizens.

42. The Greek social security system ensures for the insured persons protection for all social security risks (old age, invalidity, death, sickness, maternity, work accidents and occupational diseases, unemployment and family benefits).

43. Moreover, according to article 7 of Law 1264/1982 relating to trade union rights, the foreigners who work legally in Greece have the right to participate in trade unions.

44. Other measures implementing the principle of non-discrimination with regard to migrant workers, as well as to refugees, are described in Greece's initial report to the Committee on Economic, Social and Cultural Rights.

Education

45. Minor aliens who reside on Greek territory are liable to a 9-year minimum compulsory education, just like their Greek peers (article 40 (1) of Law 2910/2001). Minor aliens studying at all educational levels have access to all school or educational activities. According to article 40 (3) of the same Law, the following minor aliens may register with public schools despite lacking complete documentation:

- (a) Children of aliens protected by the Greek State as refugees and of those aliens protected by the United Nations High Commission;
- (b) Children of aliens who come from areas with irregular conditions;
- (c) Children of those who have applied for refugee status; and
- (d) Children of aliens who reside in Greece although their legal stay in the country has not been settled yet.

46. In view of the growing number of students with multicultural characteristics, the Ministry of National Education and Religions drafted Law 2413, which entered into force in 1996. The said law sets the basis for material action in the field of educational needs of groups with special social, cultural or religious characteristics. By virtue of this law, a Secretariat for Greek Education Abroad and Intercultural Education was founded in 1996. In 2000, the Institute for Greek Education Abroad and Intercultural Education was founded as a scientific advisory body to the Ministry. Since then, and given the experience gained from the last years' actions, the Ministry took further legislative action for the improvement and upgrading of intercultural education, in order to address the needs that came up after the enactment of Law 2413/1996.

47. At present, 27 schools of intercultural education are operating all over Greece: 13 Elementary Schools, 8 Junior High Schools and 6 High Schools. These schools guarantee equality of opportunity for all students without any form of discrimination and enrich the Greek educational system with contemporary pedagogical perceptions. All teachers serving in these schools are subject to special training and all those called upon to serve in the aforementioned schools are selected on the basis of their knowledge of intercultural education and their skills in teaching Greek as a second or foreign language.

48. Further measures are described in Greece's initial report to the Committee on Economic, Social and Cultural Rights.

The transposition in the Greek legal order of Community Directives relevant to discrimination

49. The Ministry of Labor, in cooperation with the Ministry of Justice, has already drafted a law, which will transpose in the national legal order the EC Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, as well as the EC Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

50. The draft text, among others, designates as bodies responsible for the promotion of equal treatment of all persons without discrimination, as required by the abovementioned Directives, the Office of the Ombudsman (in cases concerning the Administration) and the Labor Inspectorate Body (in case of discrimination in employment and occupation). It also sets up a Committee for Equal Treatment in the Ministry of Justice (when the offender is a private person, in particular in the field of supply of goods or services).

51. The transposition of the aforementioned Directives will further enhance the existing legal framework, in order to ensure effective protection against direct or indirect discrimination.⁶

Efforts to improve the living conditions of Roma

52. The improvement of the living conditions of Roma in Greece is a major concern for all the Greek Governments. The National Commission for Human Rights (hereinafter: NCHR) in its report dated 29.11.2001 identified a series of measures which should be adopted in order to meet the needs for social and legal protection of this particularly vulnerable social group. The said NCHR report focused on the following issues: the social marginalization of Roma, housing,

provision of adequate health services, the establishment of an education system tailored to the particular characteristics of Roma, instances of discrimination and violence against Roma in local societies, as well by law enforcement personnel. In the same vein, the Greek Ombudsman has repeatedly stressed the need to ensure humane living conditions for Roma, in particular in the fields of housing, health care and social protection, which will facilitate their integration into Greek society, as well as to improve the education of Roma children. Co-operation between central and local authorities and awareness-raising among the civil society on Roma issues at the local level are of critical importance.

53. In the past years public agencies as well as non-governmental organizations have set up plans and actions aiming at the social integration of Roma.

54. On the basis of the acquired experience from the implementation of the previous plans (National framework of Policy and Measures for Greek Roma, 1997-2001, actions of a total amount of € 17.087.513), an Integrated Action Plan for the Social Integration of Greek Roma is being implemented by an Inter-ministerial Committee coordinated by the Ministry of Interior, Public Administration and Decentralization.

55. This Integrated Action Plan aims at the elimination of social disparities, the promotion of social justice and the social integration of Greek Roma, through an integrated approach and the coordinated cooperation of co-responsible Ministries and local authorities.

56. The Action Plan's time-frame is seven years (2002-2008) and it will be implemented in two phases. The first phase of two years has already been implemented.

57. The goals of the plan are to:

- Ensure the equality of citizens;
- Promote the awareness of local societies, Roma and all the agencies involved in order to eliminate prejudices and promote social solidarity;
- Deal with social exclusion;
- Encourage the involvement of Roma in the matters concerning them and support their participation in social life;
- Integrate the Roma into the labor market, and assist them in acquiring social and technical skills and qualifications;
- Promote the creation of (local and regional) networks to support Roma's integration.

58. The basic principles are:

- Respect for the culture and the way of life of Roma;
- Encourage, strengthen and support the active participation of Roma in all project procedures;

- Promote cooperation among co-responsible agencies at local and regional level;
 - Respect and understand the views of the local society which has been called upon to play a significant role in the social integration of Roma.
59. The Priority keystones of the Integrated Action Plan are as follows:
60. “Keystone 1: Infrastructure”. The aim is to deal with the housing problem of Roma with a comprehensive framework of measures and actions of individual approach regarding all aspects of housing infrastructure.
61. The interventions of Keystone 1 are organized as follows:
- Measure 1: Creation of new settlements;
 - Measure 2: Improvement of the existing houses;
 - Measure 3: Improvement in the existing settlements;
 - Measure 4: Setting up of encampments infrastructure for travelers.
62. “Keystone 2: Services”. The basic aim is to deal with the serious problems of Greek Roma and support them in the procedure of their social integration through a framework of distinct measures and actions.
63. The interventions of Keystone 2 are organized as follows:
- Measure 1: Provision of services by co-operation teams (Sub-measure 1.1: Support - Training - Employment, Sub-measure 1.2: Education);
 - Measure 2: Provision of services by Local Authorities (Sub-measure 2.1: Health-Welfare, Sub-measure 2.2: Culture, Sub-measure 2.3: Sports, Sub-measure 2.4: Training of Adults).
64. The Integrated Action Plan is being co-financed by national resources (Central Autonomous Resources, Public Investment Plan, Regular Budget) and by Community resources (Regional and Sectoral Programmes of the 3rd Community Support Frame).
65. The total budget for the Plan is € 308.144.000. The budget for the first phase of the interventions will amount to about € 96.800.000.
66. Ad hoc Committees at central and regional level have been set up to monitor the follow-up of the Action Plan. The Committees consist of experts, a representative of the Prime Minister’s Office, members from central and local agencies, representatives from the Roma network and from the Panhellenic Confederation of Greek Roma. The General Directorate of Development Projects of the Ministry of Interior, Public Administration and Decentralization is also involved with Roma questions.

Account report of Action Plan - progress of implementation

Housing

67. The aim of the interventions is the housing of all Greek Roma. In the first phase of the Integrated Plan priority is given to:

- The integration and improvement of the existing settlements;
- The acquisition of land;
- The creation of at least 20 new settlements;
- The creation of infrastructure networks.

68. It is to be noted that housing works have been completed or are under construction in 31 encampments for nomad Roma (4 of which are permanent residences), while new settlements of prefabricated houses or of permanent houses are under construction.

69. Permanent settlements have been constructed in the following Municipalities:

- Didimotiho (52 houses);
- Sofades (84 houses);
- Serres (25 houses);
- Menemeni (24 houses).

70. 1260 prefabricated houses in the period 1997-2001, and 265 in 2002 were provided to more than 6.000 Roma who until then were living in huts and tents. The distribution of 914 prefabricated houses is currently pending.

71. In the period 1997-2001, the Ministry of the Interior financed infrastructure works and supportive activities amounting to about € 17 million. In 2002, similar activities amounted to about € 4,8 million. In 2003, similar activities amounted to about € 2,4 million and it is expected that financing of works and activities will amount to about € 4,6 million in 2004. The Ministry is also constructing playgrounds in 20 settlements.

72. The procedure for the creation of new permanent settlements has been set out in 7 Municipalities.

73. It must be added that housing loans with favorable terms, guaranteed by the Greek Ministry of Finance, are provided to Greek Roma citizens. For those of the Roma families that are homeless, the sum for 4.500 mortgage loans of € 60.000 each has been allocated, in a specifically created fund. 6396 applications have already been submitted. 50% of applications have already been examined and 1,551 of them have been approved.

Education - training

74. The main aim is the integration of all Roma children into the educational system.

75. In the years 1998-2001, an education plan was implemented in 30 regions where Roma live. The plan included the training of 3000 teachers, the production of special teaching material, the support of pupils so as to enable them to follow the normal curriculum, the creation of intensive courses to bridge educational gaps, the raising of awareness of parents and local societies. As a result, the percentage of Roma Children attending primary education had increased from 25% to 75% in the year 2000.

76. In the year 2002, the aforementioned program was incorporated into the Integrated Action Plan. It has been expanded to all regions where Roma live and its activities have been enriched.

77. A major challenge that the State faces is mastering the issue of high drop-out rates among the Roma population. To cope with this problem and to ensure school attendance of all Roma children, which will thus facilitate (to a large extent) their social inclusion, a series of policies/measures are being activated:

- The “Student Transit Card” was established to fit the needs of students who follow their family’s moving habits. This card allows the competent authorities to enroll the student in the school anytime during the year and to keep track of his/her transcripts and records; more importantly, it encourages the student to continue attending school at his/her new place of settlement;
- Induction classes (classes that operate during school hours, where Roma students are taught, in case they can’t attend regular classes). The educational goal, as in the case of foreign students, is to integrate those students into mainstream education. During the year 2001-2002, there were 110 such primary school classes with 1.972 attending. The total number of Roma students in primary education in 2001-2002 was 6.304, while 5.060 attended primary school classes in 1997;
- Psycho-social Support Programs and reinforcement of the students’ cultural identity (approach through emphasis on music and dance, personal hygiene programs, education for health programs, family counseling etc.). Counseling services are being offered to both students and their families. These services inform the Roma people about their rights and responsibilities towards the State and, at the same time, they encourage contact with local authorities and public services for issues that concern them. Furthermore, they highlight the importance of reaching high standards of hygiene in every day life, and acknowledging health and education as two extremely important aspects for their own and their children’s future. Specific advice is given on how to support the children at home, when coming back from school, and on how to keep in contact with the schoolteachers;
- Specialized educational materials, based on the culture and the social and linguistic background of Roma (in language, reading, writing, mathematics, new technologies, geography, history, nature, environment etc.);

- Counseling to local authorities (about how to reach out to the Roma society, how to integrate them etc.). Awareness programs that target local communities, authorities and parents of non-Roma students aim firstly at securing acceptance and welcoming the Roma children and parents in the educational or local environment by raising respect and appreciation for diversity, and secondly at facilitating the integration of the Roma into school and society.
78. The following results should also be mentioned:
- 5000 teachers, all over the country, have been trained on the education of Roma;
 - 4 music labs have been created, where Roma students are taught traditional music.
79. Roma students are encouraged to complete the compulsory 9-year education.
80. In the first phase of the Integrated Action Plan, about 130 preparatory courses for the regular integration of Roma children into the educational process are expected to operate. Educational plans for teachers are going to be implemented and educational material is going to be issued.
81. The first phase of the new plan includes:
- The implementation of integrated educational Plans for 600 adult Roma;
 - The training of 150 adult Roma in matters of oral and written communication in the Greek language;
 - The training of 150 adult Roma in consultative matters such as health, children education etc.
82. It must be noted that there are no special schools for Roma, but only pre-training and educational support services.
83. All practices and measures mentioned above focus on Roma education. However, Roma are viewed as part of the overall student population in Greek schools, and therefore all steps and practices that are implemented in order to enhance school attendance and to prevent dropouts target the Roma school-aged population as well. Thus, it is obvious that Roma students benefit from such practices and from projects and programs that run in schools and focus on thematic areas, such as Health Education, Counseling, Vocational Education, Environmental Education, etc.

Health

84. In the period of 1997-2001, the Ministry of Health and Welfare, the Administrations of the Prefectures and non-governmental organizations implemented vaccinations in Roma encampments.

85. In the framework of the Integrated Action Plan, an intervention plan for matters of public health, preventive medicine, vaccination etc. is promoted. In the first phase of the plan, a mobile medical unit of the Ministry of Health and Welfare organizes preventive tests (blood tests, PAP Tests etc.). The mobile unit has already visited 42 settlements and is expected to visit all the other regions where Roma live.

86. In this first phase, 50 units for medical and social support are operating, giving priority to areas of housing interventions. Such units are already in operation in the area of Gonos (Thessaloniki) and the municipality of Karditsa, while it is in process the preparation of the units for 11 regions of the country.

Employment

87. In the field of employment, the aim is to integrate Greek Roma into the labor market as well as to prevent and eliminate unemployment.

88. In the period 1997-2001, 100 training-employment programs were implemented. It is estimated that 1.800 people benefited from these programs. In the framework of the Integrated Action Plan, a program of professional pre-training, professional training, support services and assistance in search of employment for Roma individuals was implemented. A similar program will be implemented in the framework of the 3rd Community Support Frame (Section of Training-Employment).

Support centers for Roma and Roma children

89. Consultation centers provide services on matters of education, employment, health and housing in about 10 Municipalities (Agia Varvara, Ilio, Menemeni, Sofades, Karditsa, Examilia Korinthias, Nea Ionia, Volos, Etoliko, Serres, Aharnes, etc.). The new Plan provides for similar centers in 20 more regions.

Culture

90. The primary aim is the protection and the promotion of the cultural heritage of Roma.

91. In the period 1997-2001, a special section was created in the Ministry of Culture. This section has responsibility over issues of cultural heritage of Roma and belongs to the Directorate of Popular Culture.

92. Furthermore, a program of musical and photography workshops is being implemented since 1999 in certain areas (Ilio, Agia Varvara).

93. In the framework of the Integrated Action Plan, this program has been enriched and it will be expanded to cover all the regions where Roma reside, with priority to areas of housing interventions.

94. Moreover, culture centers will be created in 40 areas. Every culture center will include two separate spaces: a space for children and young people, where they will be able to express their creativity, and a meeting place for adults. These spaces will constitute the basis for cultural activities, musical workshops, photography workshops, visits to museums and other activities.

Sports

95. The aim in this field is the participation of all Roma children and Roma to sports activities on equal terms with other citizens. Programs of mass sports activities have been implemented by the General Sports Secretariat in cooperation with Local Authorities. 20 such activities took place in 1999 and 30 in 2000.

96. In the framework of the Integrated Action Plan, programs will be implemented in all the 52 areas where Roma live. It is estimated that 175 different activities will take place and that 2,000 people will benefit from these programs.

97. In the period 2002-2003, 74 activities organized by the General Sports Secretariat took place in 15 prefectures of country.

98. At the same time, activities of special athletic interventions with the collaboration of Olympic champions took place. Such a program has been already implemented in the Zefiri area and it is expected to take place in the Municipality of Aharnon and Aspropirgos.

99. The General Sports Secretariat financed the construction of an Athletic Center on an area of 27.000 m² in the urban territory of "Avliza", in the Municipality of Aharnon.

Special programmes for vulnerable groups

100. The Manpower Employment Organization (hereinafter: OAED) is committed to the elimination of all forms of discrimination on the basis of gender, national origin, religion, race and color in the field of employment. To that end, the OAED has been implementing, and will continue to implement, special employment subsidization programs for the support and protection of workers, whose entrance and stay in the labor market is extremely difficult in relation with the manpower in general. More specifically during the period 2000-2002 were designed and implemented special actions for the removal of obstacles and the fighting of discrimination against persons belonging to vulnerable groups. These programs were either national, or co-sponsored by the EU.

101. As far as the provision of equal opportunities and the promotion of access of all persons - irrespective of national origin, religion, race, color or age- to the labor market is concerned, many actions directed to persons belonging to vulnerable groups, such as immigrants, repatriated Greeks, refugees, persons with specific cultural and religious characteristics, as well as persons between 45-64 years of age, were implemented.

102. The Community Initiative 2000-2006, entitled "EQUAL", is expected to further improve the situation of persons belonging to vulnerable groups in the labor market. This initiative aims to bring about some radical changes in the field of employment. It is co-funded by the European Social Fund (ESF) and national funds. It aims at the promotion of new employment policies for the elimination of discrimination against vulnerable groups in the labor market.

103. Beneficiaries are young people, women, persons with disabilities, employees with low level of education, repatriated Greeks, immigrants, refugees, imprisoned and recently released people, young delinquents, Roma and rehabilitated persons. Citizens of a third country or

stateless persons who have applied for asylum shall benefit from the Initiative while their application is pending and until the completion of the training program into which they have been integrated.

Penalties for discriminatory treatment in the field of employment

104. According to article 16 of Law 2639/1998, entitled “Regulation of labor relations, establishment of Labor Inspectorate Body and other provisions”, any employer who violates the provisions of the labor legislation shall be liable to the following penalties, imposed by a reasoned decision of the competent Labor Inspector:

- (a) A fine ranging from € 147 to € 8.800 for each violation;
- (b) Temporary closure of the company or enterprise or its section for up to three (3) days. The temporary closure may last longer than three days or be permanent, if the competent Labor Inspector so requests and the competent Minister of Labor and Social Security so decides. Both the request and the decision must be fully reasoned.

105. For the aforementioned administrative penalties to be imposed, the seriousness of the offence, the repetitive non-compliance to the indications of the competent organs, the existence of similar violations in the past, for which penalties have been imposed and the degree of intent shall be taken into consideration. Furthermore, the limit of amount of the penalties listed above under (a) may be extended by a decision of the Minister of Labor and Social Security which has to be published in the Official (Government) Gazette. In case of non-compliance of the employer, even after the intervention of the Labor Inspectorate Body, the victim has recourse to the courts.

Horizontal effect of the rights guaranteed by the Covenant

106. The issue of applicability of civil rights not solely against the State, but also against private persons (horizontal effect of civil rights, or “Drittwirkung”) has been discussed in Greece to a large extent. In literature, one differentiates between the direct horizontal effect, according to which some constitutional rights are directly applicable to private relations and directly binding on private persons, thus creating an *erga omnes* obligation for the omission of any action which violates civil rights, and the indirect horizontal effect, according to which there is an indirect penetration of constitutional rights into the private sphere through the general clauses of private law.⁷

107. This issue was expressly dealt with in the recent constitutional revision of 2001, thus demonstrating the importance that the Greek legal order attaches to it. To be more specific, according to article 25 (1) of the revised Constitution, constitutional rights may also apply to relations between private individuals to which they pertain. Thus, there is an express establishment of the possibility of horizontal effect, not only of constitutional rights, but, according to constitutional doctrine, generally of all human rights, including the ones established by the relevant international conventions,⁸ such as the ICCPR.

108. The constitutional provision does not clarify to which specific private relations the horizontal effect applies. However, it is obvious that it mainly applies to employment and other instances of power relationship.⁹ Even before the constitutional revision it was indisputable - and in fact undisputed - that at least some constitutional rights have a horizontal effect. However, the express provision for the said horizontal effect in the Constitution fully codifies the situation and enjoys an important symbolic meaning.

109. The bearers of the obligation to safeguard and to respect constitutional rights are defined by each constitutional provision separately, according to the nature of the matter which the latter regulates. Therefore, certain rights may have an *erga omnes* effect, while others can be solely invoked against the State. This will depend on whether a constitutional right can be infringed upon, in practice, by private individuals, as well as on the content of the relevant provision.

Measures of domestic implementation

Integration of the CCPR into the national legal order

110. The relevant issues are discussed in paras. 52-59 of Greece's "Core document forming part of the report of states parties" (HRI/CORE/1/Add.121/7 October 2002).

Direct enforceability of the CCPR by Greek courts

111. The Greek practice with regard to the direct enforceability of the CCPR by the courts can be summarized as follows:

112. The Greek courts:

(a) Acknowledge the priority of the provisions of the Covenant over national law and their direct applicability;

(b) Control whether the provisions of national law, including legislation adopted by Parliament, are in harmony with the aforementioned provisions; and

(c) Interpret national law so as for the latter to be in harmony with the CCPR, taking also into consideration the relevant constitutional provisions and principles.

For more details, see paras. 60-67 of the aforementioned Core document.

113. The references of Greek courts to provisions of the Covenant become more and more frequent, especially in cases concerning the right to a fair trial, freedom of the press, protection of honor and reputation, the principle of *ne bis in idem*, etc. Details are given under the relevant articles of the Covenant.

114. It is indisputable that training and awareness-raising among the members of the judiciary is the most important factor for the enhancement of the implementation of an international human rights instrument. With regard to the ICCPR, the Ministry of Justice began the dissemination campaign immediately after the ratification of the Covenant. It distributed circular 25497/1.3.97, by which it informed the Presidents of and Public Prosecutors at the Courts of Appeals and the Courts of First Instance, as well as the Presidents of all Bar Associations, of the

publication in the Official Gazette of the law ratifying the CCPR (Law 2462/1997). The circular made special reference to article 11 of the Covenant. The Ministry notified the same authorities and the Directors of Correctional Facilities of the entry into force of the Covenant by circular 64127/30.5.1997. In his circular 9/28.12.2000, the Public Prosecutor at the Areios Pagos notes the following: "I would like to take this opportunity to point out that the provisions of the ECHR, as well as of the International Covenant on Civil and Political Rights of 16 December 1966, ratified by Law 2462/1997, have a significant impact on the force of many provisions of both our substantive and procedural law, that refer to the content and the exercise of civil rights. This creates an obligation for all the members of the judiciary to reflect on the compatibility of the applicable provisions of the national law with the regulations of these international conventions. The Public Prosecutors at the Courts of Appeals should monitor, when exercising their monitoring duties, the awareness of all members of the judiciary on all matters raised by the application of these international conventions, and indicate any possible incompatibility of official action with the spirit of the conventions."

115. It is noteworthy that the Training Department of the National School of Judges organized, from November 2000 to October 2001, a series of four seminars on "the impact of the European Convention on Human Rights on the interpretation and application of Greek law". During these seminars, attended by 235 members of the judiciary, special and extensive reference was made also to the relevant provisions of the ICCPR.

116. In conclusion, it is safe to say that the implementation of the international conventions for the protection of human rights in general and the ICCPR in particular, is taking place in a particularly positive environment, to the extent that the Greek legal order acknowledges their priority over national law and their direct implementation and invocation, imposing at the same time the obligation on all courts not to apply any provision of the national law, the content of which runs counter to international treaties.

Right to an effective remedy - systems of compensation and rehabilitation

117. See paras. 9-34 of Greece's Core Document.

National machinery for monitoring the implementation of human rights

118. The Greek legislator, responding to the pressing and urgent need of our times to enhance the protection of civil and political rights, has introduced special institutions and has established independent authorities and commissions to this end.

119. The main independent authorities are the following:

- (a) The National Radio and Television Council, established by Law 1866/1989;
- (b) The Hellenic Data Protection Authority (hereinafter: HDPA), established by Law 2472/1997;
- (c) The Office of the Ombudsman, established by Law 2477/1997; and
- (d) The Independent Authority for the Protection of Secrecy of Correspondence and Telecommunications, established by Law 3115/2003.

120. Special emphasis must be placed on the fact that the new article 101A of the Constitution, along with other specialized provisions, constitutionally guarantees the institution of independent authorities. The authorities which are explicitly mentioned in the Constitution are: the National Radio and Television Council (article 15 (2)), the Hellenic Data Protection Authority (article 9A), the Independent Authority for the Protection of Secrecy of Correspondence and Telecommunications (article 19 (2)), the Office of the Ombudsman (article 103 (9)) and the Supreme Council for the Selection of Staff (article 103 (7)).

121. The members of the independent authorities enjoy the guarantees of personal and functional independence; their selection is effected by decision of the Conference of Parliamentary Chairpersons seeking unanimity, or in any case by the increased majority of four fifths of its members, as prescribed in article 101A (2) of the Constitution.

122. The experience from the operation of independent authorities in Greece is extremely positive. The Ombudsman has seriously improved the relations between the citizens and the Administration and has helped the citizens in many aspects of their daily lives. The Hellenic Data Protection Authority and the National Radio and Television Council have also presented successful results in their respective fields of competence.

123. Of special importance is also the Greek National Commission for Human Rights. The NCHR was founded by Law 2667/1998. It is a statutory National Human Rights Institution having a consultative status with the Greek State on issues pertaining to human rights protection. The creation of NCHR emanated from the need to monitor developments regarding human rights protection nationally and internationally, to inform Greek public opinion about human rights-related issues and, above all, to provide guidelines to the Greek State aimed at the establishment of a modern, principled policy of human rights protection. Source of inspiration for the creation of NCHR were the Paris Principles of 1991 adopted by the United Nations and the Council of Europe.

124. The NCHR is a totally independent institution, since none of its members is appointed by the Government. The three-member Presidium of NCHR (President and two Vice-Presidents) comes from and is elected by the NCHR's own members. All NCHR members represent institutions, professional, academic organizations and NGO's and are appointed by these institutions or organizations. It is also to be noted that members-representatives of seven Ministries do not have the right to vote in the NCHR Plenary Sessions.

125. According to Law No. 2667/1998, by which it was established, NCHR has the following substantive competences:

- The study of human rights issues raised by the Government, by the Convention of the Presidents of the Greek Parliament, by NCHR members or by non-governmental organizations;
- The submission of recommendations and proposals, elaboration of studies, submission of reports and opinions for legislative, administrative or other measures which may lead to the amelioration of human rights protection in Greece;

- The development of initiatives for the sensitization of the public opinion and the mass media on issues related to respect for human rights;
- The cultivation of respect for human rights in the context of the national educational system;
- The maintenance of permanent contacts and co-operation with international organizations, similar bodies of other States, as well as with national or international non-governmental organizations;
- The submission of consultative opinions regarding human rights-related reports which Greece is to submit to international organizations;
- The publication of the NCHR positions in any appropriate manner;
- The drawing-up of an Annual Report on human rights protection in Greece;
- The organization of a Human Rights Documentation Center;
- The examination of the ways in which Greek legislation may be harmonized with international law standards on human rights protection, and the subsequent submission of relevant opinions to competent State bodies.

126. NCHR reports are forwarded as a follow-up to all competent Ministries. A number of recommendations contained in NCHR reports have been adopted by the competent authorities.

Article 3: Gender equality

127. The Greek Constitution of 1975 establishes the principle of equality between men and women.

128. More specifically, article 4 (2) provides that “Greek men and women have equal rights and equal obligations”.

129. In addition to the aforementioned general constitutional provision, article 22 (1) of the Constitution provides that “all workers, irrespective of gender or other distinctions, shall be entitled to equal pay for work of equal value”.

Constitutional guarantee of affirmative action measures and the elimination of legislative provisions derogating from the principle of gender equality

130. The taking of affirmative action has recently acquired a constitutional dimension. Under the revised paragraph 2 of Article 116 of the Constitution, “adoption of positive measures for promoting equality between men and women does not constitute discrimination on the basis of gender. The State shall attend to the elimination of inequalities actually existing, especially to the detriment of women”. This important aspect of the constitutional revision is also owed to coordinated attempts of Non-Governmental Organizations representing women, as well as other NGOs. It is to be noted that, in its previous version, article 116 (2) provided for “derogations”

from the principle of equal treatment “for grave reasons specially stipulated by law”. These derogations were supposedly permitted in order to act in favor of women, but in reality often acted against them despite restrictive interventions by the courts. Following the constitutional revision, such derogations are no more allowed.

131. Even before the constitutional revision, in 1998, the Council of State explicitly pointed to the need to adopt positive measures in order to attain effective gender equality and considered that affirmative action policies are in conformity with the Constitution. The Council of State held that “in case where one may find that a certain category of persons has been discriminated against due to such social prejudices so that the inflexible application of equality would result to a façade of equality, while in fact it consolidates and perpetuates the existing inequalities, the adoption by the legislator (...) of appropriate and necessary positive measures in favor of such categories (...), until such time as real equality is established, fully conforms with the spirit of the constitutional principle of equality. Consequently, if such conditions exist, the adoption of positive measures in favor of women with a view to accelerate the attainment of effective equality between men and women is not contrary to the Constitution”.¹⁰

132. More specifically, the Council of State held that the restrictive quotas *against* women applied to the admission of women to the Police School and the Officers School are contrary to the principle of equality. According to this case-law, the setting of quotas to women’s admission to the above-mentioned Schools, without sufficient reasons which would justify this discrimination, violates the constitutional principle of equality of men and women regarding their access to various professions.¹¹ Recently, the Council of State, in a case concerning the admission of women to the Corps of Border Guards, confirmed that quotas against women are contrary to the Constitution and added that the revised article 116 (2) of the Constitution no longer allows for derogations to the individual right of equality between men and women, in particular with regard to access to employment and to the training leading therein.¹²

133. In another case, the CoS, sitting in plenary, found that the provision of article 29 of Law 2085/1992, which provided for the obligatory participation of at least one woman fulfilling the legal prerequisites in the Service Councils of public servants, did not run counter to the Constitution, but rather it was in harmony with article 4, since such provision was dictated by the need to take affirmative action in favor of women.¹³

134. For affirmative action measures in the field of political rights and the relevant case-law of the CoS, see this Report, under article 25 of the ICCPR.

135. Furthermore, the Greek Parliament has adopted article 6 of Law 2839/2000, according to which, in every Departmental Board of state organizations, of entities of the public sector and of local government agencies, the number of members of each gender shall be equal to at least 1/3 of those nominated in accordance with the provisions in force, provided there are serving in the agency involved a sufficient number of employees meeting the legal requirements for nomination. Furthermore, in cases of appointment or recommendation by the public administration to entities of the public sector or local government agencies of members of the board or of other collective managing bodies of entities of the public sector or of local government agencies, the number of appointed or recommended persons of each gender shall correspond to at least 1/3 of those appointed or recommended in accordance with the provisions

in force. The aim of this article is to ensure balanced representation of men and women in decision-making procedures in the public administration, in entities of the public sector, as well as in first and second degree local government agencies.

136. Finally, it is worth mentioning that the amended article 31 (1) of the Constitution provides that in order “to be eligible for election to the Presidency, a person must be a Greek citizen for at least five years, be of Greek descent from the father’s *or mother’s line*, have attained the age of forty and be legally entitled to vote”.

137. The principles established in the Constitution lead to the enactment of important laws referring to family, education, and equality in employment relations and in social security. These laws, enacted in the framework of harmonization of the Greek legislation with international conventions and European Community Directives have greatly improved the position of women in the Greek society. The following recent examples are worth mentioning.

138. Law 2913/2001, drafted by the Ministry of National Defense, provides for the elimination of all forms of discrimination against women with regard to their admittance to Military Academies.

139. Law 3103/2003 provides for the abolition of restrictive quotas regarding the admittance of women to Police Academies. Law 3181/2003 provides for the abolition of the respective regulation regarding the appointment of women as Border Guards.

140. Moreover, the Greek legislation has adapted to the relevant Community Directives in force. These Directives guarantee the principle of gender equality. For more information, we would like to refer you to the Reports of Greece submitted to the Committee on the Elimination of Discrimination against Women. However, we would like to mention two further measures adopted recently.

141. Presidential Decree 105/2003 harmonized Greek legislation with the provisions of Directive 97/80/EC regarding the “burden of proof in cases of discrimination based on sex”.

142. This decree applies to all persons, both in the public and the private sector. More specifically, the said decree is to be applied also in cases covered by Directive 75/117/EEC, regarding the application of the principle of equal pay for men and women and Directive 76/207/EEC, regarding the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions. These Directives were embodied into Greek national legislation by Law 1414/1984.

143. Article 4 of the said decree provides that the burden of proof, established by the relevant procedural provisions, shall be reversed in any case of discriminative treatment. This means, thus, that in case the wronged person establishes facts that allow one to ascertain that he or she was subjected to direct or indirect discrimination, the burden of proof before the court is incumbent upon the respondent. Thus, the latter is obliged to provide sufficient proof that there was no breach of the principle of equality. The aforementioned reversion of the burden of proof shall not be applied in the case of proceedings where the court conducts investigations *proprio motu*. As far as criminal judicial procedure is concerned, no question of the burden of proof arises, due to the maxim *in dubio pro reo*.

144. Presidential Decree 41/2003 amended and added to the provisions of PD 176/1997 in order for the Greek national legislation to harmonize with the provisions of Directive 92/85/EEC, “on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding”. The amendments were the following:

- (a) Extension of the application of the PD 176/1997 to military and security personnel of the military and security forces and to domestic service personnel;
- (b) Amendments to the definitions provided for in article 2 of the PD regarding its application as far as the adoption of positive measures by the employer for the aforementioned categories of workers is concerned;
- (c) Substitution of articles 8 (maternity leave) and 11 (rights relevant to the employment contract).

145. It is also to be noted that the CoS held that maternity leaves provided for by the relevant legislation for women working both in the private and the public sector under a contract of work also apply to women employed in the administration of justice.¹⁴ Furthermore, the CoS has excluded application of article 2 (2) of Directive 76/207 with a view to justifying derogations from the principle of equality.¹⁵

The Convention on the Elimination of All Forms of Discrimination against Women

146. The Convention on the Elimination of All Forms of Discrimination against Women (hereinafter: CEDAW) was ratified on 30 March 1983 and has entered into force on 30 April 1983 (Law 1342/1983).

147. The first Report of Greece was submitted in 1986 and included all relevant information for the period between 1981 and 1985. The second and the third Reports referred to the period between 1986-1994, while the fourth and fifth Reports include information up until 1999. Greece is obliged to submit its 6th Report to the Committee on the Elimination of All Forms of Discrimination against Women until July 7, 2004.

148. It is to be noted that Greece has already ratified the Optional Protocol to the CEDAW by Law 2952/2001.

Mechanisms for promoting equality

General Secretariat for Gender Equality

149. The General Secretariat for Gender Equality (hereinafter: GSGE) was established by Law 1558/1985, as the competent government agency to promote and implement gender equality, in law and in practice, in all sectors (political, economic, social, cultural). It forms part of the Ministry of Interior, Public Administration and Decentralization (hereinafter: MIPAD).

Research Center on Equality Matters (KETHI)

150. The Research Center on Equality Matters (hereinafter: KETHI) is a legal entity of the private sector and operates under the supervision of the General Secretariat for Gender Equality of the MIPAD. The basic aims of KETHI's activities have a dual focus: to conduct social research on gender equality issues and to improve women's status and enable their advancement in all areas of political, economic and social life, within the framework of the policies defined by the General Secretariat for Equality.

151. KETHI operates:

- (a) A Documentation Unit, which offers an integrated Information System on Employment and Vocational Training of Women; and
- (b) An Information Unit, which offers information and counseling in matters of employment and social integration. Five Branches of the said unit operate in Athens and in four other major cities.

Regional Equality Committees

152. Law 2839/2000 (article 6 (2)), enacted following a proposal of the GSGE, established thirteen Regional Equality Committees. These operate in all capitals of the country's regions.

Inter-Ministerial Committee for Gender Equality

153. The Inter-Ministerial Committee for Gender Equality was established in 2000 by Decision of the Prime Minister.

154. The Inter-Ministerial Committee is entrusted with the following tasks:

- (a) Taking the necessary decisions on the promotion of the National Policy for Gender Equality within the framework of the European Union guidelines and the equality policies of international organizations, with a view to integrating the gender aspect in all policies (mainstreaming);
- (b) Coordination of Ministries and other public sector agencies in developing policies and actions for women at the central, regional and local level;
- (c) Supporting Ministries and public sector agencies in designing legislative initiatives and in implementing measures specifically concerning women;
- (d) Preparing and drafting the Annual Action Plan on Equality with a view to developing an integrated policy within the Third Community Support Framework (3rd CSF) and monitoring implementation of the actions and measures of the said Plan;
- (e) Supervision, monitoring and quantitative and qualitative assessment of the policies implemented;
- (f) Publication of decisions on issues of gender equality.

155. At the end of 2003, the Inter-Ministerial Committee will issue an *interim* assessment of the National Action Program for Equality (2001-2006).

Standing Parliamentary Committee on Equality and Human Rights

156. A Standing Parliamentary Committee on Equality and Human Rights was established by the new Standing Orders of the Parliament, which entered into force in January 2002.

157. The object of the Committee's work is to research and propose solutions regarding the promotion, as well as respect by the Administration, of the principle of gender equality in the fields of education, family life and other social institutions. The Committee addresses in particular issues pertaining to employment and respect and protection of human rights, in implementation of articles 4 (2) and 116 (2) of the Constitution.

Measures for the promotion of equal opportunities

158. The Inter-Ministerial Committee's National Action Plan on Equality 2000-2006 contains the political priorities and actions of the GSGE.

159. The National Action Plan on Equality constitutes Greece's framework strategy for the dissemination of the gender perspective in all policies and actions. An important achievement of the National Action Plan is the definition of goals for the implementation of equality policies and the designing of specific actions with a view to achieving the said goals.

160. The National Framework Strategy contains the four goals of the European Framework Strategy on Gender Equality 2001-2005, as well as the basic principles of the United Nations Declaration on the elimination of discrimination against women (1995 Beijing Platform for Action). The goals of the said National Action Plan are the following:

- (a) Promotion of gender equality in economic life;
- (b) Promotion of equal participation and representation in the political, social and economic field;
- (c) Promotion of equal access and equal application of social rights for both men and women;
- (d) Promotion of the change of roles and stereotypes of the two genders.

Equal rights in citizenship and nationality

161. All provisions of the Code of Greek Nationality containing discriminations between genders were amended by Law 1438/1984.

162. The aforementioned law establishes full equality between men and women, as far as the acquisition, the change and the retaining of Greek citizenship is concerned. Furthermore, it dissociates the acquisition or loss of the Greek nationality from the institution of marriage.

In that way, any preexisting discrimination contained in legislative decree 3370/1995 (“Law regarding nationality”) was abolished. Every woman has a position within the national and social community as an autonomous and independent person and is not bound by her husband’s nationality.

163. Thus, article 4 of Law 1438/1984 provides that “marriage does not have as a consequence the acquisition or loss of the Greek nationality”.

164. As far as the citizenship of children is concerned, Law 1438/1984 establishes the exact same rights for women as for men. Article 1 (1) provides that “the child of a Greek man or woman shall acquire the Greek nationality as from the time of his/her birth”. The aforementioned provision introduces the *jus sanguinis* in Greece. Thus, irrespective of any other factor (origin, marriage, etc.), the child of any Greek man or woman acquires the Greek nationality by birth.

165. Paragraph 2 of the same article introduces also the *jus soli*. Thus, it provides that any child born on Greek territory, who does not acquire by birth a foreign nationality or he/she is of unknown nationality, shall acquire the Greek nationality.

166. In the very same spirit of equality and without any form of discrimination, the law provides for all cases of acquisition of Greek nationality.

Correctional treatment of women

167. The new Correctional Code (Law 2776/1999) entered into force on 24-12-1999. This code, as well as the preexisting one (Law 1851/1989), prescribes full equality of treatment of detained men and women, without any form of discrimination.

168. More specifically:

- Any discriminatory treatment of detained persons, especially on the basis of race, color, national or social origin, religion, property or ideological beliefs, is prohibited. Special treatment of detainees may be admitted when warranted by their legal or factual status. Special treatment would, in such cases, be accorded to persons awaiting trial over convicted persons, to married detainees, to juvenile detainees over adult prisoners, to women, to disabled persons or to persons with special needs or on account of religious or other beliefs. Such special treatment shall be solely in favor of the detainee and with a view to addressing the special needs arising from his or her special situation;
- Women are held in correctional facilities for women only, or in special sections of other facilities. In the latter case, no communication with the inmates of other sections is allowed;
- The rules and the programs applied in the correctional facilities for women or the special sections for women of other facilities are adjusted to the needs of their gender;

- A special area in the correctional facility or the special section where women are held shall be appropriately arranged for the accommodation of detained mothers who are accompanied by their children of up to 3 years of age. Older children shall be admitted to child care institutions operating under the supervision of the Ministry of Health and Welfare and the Ministry of Labor and Social Security, if the competent magistrate considers, after the parents have been heard, that no suitable family environment is available;
- Mothers accompanied by infants shall always be detained in individual cells of at least 40m³, arranged in an appropriate manner;
- During the admission procedure into the detention facility, the detainee to be admitted is subjected to a body search and search of personal items, which is carried out in a private area and in such a way as not to offend his/her dignity. The search is performed by at least two employees of the same sex as the detainee;
- In women's detention facilities, a gynecologist must be on the staff.

Violence against women - measures to address human trafficking

169. In the framework of its competences to promote equality in Greece, the GSGE has set as a direct priority in its work, the combat against violence against women.

170. More specifically, since 1988 a Battered Women's Centre has been operating in Athens, to which may resort women who have been subjected to violence, for psychological and legal support. A similar Centre has been operating in Piraeus since 1999. Moreover, since 1993, a Shelter for battered women and their children has been operating, in collaboration with the municipality of Athens. This shelter temporarily hosts women who have been abused, together with their children.

171. In 1999, following an initiative of the GSGE, it was deemed necessary to establish an Inter-Ministerial Committee to Combat Violence against Women. Representatives of the competent Ministries (Ministry of Public Order, Ministry of Justice, Minister of Health and Welfare) and experts from the academic community and women's organizations participate in the said Inter-Ministerial Committee.

172. The Committee is competent to propose legislative regulations and amendments with a view to preventing and combating the phenomenon of violence against women. It is also competent to research and propose the suitable institutions for the reception and support of women who have been victims of violence.

173. The Greek legislation combats violence against women through various provisions referring generally to crimes against life and integrity of person, crimes against personal freedom, honor and personality and crimes against sexual freedom.

174. It is to be mentioned, at this point, that Law 1419/1984 provided for the *proprio motu* prosecution for the crime of rape.

175. Law 3064/2002, entitled “Combating human trafficking, crimes against sexual freedom, children pornography and generally the economic exploitation of sexual life. Support of victims of such actions”, sets up a comprehensive framework for the fight against the scourge of trafficking in human being. For more details, see this report under article 8 of the Covenant.

Gender equality in employment rights, health, social care and social security

176. A detailed analysis of all legislative provisions regarding gender equality in the aforementioned fields is included in the Greek Reports to the CEDAW Committee.

177. Finally, it is to be noted that Law 3089/2002 on Human Assisted Reproduction provides for the rules and prerequisites for artificial insemination, including the option of assisted reproduction to single women.

Article 4: Derogation of rights

178. Article 48 of the Constitution provides for the suspension of certain constitutional provisions establishing individual rights and freedoms. The relevant provision of the 1975 Constitution was amended during the revision of 1986. The said constitutional revision enacted even more strict prerequisites for the adoption of the aforementioned exceptional measure, while the Parliament’s competences on the relevant issue were enhanced, and those of the President of the Republic diminished.

Individual rights subject to suspension

179. The Constitution defines exclusively which individual rights may be subject to suspension in all or in part, throughout the Greek territory or in a part of that territory. Suspension is allowed only if the preconditions provided for in article 48 are met. These will be analyzed *infra*. The preconditions that have to be met for suspension to be effected are stricter than those envisaged both by the Covenant and the ECHR, since the constitutional legislator did not just define those rights which cannot be subject to derogation, but he clearly and exclusively named the rights which can be subject to derogation. Naturally, the Greek Constitution also excludes the rights that are excluded from derogation by the Covenant.

180. More specifically, the rights that may be subject to derogation are the following:

- Article 5 (4) (prohibition of individual administrative measures restrictive of the free movement or residence in the country and of the free exit and entrance therein of every Greek citizen);
- Article 6 (right to personal safety);
- Article 8 (right of a person to a judge assigned to him/her by law);
- Article 9 (right to the inviolability of the residence);
- Article 11 (freedom of assembly);
- Article 12 (1-4) (freedom of association);

- Article 14 (freedom of expression);
- Article 19 (right to secrecy of letters and all other forms of free correspondence or communication);
- Article 22 (3) (right of civil servants and employees of local government agencies or other public law legal entities to conclude collective labor agreements);
- Article 23 (freedom to establish trade unions and the right to strike);
- Article 96 (4) (prohibition on military, naval and air force courts to have jurisdiction over civilians);
- Article 97 (trial of felonies and political crimes by mixed jury courts).

Preconditions for declaring the country in “state of siege”

181. The following substantial prerequisites must be met in order for the country to be declared in “state of siege”:

- (a) War or mobilization owing to external dangers or an imminent threat against national security; or
- (b) Armed coup aiming to overthrow the democratic regime.

182. It is noteworthy that the case of “serious disturbance or obvious threat to public order and security owing to internal dangers” was deleted during the 1986 constitutional revision.

Procedure for declaring the country in “state of siege”

183. In the aforementioned cases, the Parliament, issuing a resolution upon a proposal of the Cabinet, puts into effect throughout the State, or in parts thereof, the statute on the state of siege, establishes extraordinary courts and suspends in whole or in part the force of the aforementioned provisions (article 48 (1)). This resolution of the Parliament shall be adopted by a three-fifths majority of the total number of members (article 48 (6)). The same resolution shall define the period of time for which the relevant measures shall be in force. This period may not exceed fifteen days.

184. If the Parliament is not in session or if it is objectively impossible that it be convoked in time, the measures mentioned in the preceding paragraph are taken by presidential decree issued upon proposal of the Cabinet. The Cabinet shall submit the decree to the Parliament for approval as soon as its convocation is rendered possible, even when its term has ended or it has been dissolved, and in any case no later than within fifteen days (article 48 (2)).

185. The duration of the measures mentioned in the preceding paragraphs may be extended every fifteen days, only upon resolution passed by the Parliament, which must be convoked regardless of whether its term has ended or whether it has been dissolved (article 48 (3)).

186. The measures specified in the preceding paragraphs are lifted *ipso jure* with the expiration of the period specified in the aforementioned constitutional provisions, provided that they are not extended by a resolution of Parliament, and in any case with the termination of war if this was the reason for their imposition (article 48 (4)).

187. From the time that the measures referred to in the previous paragraphs come into effect, the President of the Republic may, following a proposal of the Cabinet, issue acts of legislative content to meet emergencies, or to restore as soon as possible the functioning of the constitutional institutions. Those acts shall be submitted to Parliament for ratification within fifteen days of their issuance or of the convocation of Parliament in session. Should they not be submitted to Parliament within the aforementioned time limit, or should they not be approved by it within fifteen days of their submission, they cease henceforth to be in force (article 48 (5)).

188. Throughout the duration of the application of the measures of the state of emergency taken in accordance with the aforementioned provisions, the provisions of articles 61 and 62 of the Constitution (on parliamentary immunities) shall apply *ipso jure*, regardless of whether the Parliament has been dissolved or its term has ended (article 48 (7)).

189. It is clear from the constitutional procedure described above that the Parliament has a central role, both as far as the declaration of the state of siege is concerned, and as far as the approval of measures adopted by the executive branch is concerned. The provision of such defined and strict time limits regarding the duration and the force of the measures of suspension constitutes a further guarantee for the respect of the relevant constitutional provisions and the exclusion of any arbitrariness on the part of the authorities, especially on the part of the executive branch.

Consequences of declaring the country in “state of siege”

190. In case the country is declared in a “state of siege”, the relevant law enacted in application of article 48 of the Constitution is put into effect. This law (566/1977, entitled “regarding the state of siege”) provides that “the powers of the civilian authorities regarding the protection of the security of the State, the maintenance of the order and the policing, shall be exercised by the military authorities, to the extent that the latter authorities deem it pertinent”. Thus, the military authorities have the right to adopt measures, which, under normal circumstances, would be considered contrary to the constitutionally established individual rights.

191. The suspension of individual freedoms is allowed exclusively to the extent that such suspension is necessary for tackling the necessity and the danger due to which the “state of siege” has been declared. However, the suspension of the force of constitutional guarantees does not bring about a suspension or abolition of the relevant guarantees established by the provisions of the regular legislation (i.e. the Code of Penal Procedure), which continue to apply, if there is no contrary provision in the Law regarding the state of siege.¹⁶ Furthermore, the suspension of the force of the aforementioned constitutional provisions does not result in the automatic abolition of the protected legal relations. Thus, it has been adjudicated that the suspension of the force of the right to form associations and unions (article 12 of the Constitution) does not result in the dissolution of the legally established associations and unions, but only in the suspension of their constitutional protection.¹⁷ Naturally, all constitutional provisions establishing the prohibition of discrimination continue to apply. Finally, the hard core of individual rights may

not be violated in any case, since that flows from the provisions regarding the protection of the value of every human being and the State guarantee of his or her rights, provisions (articles 2 (1) and 25 of the Constitution), the force of which may not be suspended for any reason.

192. The institution of declaring the country in “state of siege” has not been applied in Greece since the collapse of the military coup (1967-1974) and the final reinstatement of the democratic regime. The Constitution and the regular legislation provide for the possibility of tackling dangers similar to those referred to in article 48 of the Constitution without recourse to the measure of suspending the force of certain individual rights. Finally, any contemplation of tampering with the democratic regime or of using the constitutional provisions for legalizing or legitimizing such tampering is inconceivable in modern Greece.

**Article 6 and Second Optional Protocol to the ICCPR:
Right to life - death penalty**

Constitutional guarantee of the right to life

193. The right to life is guaranteed by article 5 (2) of the Constitution. This article affords protection, in an absolute way, to the life of every person living within the Greek territory, irrespective of his or her nationality, race or language and of religious or political beliefs. The obligation of the State to respect and protect the life of every human being stems, furthermore, from its obligation to respect and protect the dignity of every human being, according to article 2 (1) of the Constitution. Beneficiaries of the aforementioned right are all natural persons present in the Greek territory, without any exception whatsoever.

The abolition of the death penalty

194. The death penalty has been eliminated from the Greek Penal Code already since 1993 (article 33 (1) of Law 2172/1993). In ratifying the Second Optional Protocol to the CCPR, Greece has deposited a reservation, subject to article 2 of the said Protocol, for the application of the death penalty according to the provisions of the Military Penal Code (hereinafter: MPC) in time of war, pursuant to a conviction for a most serious crime of a military nature committed during wartime. Greece has also ratified Protocol No. 6 to the ECHR (Law 2610/1998). The latter Protocol provides for the abolition of the death penalty, it allows however that the contracting parties maintain in their respective legislations a provision for the death penalty in respect of acts committed in time of war or imminent threat of war.

195. On the level of internal legislation, the death penalty is still provided for solely in the MPC, subject to important restrictions. More specifically, the death penalty is foreseen solely for military felonies committed during wartime; in such cases, life imprisonment is always provided for as an alternative. According to article 8 of the MPC, the court has to take into consideration the potential danger for the security of the country or the fighting ability of the army before imposing the death penalty. Only under the aforementioned conditions may the court impose the death penalty, without of course being obliged to do so.

196. In the same vein, article 7 (3) (b) of the revised Constitution provides that “the death sentence shall not be imposed, except for the cases provided by the law for felonies perpetrated in wartime and connected to the war”.

197. On 03.05.2002, Greece signed Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances. Following this, the Ministry of National Defense drafted a law, which was co-signed by the competent Ministers of Interior, Public Administration and Decentralization and of Justice. The draft bill was submitted to Parliament on 03.07.2003. It is noted that the draft law contains provisions that amend the relevant articles of the MPC so as to harmonize the legislation in force with article 1 of the abovementioned Protocol.

Bearing and use of firearms by police officers

The new legislative framework

198. Law 3169/2003, entitled “Bearing and use of firearms by the police forces, relevant training and other provisions”, was published in the Official Gazette in July 2003.

199. The issue of bearing and use of firearms by the police forces constituted a grave concern for the competent authorities, as well as for bodies such as the National Commission for Human Rights and NGOs. It was a shared belief that the modernization of the relevant legal framework was necessary and indispensable. The preexisting framework had been in force for several decades, and was defective and not quite adjusted to the liberal and democratic form of government of the country.

200. On the other hand, the provisions of the Greek Penal Code regarding the grounds for justification (self-defense, necessity, etc.) cannot, due to their nature and purpose, cover all the cases of use of firearms on behalf of the police. Furthermore, the use of firearms constitutes an act, for the justification of which the conditions of its legal discharge must be clearly and specially defined in law.

201. The aforementioned insufficient, obsolete and unclear legal regime resulted in serious problems during police action, which led to the constant, justified or not, questioning of the legality of use of firearms by police officers, as well as to the hesitation of police officers to use their firearms, even though such use was absolutely necessary under the circumstances.

202. The Minister of Public Order requested the NCHR to submit its observations on the legal framework regarding the bearing and use of arms by police officers, in order to ensure the compatibility of the draft law with the relevant human rights standards. The NCHR, in its report dated 12.12.2002, considered that the said draft is moving in the right direction. It proposed the modification of a series of provisions so that they fully conform to the principles of necessity and proportionality. It also stressed the need for intense and streamlined human rights education and further training in the curricula of all law enforcement officials.

203. The new law attempts to set up a modern, clear and functional legal framework, as well as to build confidence between the citizens and the police officers. The drafters of law took into consideration both the 1979 United Nations Code of Conduct for Law Enforcement Officials and the 1990 United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

204. The basic axes of the new law are the following:

205. (a) The definition of the conditions, under which the police officers possess and carry firearms. Training in the specific type of firearm and physical and mental suitability are required. Furthermore, the law provides for duty situations where the police officer is not allowed, in principle, to carry a weapon. These are duties to which the officer is assigned due to health reasons or disciplinary reasons. Article 2 (4) allows the administrators and their superior officers to remove a police officer's firearm, when there is evidence of misuse or insufficient safeguarding.

206. (b) The definition of cases where the use of firearm is permitted and the principles guiding it (article 3). The principles of necessity and proportionality apply in every case of use of weapons. According to the aforementioned principles, the police officer is bound to exhaust all milder measures before resorting to the use of his firearm. If the use of the firearm is indispensable, the form of use that will result in the least possible injury shall be selected. The use of the firearm shall not be disproportionately injurious, even if it is the only effective solution available. In any case, the police officer is bound to identify him- or herself and to inform that he or she intends to use a weapon, permitting enough time for the other person to respond, unless this would unreasonably jeopardize the life or physical integrity of him - or herself or other persons or unless this would clearly be unsuitable or in vain under the circumstances.

207. Article 3 (4) provides for the cases where warning shots and shots against objects is allowed.

208. Paragraph 5 of the same article provides, in an exclusive way, for the cases where the firing of an immobilizing shot is allowed. These cases refer either to self-defense against a crime connected with an imminent threat to a person or against a crime committed through armed force, or to the tackling of armed individuals in circumstances connected with a threat to a person.

209. Article 3 (6) provides for the cases where the neutralization shot is allowed. These refer exclusively to self-defense or defense in favor of a third party when loss of life or serious physical harm is imminent.

210. The constitutional command for the absolute protection of life of every human being present in the Greek territory requires that any neutralization shot should be subjected to the principles of necessity and adequacy, as well as to prior weighing. For instance, no neutralization shot may be fired in order to stop a prisoner from escaping prison, because in those cases prosecution by State authorities weighs far less than the protection of life. Also, no shot may be fired, if that could result to the death of the targeted person, who has just stolen a purse or who held up a convenient store, even if that would be the only means to his apprehension.

211. No neutralization or immobilization shot may be fired in the four following cases (article 3 (7)): (a) if there is serious danger of injuring a third party, (b) against an armed mass if there is danger of injuring unarmed persons, (c) against a minor (a minor is a person

under 18 years of age), unless there is no other way of preventing imminent danger of death, and (d) against a person fleeing the scene when called upon to be subjected to control according to the legislation in force.

212. Moreover, the fact that a police officer abided to an unconstitutional or manifestly illegal order of a superior regarding the use of his or her firearm does not constitute a ground of justification.

213. Police officers are under the obligation to take all necessary measures so that the allowed and justified use of their firearms fulfills “professional” standards of conduct. The Administrative Court of First Instance of Thessaloniki found that the State incurred civil liability to provide pecuniary satisfaction for pain and suffering to the members of the family of a student who got killed due to fact that a police officer’s firearm discharged, owing to the fact that the latter breached with severe negligence the rules of use of firearms.¹⁸

214. Paragraph 10 of the same article aims to prevent any instances of impunity. It expressly imposes an obligation to report any case of use of firearms by a police officer to the competent Police and Judicial Authority, so that its legality can be examined.

215. (c) The control of the physical and mental suitability of police officers to carry weapons. Article 4 imposes an obligation on the competent Health Committees to specifically pronounce themselves on the suitability of a police officer to carry weapons when rendering an opinion on the physical capability of police officers. A special committee in the Health Service of the Police Force is established, in order to assess whether all police officers are suitable to carry a firearm. Thus, in addition to the psychodynamic tests, to which all prospective officers are submitted prior to their entry into the Police Academy, all officers who have served for five years will have to undergo the aforementioned health control. Those who are deemed unsuitable to carry firearms are stationed in positions, which do not allow the carrying of firearms, or are given duties for which the carrying of a firearm is not necessary. In order for the aforementioned procedure to be followed, the necessary positions for Police psychiatrists and psychologists are created.

216. Finally, transitional provisions provide for the procedure, according to which all serving police officers will undergo the aforementioned psychodynamic tests and evaluations within a period of five years, so as to exclude all unsuitable officers from carrying a firearm.

217. (d) Provisions for strict basic and continual training in the use of firearms. The training of police officers in the use of firearms constitutes a necessary condition for their correct use. The relevant provisions for the first time establish that failing the use of firearms class constitutes a reason for dismissal from the Police Academies. The training includes tests in real conditions and in simulated conditions.

218. (e) Severe criminal sanctions are provided for in cases of bad storing of the firearm, especially when that has resulted in the firearm being found in the hands of third parties, of illegally handing the firearm to third parties, of illegal possession, illegal carrying and illegal threat and use of the firearm (article 6).

Disciplinary and criminal assessment of complaints for misuse of firearms

219. All Services of the Greek Police, on the level of Police Directorates and above, act *proprio motu*, according to the provisions of Presidential Decree 22/1996, "Disciplinary Law of Police Personnel", in every case of use of firearms by police officers and do not wait for complaints to be filed. Such incidents are immediately reported by the regional Police Services, hierarchically, up to the competent Directorates of the Police Headquarters.

220. This obligation of the Police Services is provided for in Regulatory Order of the Chief of the Greek Police 1/2001. More specifically, the relevant reports are drafted immediately after the offense or incident has taken place and are transmitted top priority, so as to reach the Police Headquarters within three (3) hours -at the latest-, from the moment the Police Authority took action. This aims at the immediate information of the Leadership of the Police and the taking of the necessary actions (issuing of an order requesting an administrative investigation, setting in motion of the procedure for the adoption of the measure of suspension etc.). It is to be noted that the same aforementioned obligation stemmed also from the preexisting Regulatory Order 1/1985, whereas, as already stated, the provision of article 3 (10) of the aforementioned Law 3169/2003 imposes the obligation to report incidents of use of firearms by police officers to the competent Police and Judicial Authority.

221. If any international organizations, NGOs or other bodies express concern on the use of firearms by police officers, the Police Headquarters inform forthwith the interested organizations in writing about the actions undertaken and their result.

222. During 2000-2003, 66 cases of use of firearms by police officers were reported. These resulted in the injury of 40 persons, 14 of which ultimately died.

223. More specifically:

(a) In the year 2000, 15 persons were injured (6 Greek nationals, 2 of which were Roma, 9 aliens), 6 of which ultimately died (3 Greek nationals, 1 of which was Roma, 3 aliens);

(b) In the year 2001, 9 people were injured (2 Greek nationals, 1 of which was Roma, 7 aliens), 3 of which ultimately died (1 Roma, 2 aliens);

(c) In the year 2002, 4 people were injured (2 Greek nationals, 2 aliens), 2 of which ultimately died (1 Greek national, 1 alien);

(d) In the year 2003, 12 people were injured (7 Greek nationals, 1 of which was Roma, 5 aliens), 3 of which ultimately died (1 Greek national, 2 aliens).

224. Sworn administrative inquiries were ordered regarding all of the aforementioned incidents. Of the 66 cases of use of firearms by police officers recorded during 2000-2003, disciplinary measures were taken against police officers in 6 cases, decision is pending before the competent judicial organs on 3 cases, 14 cases are currently under investigation (incidents of the year 2003), while the rest were dismissed, for disciplinary purposes, due to the fact that no disciplinary responsibility of police officers arose.

225. The following case is rather characteristic: a Greek citizen of Roma origin died on 24-10-2001 in Zefyri (Attica) as a result of the injuries he sustained. The injuries were caused by the shots fired against him by a police officer of the Attica Emergency Action Unit Directorate. The officer maintained that he shot because the victim did not pull his vehicle over, after being signaled, in order to undergo traffic control, but tried to run over the officers with his car. A Sworn administrative inquiry was accordingly conducted. The officer was dismissed from the Police by virtue of the Secondary Disciplinary Board. Criminal charges against the officer are still pending before the Criminal Courts.

226. On 23 of the aforementioned cases, criminal charges were pressed against the responsible officers. Two of them were acquitted by the competent criminal courts and one of them was acquitted by the competent judicial council. The twenty remaining cases are still pending before the courts. 25 cases did not have a respective criminal side. Finally, criminal files were formed for 18 cases. 6 of these were closed by the competent Public Prosecutors' Offices, whereas the latter have not yet provided information on the course of the remaining 12 cases, with regard to the exercise of criminal prosecution.

Article 7: Prohibition of torture or cruel, inhuman or degrading treatment or punishment

227. The Greek Constitution provides, in article 7 (2), that "torture, any physical abuse, impairment of health or the use of psychological violence, as well as any other offence against human dignity are prohibited and punished as provided by law." It is noteworthy that this provision does not refer solely to 'torture', as was the case with the relevant provision of the previous Constitution of 1952, but broadens the scope of the constitutional protection by adding further specific manifestations of ill-treatment. Furthermore, the said provision indicates that the legislator should accord the status of a criminal offence to torture. Indeed, several provisions of criminal law have been enacted to impose severe penalties for the punishment of the relevant offences. These are the provisions of articles 137A, 137B, 137C and 137D of the Penal Code (added by Law 1500/1984), according to which any acts of violence or offence against the human dignity of detainees or imprisoned persons are considered felonies and are punished as such. Furthermore, articles 239, 325 and 326 of the Penal Code provide for the punishment of misuse of power and illegal detention. Apart from the potential criminal prosecution, the disciplinary law of the Greek Police provides for the imposition of the sanction of dismissal from the Police Force of any officer responsible for acts or conduct that constitute a serious offence against human dignity (article 9 of Presidential Decree 22/1996). Orders from a superior officer or a public authority, as well as necessity do not constitute circumstances precluding the wrongfulness of an act of torture. In the same vein, other acts of cruel, inhuman and degrading treatment or punishment instigated or committed with the consent or acquiescence of the public authorities are also unacceptable.

228. Furthermore, according to article 48 (1) of the Constitution regarding the declaration of a "state of siege", the application of article 7 (2) may not be suspended. On this subject see this Report, under article 4 ICCPR.

229. Greece has ratified the 1984 United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment (Law 1782/1988) and has recognized the competence of the Committee to receive and consider inter-State and individual communications. Greece is also a party to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Law 1949/1991).

230. According to article 137A (2) of the PC, the term torture refers to:

- (a) Any systematic infliction of acute physical pain;
- (b) Any systematic infliction of physical exhaustion endangering the health of a person;
- (c) Any systematic infliction of mental suffering, which could lead to severe psychological damage;
- (d) Any illegal use of chemicals, drugs or other natural or artificial means aiming at bending the victim's will.

231. Furthermore, article 137A (1) of the PC provides that "any public servant or military officer whose duties include the prosecution, the investigation or the examination of criminal or disciplinary offences or the execution of penalties or the guarding or the custody of detainees, shall be punishable by imprisonment, if he or she subjects to torture, in the course of the performance of his or her duties, any person under his or her authority, with a view:

- (a) To extorting from him or her or a third person a confession, deposition, piece of information or statement, especially that of repudiation or acceptance of a political or other ideology;
- (b) To punishing him or her;
- (c) To intimidating him or her or a third person.

232. Article 137A (3) provides for less serious cases of ill-treatment involving physical injury, injury to the health, use of illegal physical or psychological force and any other serious infringement of human dignity, such as the use of lie detectors, prolonged isolation, serious attack on sexual dignity of the person. These acts are punished by 3 to 5 years' imprisonment.

233. The acts provided for in the aforementioned paragraphs are punished more severely under certain circumstances set out in article 137B (such as use of falanga or electric-shock equipment, infliction of grievous bodily harm, etc). If the said acts resulted in the death of the victim, the penalty of life imprisonment is imposed (article 137B (3)).

234. In regard to the aforementioned acts, a person may claim compensation from the State by virtue of article 105 of the Introductory Law to the Civil Code, which provides for strict state liability for unlawful damage to individual rights or interests caused by public servants.

235. It should be also noted that, according to article of 137D (4) of the PC, the victim of any act described in articles 137A and 137B has the right to claim from the perpetrator of the act and the State, which are liable in full, compensation for the damages he or she suffered, as well as monetary satisfaction for moral damages and for pain or suffering sustained.

236. The matter of physical ill-treatment, the occasioning of torture or the display of disrespectful and unbecoming conduct, by and large, on the part of police officers against persons apprehended and detained by Police Forces, is of primary importance for the Greek Police and the Ministry of Public Order. It is for this reason that the display of such conduct has been envisaged in the disciplinary regulation as a specific disciplinary offence entailing the penalty of dismissal.

237. Further, apart from the training received by the staff and the commanding officers in regard to the object in question and the issuance of a series of circulars in order for the staff to realize that any violation of the fundamental rights of any person, irrespective of race, language or religion, cannot be tolerated, whenever there is evidence that police officers have resorted to such acts, the statutory disciplinary measures are taken against them and the cases are referred to Justice.

238. Reference shall be made *infra* on the measures adopted for the protection of the rights of detainees. These measures constitute at the same time an effective mechanism for the prevention and suppression of violations of article 7 of the Covenant.

239. The Police Headquarters has taken the following measures with a view to securing the protection of human rights during police action:

240. (a) By a circular order (4803/22/14a of 03-11-1995), specific directives for the application of the provisions in force were issued and the handing out of information material to all categories of detainees in custody of the Police Force was established (detainees awaiting administrative expulsion, persons detained for criminal offences etc.). The information leaflets are worded in 14 different languages and are handed out to every detainee. Orders were also given to display the information leaflets in all Police Services detention facilities. The same circular order provided also for the application in practice of measures referring to the respect of the rights of the detained persons, such as:

- The notification of the reason and the place of detention;
- The notification of the lawyer of the detainee, of his or her relatives or of the consulate of the country of which he or she is a national, if he or she is an alien;
- The provision of facilities for hiring a legal counsel and communicating with him or her;
- The protection of the detained person's procedural rights;
- Visits to the detainee by his or her lawyer and relatives;

- The provision of medical care, including by a doctor of the detainee's own choice;
- The provision of food, including of the detainee's own choice.

241. Furthermore, the provisions of international conventions, laws, decrees and international organizations' declarations for the protection of the rights of detainees were disseminated among the personnel of the Greek Police.

242. (b) By subsequent orders, the importance that is attributed to the application of the legislation and the circular orders which refer to the rights of the detained persons was stressed. More specifically, the circular order 4803/22/14r of 24-10-2000 of the Police Headquarters provided for the following:

- The need for continued training, information, monitoring and control of the personnel of the Greek Police by their superiors on the application of the legislation and of the measures that aim to secure human rights in our country was stressed;
- The need for informing the detainees in police custody of their rights, by means of the special information leaflets for detained persons and the respective leaflets for aliens awaiting deportation was stressed;
- All Police Services with detention facilities were ordered to display the information leaflets (in large sizes) in the detention facilities, so as to facilitate the information of all detained persons of their rights.

243. (c) The issue of protection of personal data and private and family life in general of the persons apprehended by the Police Authorities was regulated, according to a relevant decision of the Hellenic Data Protection Authority, by circular order 9001/5/24c of 23-04-2003. The aforementioned circular order provided for the prohibition of making public information on the identity of the apprehended persons, pertaining to their social group, race, national origin or nationality. The relevant issues are dealt with extreme caution in connection with juvenile offenders. The sole exception to this rule concerns cases where the publication of such data would be serving the public interest (criminal policy). The important circular order 9001/5/24i of 01-10-2003 of the Police Headquarters was issued in order to further secure the protection of personal data of the apprehended persons, especially of minors, of aliens and generally of persons belonging to the vulnerable social groups. This order provided for the prohibition of publication of the initials of the apprehended person's name or of other data that may lead to the identification of the apprehended person (i.e. professional occupation).

244. (d) A new circular order was issued recently (4803/22/44 of 04-07-2003). This order refers to the treatment of detainees by the Police Authorities and resolves problems relating to the implementation of their rights, such as the notification of the grounds for and the facility of their detention, the communication with their lawyer, relatives, organizations for the protection of human rights and medical care. The same circular order stresses that the personnel is obliged not only to absolutely respect human rights, but also to display increased sensitivity in the case of detention of persons who are characterized as particularly vulnerable, such as illiterates, political refugees, asylum seekers and aliens in general.

245. (e) Similar orders of the Police Headquarters regarding the conduct of police personnel to civilians and the protection of human rights had been also issued in the past.

246. With regard to asylum seekers, it is to be noted that none of persons applying for asylum is expelled from Greece, if a decision on his application has not been reached. In application of article 33 (1) of the Geneva Convention relating to the Status of Refugees, even after the conclusion of the above procedure, the alien is not deported to a country where it is deemed that his or her life or freedom is threatened (application of the principle of non-refoulement).

Training of police officers in relation to human rights

247. In the field of training of police officers, effort is made for their education and training in human rights. On all levels of training (held in the Officers Academy, the Policemen Academy, the Post-Graduate and continual-training school and the National Security Academy), courses are taught on civil and social rights and on relevant international conventions, such as the ones on the elimination of racial discrimination and xenophobia, on humanitarian law, on the treatment of persons belonging to minority or other social groups, on torture and inhuman or degrading treatment.

248. More specifically, the following courses are taught during basic police training in the Officers Academy and the Policemen Academy: Human Rights, Constitutional Law, Social and Cultural Issues, and Sociology. These courses address the following subjects and issues:

- (a) Human Rights:
- General and Economic Freedom;
 - Human Dignity;
 - Equality;
 - Administrative and Judicial Protection;
 - United Nations International Covenant on Civil and Political Rights;
 - Protection of human beings from torture and any other cruel, inhuman or degrading treatment or punishment;
 - Basic rules on the treatment of detainees and prisoners;
 - Code of conduct for law enforcement personnel;
 - Declaration of rules of ethics for police officers;
 - 12-point-program for the prevention of torture;
 - Racism and xenophobia: definitions and tackling;

- Police competence for asylum;
 - Police interventions;
 - Protection of personal data;
- (b) Constitutional Law:
- In-depth analysis of all constitutional provisions regarding individual rights, with an emphasis on the provisions that are expected to be applied during the future exercise of the duties of the cadets;
- (c) Social and Cultural Issues:
- Minority issues (Muslim minority in Thrace);
- (d) Sociology:
- Consent and conflict in modern society;
 - Social exclusion (Roma, migrant workers, rehabilitated persons, persons recently released from prison).

249. The relevant initiatives in the sensitive field of training are not exhausted in the general framework of the basic training, but also extend to the post-training level.

250. More specifically:

(a) The annual post-training program of the Greek Police personnel contains post-training courses on: aliens, Schengen-compatible passport control, immigration, asylum, alien legalization procedures (residence permits and work permits) etc.;

(b) The Department of Professional Post-training for Senior Officers offers a course on Constitutional Law and Human Rights. In order for the need for the implementation of all provisions regarding human rights in all aspects of police work to be stressed, all officers participating in the course are obliged to conduct a research and then draft a dissertation on one of the following subjects:

- Protection against inhuman and degrading treatment;
- Xenophobia and racism in Europe: European Union policy;
- Aspects of violation and protection of human rights;
- The prohibition of racist speech as a constitutional problem;
- Treatment of apprehended and detained persons: legal and factual dimension;

- The constitutional guarantees regarding apprehension and detention and the Greek reality;
- Roma: social conduct, permanent settlement and protection;
- Individual rights and abuse of those rights;
- Social minority groups and inequalities;

(c) Courses on the protection of human rights and international humanitarian law are taught in the National Security Academy;

(d) Training seminars abroad are organized in the framework of the European Police Academy (CEPOL). These seminars deal with issues such as human rights, trafficking in human beings, transnational crime, border control etc. Many high-ranking officers represent our country each year in these seminars;

(e) Aside from the taught courses, many lectures are held in the Police Academies. These lectures refer to Police and Human Rights and emphasize the following issues:

- Obligations, restrictions and rights of the officers of the Greek Police;
- Competences and jurisdiction of the organs of the Greek Police (legal and mixed acts);
- Conditions for the use of firearms;
- Organs and competences during use of force;
- Control of Police power;
- Criminal, administrative and civil liability of officers of the Greek Police;

(f) Special weight on similar issues is attributed during the training of Border Guards. The latter are taught Constitutional Law, as well as the provisions of the Code of Conduct of competent organs, the provisions of the ECHR, the United Nations International Covenant on Civil and Political Rights, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment etc., since, because of their field of work, they have to learn and fully understand the aforementioned provisions.

251. On the occasion of Human Rights Day (10.12.2003), a series of events have been organized in order to raise the awareness of Police officers on this issue. In addition to the order of the day by the Chief of the Greek Police for the 55th anniversary of the UDHR, lectures were held in all Police Schools, as well a main event in Athens (Greek Police Academy), with the participation of the President of the NCHR and the Greek Ombudsman, focusing on the protection of the human rights of immigrants.

252. A congress on the multicultural society and the treatment of refugees and immigrants by the Police and the law was held from 19-21.12.2003 in Olympia, on the initiative of the Police Officers' Union and the National Center of Public Administration, with the participation of representatives of the Greek Police and the Ministries which are competent for the regularization of immigrants.

253. Furthermore, seminars on refugee law, treatment of asylum seekers and distinction of refugees from immigrants are organized by the Ministry of Public Order in cooperation with the United NationsHCR. In 2003, there have been 8 meetings, while for 2004 10 meetings have been scheduled.

254. It is clear from all of the above that the Leadership of the Greek Police is highly sensitive on issues regarding the protection of human rights, since these are incorporated in all levels of police training. This effort is continuing with the same intensity, in order for the Greek Police personnel to fully comprehend the need for strict implementation of the fundamental principles of protection of human dignity.

Training of prison guards

255. Guards are obliged to attend the introductory education course of the Guard Personnel School (article 10 (16) of Law 2298/1995). During the two-month studies, newly appointed correctional officers obtain theoretical and practical education which helps them to better meet the requirements of their duties. Through the theoretical education, the correctional officers gain knowledge on:

- The provisions of the Correctional Code;
- United Nations and Council of Europe instruments concerning human rights;
- Alternative methods of sentence serving;
- Their duties, rights and obligations;
- Methods to resolve conflicts in prisons;
- Provision of first aid and handling of emergencies;
- Handling mutinies and riots.

256. The practical education includes training on self-defense and self-protection methods.

Training of the Hellenic Coast Guard (HCG) personnel on human rights issues and the relevant legislation

257. Basic training on the abovementioned issues is provided at the HCG schools of officers, supplemented by regular further training (seminars, lectures).

Legal safeguards for detainees in police services

258. The deprivation of personal freedom of the detainees in Police Services does not constitute an objective *per se*, but rather a necessary means for the conducting of criminal and administrative procedures according to the provisions in force.

259. Any use of force, as well as any inhuman or degrading treatment of a detainee is strictly prohibited. The relevant procedural actions on criminal or administrative level are conducted with the least possible delay, so as the deprivation or limitation of personal freedom to fulfill not only the temporal, but also the substantial prerequisites of legal detention (articles 2 (1), 6 and 7 (2) of the Constitution, articles 7 and 9 of the ICCPR, and article 3 of the ECHR).

The detainee's right to be informed

260. The detainee must, when brought before the police services, be fully informed of the reasons for his or her detention as well as about all the rights to which he or she is entitled during the period of detention (article 9 ICCPR, article 5 (2) ECHR). To this end, detainees must receive an information leaflet, approved also by the Public Prosecutor's Office, in a language they understand, on their rights; these rights should also be clearly explained to them. In the case of alien detainees, who do not understand the Greek language, an effort must be undertaken to explain these rights through the most suitable means (through an interpreter, a consular authority, etc.). Police authorities are also obliged to display the leaflets as posters in the detention premises. Special effort should be made to fully inform detained aliens who apply for asylum (article 1 (6) of PD 61/1999).

The detainee's right to communicate

261. Communication between detainees in police custody and their relatives or other persons of their choice includes telephone communication as well as personal contact. The police must facilitate the telephone contact between the detainees and their families in order to inform them, if they so wish, of the place and reasons of their detention. The police is also obliged to allow visits to the detainees on the basis of a schedule that sets the timetable, the place and the persons who are allowed to visit the detainees (article 67 (4) (12) of PD 141/1991). It is stressed that the right of communication includes, in the case of detained aliens, the obligation to inform the consular authorities of their countries, the facilitation of the telephone communication between the latter and the detainee and the obligation for the police authority to allow consular staff to visit the detainee, unless of course the latter refuses to meet them. The Police are also obliged, by virtue of existing provisions, to allow free contact between detainees and international organs, such as the Committee against Torture, the representatives of the United Nations High Commissioner for Refugees and persons authorized by the latter. In so far as the visits by representatives of associations active in the fields of human rights, detention conditions and moral or legal support to detainees (such as the Church, NGOs, Bar of Medical Associations) are concerned, police authorities must inform detainees of the interest of the aforementioned associations and allow such visits only when the latter consent to them, especially in view of the respect of provisions regarding the protection of personal data.

Right of access to a lawyer

262. The Code of Criminal Procedure (articles 96 *et seq.*) absolutely enshrines the right of communication between persons detained by the police authorities who are charged with an offence and their lawyers. The Police are obliged to adopt all available measures so as to facilitate the implementation of this right. To this end, they must guarantee both telephone and personal contacts between a detainee and his or her lawyer. More particularly, the detainee is entitled to inform his or her lawyer by telephone of the place and reason of the detention and, in case he or she has no lawyer, to contact by telephone the local Bar Association, so as to hire a lawyer of his or her choice. Furthermore, a lawyer's free access to the detainee and the provision of legal assistance is guaranteed under any circumstances, irrespective of whether this person is detained on the grounds of criminal or administrative procedures. The lawyer's access to the detainee, which, it should be noted, is not subject to the time limitations that are imposed to visits by other persons, shall be unimpeded and does not require a previous production of a power of attorney or authorization by the interested person to the police authorities. Article 45 of the Attorneys' Code (Legislative Decree 3026/1954) provides that entry to public services is free to lawyers who may enter them after they merely produce their professional I.D. Representation by a lawyer is presumed to have been conferred unless a deed of power of attorney is expressly required by the law (art. 217 of the Civil Code). Furthermore, a power of attorney cannot be in practice applied, since the interested person is detained. In most cases, the lawyer contacts the detainee following a mandate by the family; in such cases, the detainee's oral declaration at the moment of the contact is sufficient in order for the lawyer to represent and provide legal assistance to the former. In the case, however, of persons, mainly aliens, detained in the context of administrative procedures, when attempts are made to provide legal assistance by mandate of persons other than the family members or the diplomatic authorities of the country of origin, as well as by representatives of associations (NGOs, Bar Associations etc.), the police is obliged to allow the lawyer's access to the specific detainee for whom the mandate to represent has been given, after it verifies this fact; this is also assumed by the fact that the lawyer knows the identity (name and surname) of the detainee he or she comes to assist.

Health care services

263. The protection of the detainee's health is a basic duty of the police authorities. Medical care is provided by the medical doctor serving in the police health service or, in case the latter is absent or prevented, by another doctor, whereas the detainee is entitled, while being examined by the service doctor, to request to be also examined by a doctor of his or her choice. In case the detainee falls sick, suffers a serious accident or enters a medical institution, the police are obliged to inform the family members thereof, and, in case there are no family members, any person indicated by the detainee. Finally, special medical care is offered to detainees who are drug addicts and whose life is in danger due to the deprivation syndrome (art. 60 (3) (8) and (11) and art. 67 (4) (22) of PD 141/1991).

Individualized custody records

264. Every arrest of an alien awaiting expulsion shall be entered by the arresting service to a computer system, which will automatically render a file number (distinct for every alien). The relevant correspondence will then be placed in the detainee's personal file and will be kept in the

records of the arresting service and in those kept with the Headquarters of the Greek Police. The date of the arrest or execution of the extradition or expulsion decision or of the decision for the release of the detainee shall also be recorded in the computer registers.

265. Detainees exercise their rights without prejudice to the foreseen legal actions that aim to protect the interests of the service as well as, more widely, the public and social interests. The application of the provisions of the Correctional Code (Law 2776/1999) and of Presidential Decree 141/1991 on the “competences and in-service acts of the personnel of the Ministry of Public Order” provides adequate guarantees to this end. In particular, detainees have to undergo a body search as well as a search of their personal belongings when brought to the police premises; this search should be performed in a private area and in such a way so as not to offend their dignity. Furthermore, all indicated measures are adopted, in order to prevent detainees from escaping, especially during the time they leave the detention premises and remain in areas of examination, telephone communications and visits. Finally, and according to existing circumstances and in case the space of detention premises allows for it, all necessary measures shall be taken to avoid intermingling among detainees, while women and minors shall be kept in special detention premises (art. 67 (3) (25) of PD 141/1991). In all cases, detainees must be treated on an equal basis and any discriminatory treatment is forbidden (art. 3 of Law 2776/1999).

Disciplinary and criminal investigation of cases

266. In the rare cases of denunciations of violation of fundamental human rights and offence to human dignity within the Ministry of Merchant Marine, internal inquiries are always conducted, disciplinary action is taken and criminal proceedings are instituted against the officers involved.

267. In the field of competence of the Ministry of Public Order, 164 cases against police officers for ill-treatment of persons were investigated in the period 2001-2003. 54 of these cases referred to aliens and 11 to Roma. The results of the relevant investigations were the following:

- (a) Disciplinary aspect:
 - Disciplinary sanctions were imposed in 15 cases;
 - In 105 cases the file was closed;
 - 44 cases are pending;
- (b) Criminal aspect:
 - 74 cases did not have a criminal aspect;
 - 12 cases were closed by the competent Public Prosecutor’s Office;

- In 35 cases, no pressing of criminal charges has been notified to the Police Headquarters;
- Criminal charges were pressed in 43 cases, in 2 of which the defendants were found not guilty, in 2 of which acquittal decisions of the competent judicial councils were issued and 39 of which are still pending before the competent courts.

268. More specifically:

(a) In the year 2001, 57 cases of alleged ill-treatment of persons were investigated. 19 of these cases concerned aliens and 7 of these concerned Roma. The results of the investigations were the following:

- (i) Disciplinary aspect:
 - Disciplinary sanctions were imposed in 7 cases;
 - 44 cases were closed;
 - 6 cases are pending;
- (ii) Criminal aspect:
 - 28 cases did not have a criminal aspect;
 - 5 cases were closed by the competent Public Prosecutor's Office;
 - In 9 cases, no pressing of criminal charges has been notified to the Police Headquarters;
 - Criminal charges were pressed in 15 cases, in 2 of which the defendants were found not guilty, in 1 of which an acquittal decision of the competent judicial council was issued and 12 of which are still pending;

(b) In the year 2002, 60 cases of alleged ill-treatment of persons were investigated. 23 of these cases concerned aliens and 4 of these concerned Roma. The results of the investigations were the following:

- (i) Disciplinary aspect:
 - Disciplinary penalties were imposed in 5 cases;
 - 49 cases were closed;
 - 6 cases are pending;

- (ii) Criminal aspect:
 - 27 cases did not have a criminal aspect;
 - 4 cases were closed by the competent Public Prosecutor's Office;
 - In 13 cases, no pressing of criminal charges has been notified to the Police Headquarters;
 - Criminal charges were pressed in 16 cases, in 1 of which the defendant was found not guilty and 15 of which are still pending;

(c) In the year 2003, 47 cases of alleged ill-treatment of persons were investigated. 12 of these cases concerned aliens and none of these concerned Roma. The results of the investigations were the following:

- (i) Disciplinary aspect:
 - Disciplinary penalties were imposed in 3 cases;
 - 12 cases were closed;
 - 32 cases are pending;
- (ii) Criminal aspect:
 - 19 cases did not have a criminal aspect;
 - 3 cases were closed by the competent Public Prosecutor's Office;
 - In 13 cases, no pressing of criminal charges has been notified to the Police Headquarters;
 - Criminal charges were pressed in 12 cases and they are all currently pending.

269. It should be noted that the Ministry of Public Order and the Police Headquarters have attributed great weight on the matter of protection of human rights, which is considered by the Leadership both of the Ministry and the Greek Police to be of extreme importance. The Disciplinary Law of the personnel of the Greek Police contains very strict provisions on the tackling of incidents of ill-treatment or degrading treatment. According to these provisions, the infliction of torture, any physical abuse or damage to the health, the use of psychological violence or any other act or conduct which entails a heavy offence of human dignity, during the fulfillment of a police officer's duties or outside that framework, constitute serious disciplinary offences and are punished by the disciplinary sanction of dismissal from the Force.

270. Every case of ill-treatment is investigated according to the Disciplinary Regulation of the police personnel. If disciplinary offences have been committed, the provided sanctions are imposed.

271. In such cases, the relevant files of the cases are transmitted to the competent Public Prosecutor's Authority for the pressing of criminal charges.

272. It is to be noted that all norms and principles of the European legal culture, which have been incorporated in the Greek national law (substantial and procedural criminal law), especially those referring to the grounds of justification, to imputability, to the presumption of innocence and to equity for the prosecuted persons, are also applied in disciplinary law.

273. It is to be stressed, however, that every possible effort is made in order to secure that all administrative investigations regarding complaints for ill-treatment of persons are conducted with the least possible delay, are thorough and unbiased.

274. It is true that the number of complaints for ill-treatment of citizens for the period 2001-2003 is not small in absolute numbers (164 cases). However, these cases reflect isolated incidents and in no way can the latter constitute a basis for maintaining that there is a general pattern of police ill-treatment in Greece.

275. The Ministry of Public Order and the Police Headquarters have repeatedly expressed their determination not to allow the development of a xenophobic environment or the expression of racist phenomena within the Greek Police Force and to control and monitor every illegal, irregular or indecent conduct of police officers. It is to be noted, however, that the investigations of the relevant incidents has so far proven that the latter did not have a racist or xenophobic motive.

276. In the light of the above, it is clear that complaints about racist prejudice of police officers against aliens and Roma are ill-founded. This is also corroborated by the fact that from the 164 complaints in the period 2001-2003, only 54 concerned aliens and only 11 Roma, while from the 66 cases of use of firearms by police officers in the period 2000-2003, only 27 concerned aliens and 5 Roma.

277. It is useful, finally, to refer to an extract from a recent circular of the Chief of the Greek Police, which epitomizes the position of the Greek Police on the issue of respect of our country's international obligations, especially as far as persons belonging to vulnerable groups are concerned: "The existing legal framework adequately protects the rights of detained persons; in particular, protection is enshrined by means of legal provisions of higher ranking, as per article 28 (1) of the Constitution (international conventions). Police officers are obliged to unequivocally respect the aforementioned provisions; for them, the treatment of detainees, in the small period of time they are kept by the police, represents a challenge to confirm their lawful behavior, the respect of the personality, the protection of the dignity and the guarantees of the detainees' rights. Police officers should, furthermore, be even more sensitive in case of detainees who are considered particularly vulnerable and whose rights need a more indicated protection. As such, should, in principle, be considered minors, sick persons, alcoholics and drug addicts, illiterate persons, political refugees, asylum seekers and aliens in general. By fully respecting the rights of every individual detained by the police and by treating this person in a

humane, impartial and lawful way, the police officer demonstrates that he or she has a complete professional training, ethics and personality, and establishes relations of reliability and mutual trust with the citizenry, while reconfirming the position of the State, which pays particular attention to the universal application of the measures aiming to allow detainees full use of their rights and to control on a permanent basis this application by the concerned services and their personnel”.

Article 8: Freedom from slavery, servitude and forced labor

Prohibition of slavery, servitude and forced labor

General framework

278. Article 22 of the Constitution establishes the right to work, the protection of which constitutes an obligation of the State. Any form of forced labor is prohibited by the Constitution. More specifically, article 22 (4) of the Constitution provides that “any form of compulsory work is prohibited. Special laws shall determine the requisition of personal services in case of war or mobilization or to face defense needs of the country or urgent social emergencies resulting from disasters or liable to endanger public health, as well as the contribution of personal work to local government agencies to satisfy local needs”.

279. Greece has also ratified the Slavery Convention (Law 4473/1930), as well as the Protocol Amending the Slavery Convention (Law 2965/1954), the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (legislative decree 1145/1972), the ILO Convention (No. 29) Concerning Forced Labor (Law 2079/1952) and the ILO Convention (No. 105) Concerning the Abolition of Forced Labor (legislative decree 4221/1961).

Labor conditions in correctional facilities

280. The average payment of working inmates is € 3 per day. The inmates work for 4 to 6 hours per day. All hygiene and security rules provided for by the labor legislation are also applied in the correctional facilities where inmates work. Furthermore, the Ministry of Justice insures all working inmates with the Social Security Foundation for accidents (medical care, accident allowance, disability pension).

281. On the terms of employment of inmates employed by private enterprises outside the correctional facilities the following apply:

282. The legislation in force for employees in general is to be taken into consideration when determining the remuneration for the work rendered in private enterprises outside the correctional facilities. One third of the remuneration of such inmates is paid to the State as participation to the living costs in the correctional facilities and is deposited to the account entitled “Inmates’ Work Funds”. This amount cannot in any case exceed the per day wage of an unspecialized worker (article 43 (2) of the Correctional Code). The labor legislation in force is applied as far as working time and social security is concerned.

Loss of unemployment benefits due to refusal of work

283. According to circular 59 (protocol nr. 78989/02-09-1976) “regarding the operation of Employment Offices”, every person who visits the Manpower Employment Organization (OAED) in search of employment is registered as unemployed if he or she is able to work and is ready to accept employment in accordance with his or her qualifications and skills.

284. After the registration, the OAED searches for any vacant places in the field of employment that the unemployed person wishes to work. If the unemployed person is receiving unemployment benefit, and if he or she refuses to work in a suitable position as advised by the Employment Service, then the latter Service immediately fills and forwards to the Benefits Service a relevant note, by which the latter is ordered to immediately cease payments of the benefit. The persons who were not hired for objective reasons are notified as soon as another opportunity comes up.

285. It should also be noted, that if the refusal of the unemployed to accept a position is due to the fact the latter does not correspond to the person’s qualifications, the payment of unemployment benefits is not interrupted. The employment offered must be ad hoc appropriate for the unemployed in question, meaning that the latter has the required physical or mental skills, that his or her health or moral are not endangered, that the remuneration is reasonable, that the employment does not constitute an impediment to his or her future evolution and that the labor is not be provided in a place that is objectively difficult to reach.

286. There is no time limit as regards the right of the unemployed to refuse employment that does not correspond to his or her qualifications.

287. In case the payment of unemployment benefits is interrupted due to refusal of the beneficiary to accept an employment offered, the interested party is entitled to appeal to the competent Committee of the Organization, and if such appeal is dismissed, he or she may present his or her case before the Board of Administration of the Organization.

Trafficking in human beings

288. Trafficking in human beings has taken on great proportions worldwide over the last twenty years. “Traditional” slave trade and slavery have evolved into a “modern” business, especially under the forms of compulsory labor and sexual exploitation. It is estimated that human trafficking constitutes the third largest “criminal business” after illicit trafficking of narcotics and arms.

289. Social exclusion, lack of knowledge of the language or economic destitution, among other social factors, make women, minors and aliens vulnerable to, and potential victims of, this abhorrent crime; a crime that has a severe impact on personal and physical dignity and integrity.

290. Greece, fully comprehending the problem of trafficking in human beings, as well as the fact that the problem is constantly growing, not only on national and European, but also on international level, has qualified it as a top and permanent priority problem, thus designing and applying action plans through the competent authorities and bodies.

291. The Ministry of Public Order has defined as one of its key priorities the tackling of trafficking in human beings for financial and sexual exploitation, through a process of setting targets, raising police personnel awareness, enhancing continuous training and implementing important activities by the Departments of the Greek Police.

292. The Greek Police cooperate with all other bodies involved, the IOM and NGOs in order to achieve the result sought, this being the rescue of the victims of human trafficking.

293. In order to confront these heinous criminal activities more effectively and ensure sufficient and comprehensive assistance to the victims, the Greek Parliament adopted Law 3064/2002 on "Combating trafficking in human beings, crimes against sexual freedom, child pornography and more generally on economic exploitation of sexual life and assistance to the victims thereof".

294. The new law provides for a more severe punishment of all contemporary forms of human trafficking - such as the sale of human organs, compulsory and deceitful exploitation of labor, economic exploitation of sexual life, recruitment of minors for the purpose of using them in armed conflicts - whereas special emphasis is given to the protection of minors, women and aliens. In addition to the above, the aforementioned law contains a special provision explicitly designed to confront the problem of child pornography, which has taken on disquieting dimensions through the expansion of the Internet. Severe penalties, in some cases even life imprisonment, are imposed on the perpetrators of the aforementioned crimes. The competent Public Prosecutor may prosecute the alleged perpetrators of the most important of the aforementioned crimes *proprio motu*. Article 8 of the Criminal Code is amended to enshrine the crimes of human trafficking and sexual abuse, so as for the perpetrators of such crimes to be prosecuted and punished, even if they have committed the aforementioned crimes in the territory of another country. The acceptance with intent of services of victims of human trafficking is criminalized.

295. Furthermore, article 12 of the aforementioned law provides for the protection and help to the victims of the crimes of servitude and human trafficking and the crimes against sexual freedom. This protection refers to life, physical integrity, personal and sexual freedom, if a serious threat is posed to the aforementioned rights. Shelter, food, medical care, psychological support and legal aid are provided to the victims of these crimes for as long as it may be deemed necessary. Furthermore, all juvenile victims are registered in educational and professional training programs.

296. By virtue of the said law, Presidential Decree 233/2003 was enacted, on the protection and assistance to victims of crimes provided for in articles 323A, 349, 351 and 351A of the Penal Code, in conformity with article 12 of Law 3064/2002.

297. According to the provisions of that PD:

- Greek citizens or aliens, who have suffered directly a prejudice on their physical integrity or their personal or sexual freedom or when these or their life are in serious jeopardy, are considered as victims of the crimes provided for in articles 323, 323A, 349, 351 and 351A of the Penal Code;

- For the purposes of the PD all State Agencies, as well as those of the wider public sector and of local government agencies that can provide protection and assistance, are considered to be “Agencies or Units for the Provision of Protection and Assistance”;
- If the victims have had recourse to the Agencies or Units for the Provision of Protection and Assistance, they are given protection and assistance regardless of whether criminal charges have already been pressed for the unlawful acts provided for in the above-mentioned articles;
- Protection is provided as long as there is still risk of life, physical integrity, personal and sexual freedom, whereas the provision of assistance continues for as long as it is deemed indispensable by the Agencies and Units for the Provision of Protection and Assistance;
- For the purpose of providing protection and assistance, the Agencies or Units in question are entitled to conclude the appropriate contracts with non-profit agencies, either of public or private law, as well as with non-governmental organizations active in this field;
- The security of the victims, as well as the security of the places where they live, is ensured by the adoption of appropriate measures. In parallel, assistance is also provided by the Greek Police;
- Victims who are under 18 years of age have access to those public schools that host special reception classes or sections or are implementing cross-cultural education programs; the victims who are up to 23 years of age are entitled to be admitted to the training programs implemented by the OAED, even when the total number of admissions foreseen for those programs has been covered;
- Immediate and free medical care by the services of the National Health System is provided to those victims who are not covered by any insurance;
- The Agencies and Units for the Provision of Protection and Assistance take the appropriate measures to secure legal assistance for the victims; they also see to it that interpretation service is provided when the victims do not speak Greek;
- A standing committee is provided for, to be presided over by the Secretary General for Welfare and composed of representatives of the appropriate Ministries; its mission is to coordinate all activities related to protection and assistance to the victims, to issue circular notes on all relevant questions that may arise, to gather statistical data and to suggest measures aimed at improving the provision of protection and assistance to the victims.

298. In order to provide information to the competent Police personnel and to ensure the uniform application of the new legislative framework, the victim identification procedure, the implementation of good practices and the cooperation with all bodies involved in the fight against trafficking, a circular was issued by the Chief of the Greek Police. This circular

establishes the provision of a special information sheet to women who may be victims of trafficking and financial or sexual exploitation, in order to assist the identification process. This sheet is available in 14 languages.

299. In parallel, a Task Force for Combating Human Trafficking (hereinafter: OKEA) was established in 2001 by virtue of a joint decision of the Minister of Interior, Public Administration and Decentralization and the Minister of Public Order. The Chief of the Greek Police is the president of the Task Force, whereas many high-ranking and specialized officers, scholars and representatives of the MIPAD, the International Organization for Migration and the General Secretariat for Equality participate as members. Since its inception, the OKEA has been involved in various activities, including:

- Preparing the legal framework (Law 3064/2002, Presidential Decree 233/2003);
- During the Greek Presidency of the European Union (first semester of 2003), OKEA promoted, in the field of Justice and Home Affairs, the adoption of the Brussels Declaration on Preventing and Combating Human Trafficking by the Council of Ministers of the EU (May 2003);
- Communications Strategy and Public Awareness:
 - Systematic dissemination of information through the media;
 - Participation of OKEA members in seminars and meetings in Greece and abroad;
 - Publication of a newsletter;
 - Exhibit, “Europe Against Human Trafficking” at the Cultural Center of the City of Athens (30 January -12 February).

300. OKEA has contributed to the mobilization of relevant NGOs and governmental agencies to take appropriate action in combating human trafficking, especially within the framework of the Greek Presidency of the EU. Combating human trafficking is a priority for all Greek Police services. The Police Headquarters is actively involved with the Department of Public Order, whose director is a member of the OKEA. Three officers have been assigned to deal specifically with issues of human trafficking and to provide guidance to the regional police services. Special anti-trafficking squads in the Public Order Divisions of Athens and Thessaloniki will start operations by the end of October 2003.

301. The next cycle of OKEA work is aimed at undertaking action in a more practical and dynamic manner, widening and strengthening cooperation with all bodies involved for the main purpose of identifying and providing assistance to as many victims as possible.

302. It is also to be noted that the phenomenon of trafficking in women and children is handled by the Public Security Division of the Greek Police Headquarters. This Service is also staffed with specialists (including women officers) in handling cases of human trafficking, who provide guidance to the regional operating Services.

303. As of 1.11.2003, special anti-trafficking teams having the necessary personnel and equipment operate within the specialized Vice Squads of the Security Divisions of Attica and Thessaloniki. Such special teams operate on a pilot basis and the results of their activity shall be assessed in due time in order to finalize their structure and decide on their expansion.

Results of police action against trafficking in human beings

304. In the period between 15.10.2002 and 31.10.2003, a total of 475 cases falling within the purview of anti-trafficking law 3064/2002 were investigated by the Police. Of the 703 individuals who were accused of involvement, 592 were arrested. Finally, a total of 195 women have been identified as victims of trafficking in human beings.

International cooperation

305. The Ministry of Public Order actively engages in international action, in cooperation with international and national organizations and bodies and participates in the joint combat against trafficking in human beings. The Greek Police attend a large number of meetings held by the United Nations, INTERPOL, EU, EUROPOL, SECI, the Adriatic and Ionian Sea Initiative, the Black Sea Initiative, etc.

Operation “Mirage”

306. In September 2002, operation “Mirage” was organized by SECI, and in particular by the Work Group for Human Trafficking and Clandestine Immigration, with the participation of SECI’s member states, international organizations and NGOs, for the purpose of defining the criminal groups involved in the trafficking in women, through common police investigations. As for the overall results of the operation, as processed and announced by SECI, there were 20.558 checks; 1738 women were investigated; 237 women were found to be victims of trafficking. “Mirage” operation was repeated in September 2003 in two stages. The overall results of the operation for all participants shall be announced by SECI. The results for Greece comprise 83 checks, investigation of 171 women and identification of 30 women as victims of trafficking.

Cross-border police cooperation

307. Regular bilateral meetings take place with neighboring countries, in order to improve, among other things, border controls for combating illegal immigration and human trafficking.

Police officers training

308. The subject of human trafficking is included in the curriculum of all levels of the Police Academy, as well as in post-graduate studies. The training is provided by University scholars and police officers. Police officers are encouraged to prepare their thesis on subjects related to human trafficking.

Exchange of information

309. Exchange of information on human trafficking issues is included in the cooperation of the Greek Police with international bodies, such as EUROPOL, INTERPOL and SECI. It is also included in bilateral agreements of police cooperation concluded between Greece and EU member countries as well as non-EU countries. Police liaison officers have already been posted in a number of foreign countries.

310. On a national level, the efforts of the Greek Police are focused on widening the sources of information and obtaining their systematic analysis, in order to combat human trafficking networks.

International Development Cooperation

311. The Greek Foreign Ministry attaches great importance to the support of the actions undertaken by NGOs in the fight against human trafficking. The setting up of a co-operative mechanism involving state authorities, countries of origin, international organizations and NGOs is a vital element in the overall strategy to combat the scourge of trafficking.

312. To this effect, the MFA, in particular the International Development Cooperation Agency, or Hellenic Aid, is implementing an action plan, which includes, among others, the following measures:

- The financing of programs of Greek NGOs to combat trafficking in the wider area of South Eastern Europe. Currently, the Ministry supports nine anti-trafficking projects throughout S-E Europe to the tune of € 1.1 million;
- The contribution to anti-trafficking Trust Funds and Task Forces in the framework of the Council of Europe, the Stability Pact, the OSCE and the IOM;
- The appointment of a desk officer responsible for the actions to combat trafficking and the setting up of a flexible and informal working group, responsible for monitoring developments and mainstreaming NGO and State action according to international standards and best practices, under the supervision of the Secretary General for International Economic Relations and Development Cooperation;
- The support of awareness-raising campaigns designed both by NGOs and state authorities aiming at sensitizing public opinion and demonstrating that victims of trafficking are denied basic human rights and suffer from severe ill-treatment, seriously affecting their physical integrity as well as their personal and sexual freedom;
- The organization of meetings with ambassadors of the main countries of origin of trafficked persons. Moreover, fieldwork visits to countries from which significant numbers of victims have come to Greece and discussions with the competent political authorities have also been scheduled, in order to jointly elaborate action and cooperation plans.

Article 9: Right to liberty and security of person

Constitutional framework and content of the right to liberty and security of person

313. The Greek Constitution guarantees the right to liberty and security of person in articles 5 (3) and 6. Article 5 (3), which, according to article 110 (1), cannot be subject to constitutional revision, provides that “personal liberty is inviolable. No person shall be prosecuted, arrested, imprisoned or otherwise confined, except when and as the law provides”. According to article 6 (1), “no person shall be arrested or imprisoned without a reasoned judicial warrant, which must be served at the moment of arrest or detention pending trial, except when caught in the act of committing a crime”.

314. The maximum duration of detention pending trial may not exceed a period of one year in the case of felonies or six months in the case of misdemeanors (article 6 (4) of the Constitution). According to the same article, in entirely exceptional cases, these time limits can be prolonged for 6 and 3 months respectively following a decision of the competent judicial council. The excess of the maximum duration of detention pending trial, by successively applying this measure for separate acts referring to the same case is prohibited (article 6 (4) of the Constitution, as revised in 2001). It is to be stressed that the provisions of the Greek Constitution are stricter and more specific than the relevant provisions of international human rights instruments.

315. According to article 20 (1) of the Greek Constitution “every person shall be entitled to receive legal protection by the courts [...]”. This right is understood to encompass the right to control by a court of the legality of the detention, irrespective of whether there is a detention pending trial, or any other kind of detention. Moreover, according to article 8 of the Constitution, “no person shall be deprived of the judge assigned to him or her by law against his or her will. Judicial committees or extraordinary courts, under any name whatsoever shall not be constituted”.

316. In criminal cases, any person arrested must be brought before the competent investigating judge within 24 hours from the time of arrest at the latest. If the arrest took place outside the seat of the investigating judge, the arrested person must be brought before the latter in the shortest time possible. The investigating judge is obliged to either release the arrested person or to issue a warrant for his or her detention within 3 days from the time of the appearance of the arrested person before him or her. This time limit may be prolonged for 2 days if the arrested person so requests, or in cases of *force majeure*, confirmed by a decision of the competent judicial council. After the lapse of the aforementioned time limits, any warden or other civil servant or military officer in charge of the detention of the arrested person must release him or her immediately, or face relevant criminal charges, as well as undertake reparation for the injury suffered by the arrested person. The aforementioned procedure is provided for in paragraphs 2 and 3 of article 6 of the Constitution and regulated in detail by various relevant articles of the Code of Criminal Procedure (hereinafter: CCP).

Beneficiaries of the right to liberty and security of person

317. Beneficiaries of the right to liberty and security of person are only natural persons irrespective of nationality. The protection of the right to liberty and security of person is absolute, irrespective of the beneficiary's gender, race, nationality, language, and religious or political beliefs, as set out in article 5 (2) of the Greek Constitution.

Cases of permissible deprivation of liberty - effective remedies

Arrest

318. Except of the cases of article 275 CCP, (offender caught "in the act") no person shall be arrested without a specially and sufficiently reasoned warrant of the investigating judge or the judicial council, which must be served at the moment of arrest. An arrest may take place only in those cases where detention pending trial is permitted (art. 276 (2) CCP). In certain cases, the CCP provides for the violent transfer of the accused or a witness to the court. The detention of the aforementioned persons may not extend over the period of time deemed absolutely necessary for the provision of any necessary information. Finally, article 95 (1) (b) of Presidential Decree 141/1991 authorizes the Police to invite or transfer for examination to a Police Headquarters any person, against which serious suspicions do exist, that the latter has participated in a criminal offence. If the prerequisites of arrest, as set out in article 275 CCP, are not met, then that person has to be set free by the police officers.

Detention pending trial

319. Detention pending trial constitutes an exceptional measure, to be ordered by a magistrate, as a last resort, only if the latter concludes that the imposition of restrictive conditions shall turn out to be unfruitful. According to article 282 (3) CCP, detention pending trial may be imposed, only when the following prerequisites are met:

- There are serious indications of guilt against the accused;
- An investigation for a felony is being conducted;
- Detention pending trial is deemed as absolutely necessary, in order to assure that the person, on which this measure is imposed, will be present at any time and participate in the relevant acts of investigation or the hearings of the case before the court (article 296 CCP);
- Detention pending trial may be ordered instead of restrictive conditions against a person, only in the case where the latter has no known residence in the country, or has made preparations to facilitate his or her absconding, or has been a fugitive in the past or has been declared guilty for escape from prison or for breach of restrictions with respect to the place or residence or found guilty of an escapade or a violation of restrictive terms, or, if set free, it is estimated that he or she may commit further crimes; this estimate must be the result of reasoning based on facts concerning the life, so far, of the accused or on the special circumstances under which the act he or she is charged has been committed. The gravity of an offense itself does not justify the imposition of detention pending trial (article 282 (3) CCP);

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— According to article 282 (4), the restrictive conditions imposed on any accused person for a felony or a misdemeanor may be replaced by an order for pre-trial detention, if the conditions are violated. Still, this replacement has to meet the criteria set out by the provision in question.

320. The investigating judge is competent to order the provisional detention of the accused. But the judge shall receive also the agreement of the Public Prosecutor for it (art. 283 (1) CCP). In case of disagreement between these two judicial officials, the competent judicial council decides. It should be noted that the Public Prosecutor, before expressing his or her opinion should hear the accused and his/her counsel (article 283 (1) CCP).

Effective remedies

Appeal against the warrant ordering the detention pending trial and the order of the investigating judge imposing restrictive conditions (article 285 CCP)

321. The accused may appeal against the aforementioned orders within a period of 5 days from the beginning of detention pending trial before the competent judicial council. The judicial council may lift detention, or replace the latter with restrictive conditions, or replace the existing restrictive conditions. If the initial warrant has been issued following a decision of the judicial council, no remedy is available.

Rescission or replacement of detention pending trial or restrictive conditions (article 286 CCP)

322. If during the investigation the investigating judge finds that the imposition of detention pending trial is no longer justified, he or she may either rescind those measures or apply for the rescission before the judicial council. The accused may lodge an appeal against the decision of the latter before a judicial council for Appeals.

323. The provisionally detained may apply to the investigating judge for the rescission of the measure or the replacement of the detention pending trial with restrictive conditions. The former may lodge an appeal against the order of the investigating judge in a period of 5 days, following the notification of the order.

324. The investigating judge, following the public prosecutor's written opinion, may replace detention pending trial with restrictive conditions, or the latter with temporary detention, issuing an arrest warrant. The public prosecutor and the accused may lodge an appeal against the decision before a judicial council in a period of 10 days.

Duration of the detention pending trial (article 287 CCP)

325. If the detention pending trial has lasted for 6 months, the judicial council may order for the release of the accused or for the prolongation of the detention pending trial. The accused may file a memorandum expressing his or her opinion; that memorandum must be duly notified to the judicial council by the direction of the prison. The judicial council may summon the accused to appear before the judicial council in person or by his or her legal council, in order to give his or her opinion.

***Replacement of detention pending trial after a decision of the judicial council
(article 291 CCP)***

326. The defendant may request the competent judicial council or the court to replace detention pending trial with restrictive conditions, in case he or she is still remanded even after his or her case has been referred to the competent court. The relevant application is considered as admissible, even if the relevant decision of the judicial council or the Court has not been enforced.

Serving a penalty of deprivation of liberty - security measures

Deprivation of liberty as a criminal sanction

327. *Confinement in a penitentiary* is either incarceration for life or temporary for a period between 5 years or 20 years (article 52 PC). Article 105 PC provides for the granting of parole. Restriction of liberty in a penitentiary for an indeterminate period is provided for habitual recidivists. The judge shall only fix the lower limit of the period of confinement (articles 90-91 PC). However, the law fixes the maximum limit of the said sanction (article 91 (3) PC). It is estimated that in practice this kind of custodial sentence has never been imposed.

328. *Imprisonment* is the main custodial sanction and the most frequently imposed one, either as such or as a suspended or as a converted one into other non-custodial sanctions. The maximum term is 5 years, the minimum 10 days (article 53 PC).

329. According to article 127 PC, as amended by article 1 (8) of Law 3189/2003, if the court, investigating the circumstances under which the offense was committed and the personality of the juvenile offender, if the latter has at least completed his or her 13th year of age, decides that the imposition of a criminal sanction is necessary in order to deter him or her for committing further offenses, it may convict him or her to *a restriction of their liberty in a special institution for the detention of minors*. The decision of the court fixes the exact period of this restriction, which may not exceed 20 years and it may not be less than 5 years, if the law provides that the offense in question is to be punished by a penalty of deprivation of liberty for a term not less than 10 years. In all other cases, the duration of the restriction may not exceed 10 years and it may not be less than 6 months (article 54 PC as amended by article 2 (3) of Law 3189/2003).

330. *Restriction of liberty in special institutions for offenders with limited imputability* is provided for in article 37 PC. These offenders will be punished with a mitigated penalty (art. 36 PC). Whenever a condition of limited imputability makes special treatment or care necessary, the imposed punishment or confinement shall be executed in a special psychiatric institution or wing of the penitentiary (art. 37 PC).

331. *Restriction of liberty in a psychiatric institution* is also imposed to dangerous offenders with a limited imputability (articles 38 et seq. PC). The maximum term is provided for in article 39 (3) of the PC.

332. *Detention* is the less severe type of custodial sentence. Detention is for at least one day and shall not exceed one month in duration, unless the Penal Code provides otherwise (article 55 PC). It is rarely served since it is usually converted into a pecuniary sentence.

Security measures

333. Security measures are provided, irrespective of the imputability of the defendant, in order to protect the public order, either as substitutes for main penalties for persons who are not criminally responsible or for persons criminally responsible in addition to penalties. Security measures involving a deprivation of liberty are the following:

- Custody of offenders in a state therapeutic institution. This measure may be imposed to convicts who, due to a mental illness of deaf-muteness, cannot be punished for a criminal offense they have committed but who are dangerous to public safety (article 69 PC);
- Commitment of alcoholics or drug addicts into a therapeutic institution (article 71 PC);
- Referral to a workhouse of offenders whose acts may be attributed to laziness or to a tendency towards vagrancy and irregular life (article 72 PC). This provision is not applied in practice.

Effective remedies

334. (a) *Custody of unaccountable offenders.* According to article 70 (3) PC, the competent Misdemeanors Court shall decide whether the unaccountable offender shall remain in custody every three years. The same court may order the release of the offender at any time after the filing of an application to this effect by the Public Prosecutor or the Director of the correctional facility.

335. (b) *Commitment of alcoholics or drug addicts into a therapeutic institution.* The competent Misdemeanors Court of the district of the therapeutic institution may, following an application by the Director of the latter, order the release of the detained person even before the exhaustion of the two-year term (article 71 (2) PC).

336. (c) *Referral to a workhouse.* The competent Misdemeanors Court of the district of the workhouse shall determine, annually, after the first year of confinement, whether the detained person shall be released, following an application to that effect of the Public Prosecutor or of the Director of the workhouse (article 72 (3) PC).

337. On 19 June 2003, the NCHR proposed to the Ministry of Justice a series of amendments of criminal law concerning the enhancement of the protection of the rights of mentally disabled persons who are subject to criminal security measures. The said report focused, *inter alia*, on the need to strengthen the system of judicial guarantees afforded to the abovementioned persons.

Reformatory and therapeutic measures for juvenile offenders

338. The placement of a juvenile offender in a suitable state, municipal, communal or private institution is one of the reformatory measures described in article 122 PC. The maximum duration of this placement is fixed in the relevant decision of the court. Furthermore, according to article 123 PC (as amended by article 1 (4) of Law 3189/2003), if the situation of the juvenile offender requires special treatment, especially if he or she suffers from a mental disease or other mental instability, or from a disease or situation that creates a severe physical dysfunction, or if he or she has the habit of abusing alcohol or narcotic substances of which he or she cannot be redeemed by him- or herself, or if he or she is mentally retarded, the court may commit the offender to a therapeutic or other suitable institution.

Effective remedies

339. According to article 124 PC (as replaced by article 1 (5) of Law 3189/2003), the court that tried the case, may at any time replace the reformatory measures it imposed with other measures, if it deems it necessary. If the measures have achieved their objective, the court may recall them. The court may order the same for therapeutic measures, following an expert opinion by a specialized team of doctors, psychologists and social workers. The existence of the prerequisites for the replacement or recall of the reformatory or therapeutic measures is examined by the court at the latest a year after they were imposed. The reformatory measures imposed by the court cease immediately when the juvenile offender reaches the age of 18. The court may extend the measures by a specially reasoned decision until the offender has reached the age of 21. The therapeutic measures may be extended until the juvenile offender has reached the age of 21, following an expert opinion by a specialized team of doctors, psychologists and social workers (article 125 PC, as replaced by article 1 (6) of Law 3189/2003).

Personal detention for debts to the State

340. According to article 4 (5) of the Constitution, “all Greek citizens contribute without discrimination to public charges, in proportion to their means”.

341. The institution of personal detention for debts to the State is provided in order to secure the fulfillment and observation of the aforementioned fundamental obligation of the Greek citizens. The relevant procedure is prescribed in the new Code of Administrative Procedure (hereinafter: CAP, Law 2717/1999).

342. All disputes that come up during the collection of public income, which takes place in accordance with the provisions of the Code for the Collection of Public Income (hereinafter: CCPI), fall within the scope of the provision of the CAP, unless the said income refers to claims of private law.

343. Personal detention is ordered by a competent court, following an application by the State (article 231 (1) CAP).

344. Article 234 poses important restrictions on the adoption of the said measure, in particular as regards the amount of the debt to be collected and the duration of the detention, which may not in any case exceed one year.

345. Article 236 prescribes the strict observance of the principle of proportionality regarding the adoption of the said measure. More specifically, the article establishes the rule that the competent court may order personal detention only if it deems that this measure is necessary and suitable to bring about the payment of the debt, as well as that the said measure is the only adequate means of bringing about the collection of the money for the satisfaction of the relevant claim.

346. The Grand Chamber of the CoS found that the measure of personal detention is to be adopted only in connection with claims of the State, and not in connection with claims of other public law entities, such as the Social Security Foundation.¹⁹ This conclusion stems from the wording of the relevant provisions of the CAP, which are to be construed narrowly, under the light of article 5 (3) of the Constitution and article 7 of the ECHR, since the provisions of the CAP entail the deprivation of the individual right of personal freedom for the debtors who are to be subjected to the measure of personal detention.

Effective remedies

347. This measure of deprivation of personal freedom is followed by a series of judicial guarantees. It is to be noted that, according to article 231 CAP, the adoption of the measure is ordered by a judicial and not an administrative authority. The detained person may submit:

- An application for his or her release in case the amount of the debt (together with the interest due and the enforcement expenses) has been paid to the competent authority, multilaterally netted or deposited to the Bails and Loans Fund. The trial is set on a date that may not be less than two or more than four days away from the day of submission of the application (article 238 CAP);
- An application for the temporary suspension of the personal detention (article 239 CAP);
- An application to be remanded in another facility or to be released on health grounds (article 240 CAP).

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348. According to article 242 CAP, all decisions regarding personal detention are subject to the exercise of legal remedies before the competent administrative courts. The time limit for the exercise, as well as the exercise, of most remedies leads to the suspension of the decision. However, the competent court may declare its decision as provisionally enforceable.

349. The arrested person may, before being confined, express his or her objections as to the legality of his or her arrest, or he or she may claim, after the hearing on the application for personal detention, that his or her debt has been covered. In that case, the arrested person must be immediately brought before the competent President of the Court of First Instance, who immediately decides on the expressed objections. If these are sustained, the objector is immediately released. If these are overruled, the objector is imprisoned. The aforementioned decision is not subject to any legal remedy (article 243 CAP).

Personal detention to enforce compliance with legal obligations

350. (a) Articles 914-938 of the Civil Code provide for the obligation to pay compensation for the commission of an unlawful act (tort or delict). According to article 1047 (1) of the Code of Civil Procedure (hereinafter: CCivP), personal detention may be ordered to enforce compliance with claims stemming from such acts. Everything stated in this Report under article 11 of the Covenant apply in this case.

351. (b) Furthermore, personal detention may be ordered in cases of non-compliance with a legal obligation to pay alimony, an obligation established by law and acknowledged by a judicial decision.

Personal detention as a procedural means of enforcement

352. Article 946 CCivP provides that, if the debtor does not comply with his or her obligation to perform an act which cannot be performed by a third party and the performance of which depends solely on the debtor's will, the court may convict him or her to perform the said act, and, in case the debtor doesn't comply with the court's decision, the court may *proprio motu* impose on him or her a pecuniary penalty of up to € 6,000 approximately to be paid to the claimant and personal detention for up to one year.

353. A similar provision on the non-compliance with a judicial order not to perform or not to oppose an act is contained in article 947 CCivP.

354. The judicial decision ordering the handing over of a child, or regulating the right of personal communication of the parent with his or her child, may threaten personal detention in case any of the parties does not comply with it (article 950 CCivP).

355. With regard to detention for commercial debts and to the relevant remedies, see under article 11 of the Covenant.

Involuntary hospitalization of mental patients

356. Section 6 of Law 2071/1992 ("Modernization and Organization of the Health System") provides for the prerequisites and guarantees regarding involuntary hospitalization of mental patients in psychiatric units.

357. According to article 95 (2) of the same law, the prerequisites for involuntary hospitalization are the following:

- The patient must suffer from a mental disorder;
- The patient must not be in a position to judge what is in the best interest of his or her health;
- The lack of hospitalization must have as a consequence, either the exclusion of his or her cure, or the deterioration of his or her health; or
- The hospitalization of the mental patient must be indispensable in order to deter acts of violence of the patient against him- or herself or others.

358. It should be mentioned that paragraph 3 of the aforementioned article provides that a person's inability or refusal to conform to the prevalent social, moral, or political values do not constitute *per se* a mental disorder.

359. Article 96 of the aforementioned law describes in detail the procedure of admission of a patient into a mental health unit. Only the husband or wife, close relatives, the caretaker or a judicially appointed guardian of a patient may request the latter person's involuntary hospitalization. Lacking a request from the aforementioned persons, the competent Public Prosecutor may, in cases of emergency, request the involuntary hospitalization of a patient.

360. The request must be addressed to the competent judicial official (Public Prosecutor), while expert opinions in writing of at least two psychiatrists must be attached to the request.

361. The Public Prosecutor shall order the transfer of the patient to a suitable mental health unit, after he or she has determined that the legal prerequisites are fulfilled, and only in case the two separate expert opinions on the need for involuntary hospitalization concur.

362. Article 98 provides that the conditions of the hospitalization must serve the needs of the treatment. Furthermore, the personality of the patient must be respected, while the limitations to his or her personal freedom must be determined solely on the basis of his or her health condition and the needs of the treatment.

363. According to article 99, involuntary hospitalization is ceased when the aforementioned prerequisites are no longer fulfilled. The patient is immediately released. However, the duration of involuntary hospitalization may not exceed six months; only in extraordinary circumstances hospitalization may be prolonged, with the concurring opinion of a committee of three psychiatrists.

Effective remedies

364. Law 2071/1992 establishes a system of judicial control of the legality of involuntary hospitalization. This system guarantees the fulfillment of all legal prerequisites for hospitalization. It also prescribes respect for the interested party's rights and vests him or her with the right to be heard and to exercise legal remedies. More specifically:

365. Within three days from the time the competent Public Prosecutor ordered the transfer of the patient, the former requests the Three-Member Court of First Instance to decide on the issue. The hearing is held within 10 days of the Public Prosecutor's request. The Court may decide to conduct a closed-door hearing, in order to protect the patient's private life. The patient is notified at least 48 hours before the hearing. The patient may be represented by a lawyer and a psychiatrist as an expert counsel (article 96 (6)). The court may order the examination of patient by another psychiatrist, if it deems that the expert opinions submitted dissent or are not convincing or that the scientific director of the hospital expresses an opinion dissenting from the expert opinions. The decision of the Court of First Instance must be specifically reasoned (article 96 (8)).

366. According to article 97 of the aforementioned law, the decision of the Court of First Instance is subject to appeal or reopening of default, in accordance with the provisions of the Code of Civil Procedure, within a two-months time limit from the publication of the decision. The appeal is tried by the Three-Member Court of Appeals within 15 days from its submission. The hearing is not held publicly. The Appellate Court may request an expert opinion by another psychiatrist or whatever it deems necessary.

367. Finally, according to article 99 (3), the patient, his or her relatives or his or her legal guardian may request the cease of involuntary hospitalization by submitting an application to that effect to the Public Prosecutor. The Prosecutor shall immediately submit the application to the Court of First Instance. If the Court of First Instance does not accept the application, a new application can be submitted after three months.

Detention of aliens pending deportation

368. See this Report under article 13 of the Covenant.

369. With regard to asylum seekers in detention, it is to be noted that, in order to ensure the effective protection of refugees, orders have been issued by the Aliens' Division of the Greek Police Headquarters to all Police Departments for the unswerving application of the procedures provided in the legal framework on asylum, which safeguard the rights of asylum seekers and the unhindered submission-filing of applications for asylum. Detained asylum seekers are fully informed of the reasons of their detention, as well as of all rights they may exercise during such detention, in particular the right to communication (in particular with the UNHCR and other international organizations, the Greek Council for Refugees and other NGOs active in the field of human rights and associated with the UNHCR) and legal counsel. In all cases, applications for asylum are reviewed on the basis of their merits and all safeguards are assured for asylum seekers. During the time required to complete asylum procedures, no asylum seeker is expelled or returned.

The right to compensation for illegal detention

370. Article 7 (4) of the Constitution provides that "the conditions under which the State, following a judicial decision, shall indemnify persons unjustly or illegally convicted, detained pending trial, or otherwise deprived of their personal liberty, shall be provided by law". It is fact that the courts applied the relevant provisions of the CCP in a rather restrictive manner, and the claims of the interested parties were denied in the majority of the cases. The competent criminal courts had the tendency to adjudicate that the person who was convicted or temporarily detained had contributed, through his or her own serious negligence, to him or her being detained. That led to a denial of compensation. Furthermore, the criminal courts had the tendency to obstruct the right of the interested person to be heard on the issue. In parallel, the relevant decisions were not sufficiently reasoned in many cases. The ECtHR found in a number of cases that the relevant provisions of articles 5 (5) and 6 (1) of the ECHR had been violated.²⁰

371. As a response to the aforementioned jurisprudence, the Parliament adopted article 26 of Law 2915/2001, which amended articles 533-545 of the CCP with a view to rendering the system for the compensation of illegally detained persons more effective. This new legislation

provides that compensation cannot be denied unless the interested party contributed with intent to him or her being detained. Furthermore, the right to a prior hearing is safeguarded and a reasonable threshold of compensation is set. According to article 543 CCP, the relative provisions apply also to aliens and to stateless persons, without further prerequisites. The preexisting formulation of the article required the existence of reciprocity.

Article 10: Humane treatment of persons deprived of liberty

Fundamental rights of imprisoned persons

372. The rights of imprisoned persons are regulated by the Correctional Code (hereinafter: CorrC), which was ratified by Law 2776/1999. The Explanatory Report of the Code provides that “any penalty of deprivation of liberty shall be served within the framework of the provisions of the Constitution, of international conventions ... and of other international instruments which enjoy general recognition, such as the European minimal rules for the treatment of inmates [adopted in the framework of the Council of Europe] of 1973 and 1987”.

373. The safeguard of human dignity and the promotion of self-respect and the feeling of social responsibility of imprisoned persons constitute basic principles of the Correctional Code. The control of the legality of measures concerning the treatment of prisoners is exercised by the competent judicial official and by the Court for the Enforcement of Penalties (article 2 (1) and (2) CorrC). The principle of equal treatment of prisoners and of the prohibition of discrimination is established expressly in article 3 CorrC.

374. It is noted that prisoners do not have any other obligations and are not subject to any other restrictions of their rights, other than those provided for in the Correctional Code. The only right that is restricted during the serving of the penalty is the right to personal freedom (article 4 (1) CorrC). The measures for guarding and securing the normal operation of the correctional facilities do not exclude the exercise of constitutionally protected civil and political rights of the detainees (article 7 CorrC).

375. More specifically, prisoners enjoy the following rights:

- The CorrC guarantees to all prisoners the constitutionally protected right to the free development of their personality (article 4 (2)), as well as the right to vote (article 5);
- It also provides that, in case of a wrongful act against a prisoner or in case of an illegal order, the latter has the right to submit a written report to the Prison Board, if the CorrC does not provide for the exercise of any other legal remedy. The written report shall remain confidential, whereas the prisoner has the right to have his or her report examined in the second degree by the Court for the Enforcement of Penalties. The latter shall lift the results of the wrongful act, if it finds that the report is well founded in law and in fact. The competent authority of the Ministry of Justice shall recall the wrongful act and satisfy the prisoner’s request (article 6 (2) CorrC);

- The CorrC establishes also the obligation of the direction of the correctional facility to transmit, within three months, every report or letter of the prisoner which is addressed to a public authority or an international organization, without taking knowledge of its content. The direction of the correctional facility is obliged to record every such action in a special file (article 6 (3));
- Other provisions of the CorrC safeguard the personal hygiene of prisoners (article 25 (1)), the sanitary control of all detention facilities (article 26 (1)), as well as the cleanness of the detainees' mattresses, sheets, clothes and towels (article 33);
- The director of the facility must ensure the provision of medical and health care to the detainees. The level and quality of care shall be similar to that of the outside community. In that framework, every detainee receives medical screening on admission to the facility and every six months. A personal health file (card) is kept for every prisoner. All data of medical or health interest are recorded in the said file, which accompanies the prisoner whenever he or she is transferred;
- Prisoners who become ill during their detention, as well as those suffering from acute mental health problems, are admitted to the infirmary or to a special section of the facility. If the circumstances so require, in case their treatment is not possible in the health-care services of the facilities, the patients are transferred on a case-by-case basis to the general hospitals;
- The diet of the prisoners is determined by the doctor of the facility in cooperation with the Prison Board on a weekly basis. Special diet programs are provided for prisoners or groups of prisoners according to their state of health or their religious beliefs;
- At least one hour per day is allocated to prisoners, in order for them to walk or to otherwise work out. This provision aims at preserving the physical and mental health of the detainees;
- Every prisoner has the right to receive information through newspapers, magazines, and radio and television broadcasts. Lectures and group discussions are organized in the correctional facilities, while prisoners have the possibility of educating themselves through the lending libraries that operate in the correctional facilities;
- All detainees, irrespective of their nationality, enjoy the constitutionally protected freedom of religion without discrimination;
- The work provided by prisoners does not have the character of punishment. Prisoners who express a wish to that effect are enlisted in programs of vocational education and training. Prisoners may be employed in auxiliary jobs. Agricultural and industrial labor units operate in the correctional facilities. A prisoner may be self-employed following a relevant authorization by the Prison Board. Prisoners may work outside the correctional facility in agricultural or industrial units under the supervision of the direction of the facility. The detainees providing any form of work, or participating in training programs may qualify for a reduction of their penalty;

- Every prisoner has the right to be visited at least once a week by relatives (up to the fourth degree), whereas the persons detained pending trial may be visited at least twice a week. The visits by spouses and children are entertained in special rooms. In case of prohibition of visits, every prisoner may have recourse to the competent judicial official;
- Every prisoner has the right to communicate by phone, as well as by telegrams and letters without restrictions as to their number. Along the same lines, those detained pending trial have the right to communicate with their lawyers. The content of the communication shall not be subjected to control, except in cases of national security or of need to assert the commission of crimes of particular gravity. In the latter cases the control shall take place in accordance with the guarantees provided by law. In all other cases, telephone calls take place in rooms that are only visually controlled, while the letters are opened before the inmate without their content being read;
- Prisoners have the right, under certain preconditions, to obtain regular, non-regular and educational leaves, which count against their allotted time of sentence;
- Disciplinary sanctions may be imposed only for the commission of disciplinary offenses that are described in the provisions of the Correctional Code. The disciplinary sanctions which correspond to disciplinary offences are: (a) confinement in a detention cell, (b) transfer to another correctional facility, (c) penalty points (which are considered for the assessment of the conduct of the detainee in cases of conditional release, leave and favorable calculation of sentence time). In any case, however, no disciplinary penalty may be enacted or imposed, if that penalty constitutes torture or physical abuse, or if it results in health damage or psychological violence (article 66 (2) CorrC);
- Taking into account the fact that nearly 40% of the inmates of Greek prisons are aliens, the Ministry of Justice has published a leaflet in nine foreign languages, in order to inform alien inmates of their rights and obligations. Furthermore, all inmates are informed, in a language they understand, of the provisions of the Correctional Code and of the Internal Rules of Operation of the correctional facility;
- The new Correctional Code contains detailed provisions regarding the specifications for the buildings that will be used as correctional facilities. The allocation of a second inmate to a personal cell is allowed only in exceptional cases and for a limited time. Mothers that are accompanied by their babies are held in personal cells.

376. A number of organs are vested with the power to monitor the living conditions of the detainees in the correctional facilities, such as:

- The Central Prison Board (hereinafter: CPB), which, among others, is vested with the power to propose to the Minister of Justice the general correctional policy and to make proposals on the anti-criminal policy of the country, whereas it also proposes measures for the education and training of the correctional personnel. The CPB also monitors the implementation of employment, educational and training programs for the detainees;

- The Prison Board, which, among others, decides on the organization of educational or other activities (article 34 (1)), organizes lectures (article 37 (2)), organizes and realizes events for the entertainment of the detainees (article 38 (2)), takes care for the employment of detainees after a request by public or private law entities (article 41 (5)), allows the visits of persons other than the prisoner's relatives (such as members of scientific, religious or cultural organizations, article 52(2)), adopts the necessary security or protective isolation measures in cases of suicide attempts, contagious diseases or mental disorders or reactions as a result of detention and after the submission of an expert opinion of a doctor, without those measures constituting punishment (article 65 (3)). In case of protective isolation, the isolated detainee is under daily medical supervision;
- The Central Transfer Committee which handles transfers of prisoners in accordance with the prerequisites set forth in article 9 (2) of the Correctional Code.

Inspection of correctional facilities - guarantees for the respect of detainees' rights

377. Law 3090/2002 established the "Body for the Inspection and Monitoring of Correctional Facilities". This is a special agency, which reports directly to the General Secretary of the Ministry of Justice. Head of the Body is a retired member of the judiciary.

378. The CPB proposes the adoption of measures for the improvement of the conditions of operation of the correctional facilities and for the exercise of all prisoners' rights without any impediment (article 8 (3) (a)). It also drafts the rules of operation of all correctional facilities and then submits them to the Minister of Justice for approval. These are drafted on the basis of a proposal by the competent Prison Board (article 8 (3)(b)).

379. Furthermore, the directors of the correctional facilities are obliged to submit annually a report on the operation of the facility, as well as relevant proposals (article 83 (1) CorrC). In addition, the director of every correctional facility is obliged to daily control and monitor the quality and the general condition of the food provided. During the control, a doctor appointed by the local Medical Board may be present.

380. At the same time, the institution of judicial control, as described in article 572 (1) CCP, is retained. This control is exercised by the "Public Prosecutor for the execution of sentence", i.e. the Public Prosecutor at the Misdemeanor Court in the area of which a particular prison is situated, as well as by the "Court for the execution of sentence", i.e. the competent *ratione loci* Three-Member Misdemeanor Court.

381. In the four major prisons of the country, a deputy Public Prosecutor at the Court of Appeal exercises the above competence, assisted by a Public Prosecutor at the Misdemeanor Court, who is assigned to the said prisons and is relieved from all his or her other duties.

382. The Public Prosecutor controls and monitors: (a) the living conditions, (b) the implementation of the provisions of the Correctional Code, (c) the respect of the rights of prisoners, (d) the prevention of any inhuman treatment. He or she shall visit the prison at least once a week. During these visits, the Public Prosecutor meets with inmates who have requested

a hearing (article 572 (2) CCP). The control of the correctional facility by the Public Prosecutor aims, among others, at ensuring that the treatment of the detainees is equal and humane, without discrimination on the basis of race, color, gender, language, religion, nationality or social origin or discrimination on the basis of beliefs (article 3 (1) CorrC).

383. The competent Public Prosecutor is the chairperson of the Disciplinary Council, which awards rewards to the detainees and imposes disciplinary penalties.

384. If it has been ascertained that the rights of prisoners have been violated, or that a wrongful act against an inmate has been committed, the Public Prosecutor is obliged to report in writing every relevant incident. If the said incident constitutes a disciplinary offence, the Prosecutor is obliged to report it to the Ministry of Justice, whereas if the said incident constitutes a criminal offence, the report is to be addressed to the Prosecutor of the Misdemeanor Court, in order for disciplinary or criminal prosecution to commence. It is also to be noted that in case of disciplinary offences of personnel of correctional facilities, both the Minister of Justice and the General Secretary of the Ministry may request a preliminary disciplinary investigation by the competent Public Prosecutor.

Training of correctional personnel

385. The training of the personnel is organized by the Ministry of Justice. The CPB proposes the adoption of measures regarding education and training of the personnel. Basic training takes place in the Correctional Personnel School, immediately after the new officers have been hired. The completion of the basic training constitutes a prerequisite in order for the newly hired officers to attain permanent status. The officers also have access to the permanent training program of the Institute for Permanent Education.

386. During their theoretical and practical training, the correctional officers acquire knowledge on a series of subjects regarding: (a) the Correctional Code and the correctional treatment of juveniles, (b) the duties of the correctional personnel, (c) the relevant instruments of the United Nations and the Council of Europe, as well as the international protection of human rights in general, (d) elements of psychology (detainee psychology, psychology of offenders and delinquent persons, psychology of addicted persons, psychology of the correctional personnel), (e) detainee hygiene and detention facilities sanitation, (f) alternative forms of serving sentences, (g) methods of dispute resolution within the correctional facility, (h) first-aid, (i) mutiny and riot control.

Separation of persons detained pending trial from convicts

387. Greece has the following types of correctional facilities: judicial prisons, closed prisons, therapeutic centers, special institutions for the detention of minors and agricultural prisons. Persons detained pending trial, and convicts serving a term of no more than five years are held in judicial prisons, while convicts serving terms of more than five years are held in closed prisons. However, new correctional facilities are currently under construction. The separation of persons detained pending trial from convicts will be possible in these new facilities.

Separation of juvenile offenders from adults

388. According to article 121 (1) PC, as amended by Law 3189/2003, as “minors” are qualified persons between the ages of 8 and 18 (completed) at the time an offense has been committed. According to the same law, minors who have completed their 8th, but not their 13th year of age cannot be held criminally responsible for their actions. Minors who have completed their 13th year of age can be held criminally responsible. The latter may be sentenced to a penalty involving deprivation of their liberty, which is served in a special institution for the detention of minors; the competent court fixes the exact period for the above deprivation of liberty.

389. For more details on this issue, see *supra*, under article 9 of the Covenant.

390. According to article 12 CorrC, detainees between the ages of 13 and 21 are considered as juvenile detainees. Juvenile detainees are allowed to remain in the special juvenile detention facilities or sections until they have reached their 25th year of age, and if that is considered necessary in order for the educational or professional programs they attend to be completed. However, some juvenile detainees over the age of 18 may be transferred and detained in adult correctional facilities, if there are serious reasons for such a transfer (article 12 (3)).

391. A Juvenile Protection Society operates in the seat of every Court of First Instance. These Societies are public law entities, supervised by the Ministry of Justice. Their main aim is to actively contribute to the prevention of juvenile criminality and to provide material and social aid to juveniles to whom reformatory measures have been imposed or to juveniles released from a special juvenile detention or to those facing pressing difficulties of social adaptation (articles 18 of Law 2298/1995 and 13 of Law 2331/1995).

Social reintegration of detainees - alternative penalties

392. There has been a continuing trend away from custody towards pecuniary penalties and non-custodial measures and such sentences now predominate. This practice of the courts in progressively reducing the use of custody has also been followed by the legislature. Thus, the maximum penalty limit for conversion of imprisonment into pecuniary penalty (art. 82 PC) and for suspension of sentence (art. 99-104 PC in case of first offenders) has been raised.

393. By virtue of recent laws, convicted persons can avoid confinement if they agree to provide community service. Moreover, the possibility exists for suspension of sentence with or without supervision (articles 100 and 100A PC), as well as for conditional release (article 105 PC).

394. The new Correctional Code provides that the State shall take care for the reintegration and adaptation of the prisoner awaiting release to his or her social, professional and family environment (articles 80 and 81). A non-profit legal entity aiming at the professional training and rehabilitation, the financial assistance and the gradual social reintegration of the released person has already been established. Its name is “Epanodos”.

Security measures

395. The maintenance of order and security within the correctional facility constitutes the duty of the correctional personnel. If there is a mutiny or a riot, the Public Prosecutor or, in cases of extreme gravity and urgency, the Director of the facility, the assistant Director or the sergeant may call upon police forces to provide the necessary assistance, including the latter's entry to any part of the facility. The Public Prosecutor may recall the relevant request of the warden. The method of intervention is decided by the officer of the police force in charge of the operation (article 65 (1) CorrC).

396. The importance of the aforementioned legislative provision is great, because it provides that, in case of disturbances within the prison, the Public Prosecutor shall be the one to decide which measures are to be taken and to coordinate the actions for the restoration of order and security.

397. Security measures are: the use of handcuffs, the confinement in a cell as a disciplinary measure, along with every other similar measure. The measures are adopted by the Prison Board or, in case of emergency by the Director of the facility. In the latter case, the Prison Board must approve the adopted measures within 24 hours (article 65 (2)).

Conditions of detention in military prisons and in disciplinary facilities of the Armed Forces

398. The Armed Forces Prisons have been abolished, and the relevant facility has been handed over to the Ministry of Justice, following a special agreement with the Ministry of National Defense (hereinafter: MND). A section of the Judicial Prison of Corinth is currently being used as a military prison. The security and correctional personnel of the aforementioned section is the same with the rest of the prison and is not dependent on the MND. The Correctional Code also applies on the detainees of that special section, as it applies for the rest of the country's correctional facilities.

399. The sole strictly military prison is the one located in the vicinity of the "Pavlos Melas" Military Camp in Thessaloniki. This prison however cannot hold many detainees (it has only six cells for soldiers and one cell for officers which can hold three and two persons each respectively). The detention conditions in the aforementioned prison are very good. Members of the Armed Forces serve as security personnel for the prison. The applicable laws are the Military Prisons Regulation and the Correctional Code. It is to be noted that only two soldiers and one officer were held in that facility in September 2003.

400. There are also some detention facilities of the Armed Forces used for the serving of severe disciplinary penalties. The Correctional Code and the Military Prisons Regulation apply on the persons held in these facilities. The conditions of detention are satisfactory and do not raise any particular concerns.

Efforts to improve conditions of detention

401. During the last years, international bodies and organs for the protection of human rights, as well as relevant national institutions, have examined the conditions of detention in Greece. More specifically:

402. In May 2001, the *Committee against Torture* (CAT) adopted its conclusions and recommendations following the examination of the third periodic report of Greece. The Committee welcomed, *inter alia*, the existing legal framework and array of institutions in place for the protection against torture and other cruel, inhuman or degrading treatment or punishment, the establishment of new institutions to guarantee the rights of prisoners and the use of specially trained personnel from outside the prison service, under the supervision of the Public Prosecutor, to intervene in cases of serious disorder in prisons. On the other side, the Committee expressed its concern about the harsh conditions of detention in general and, in particular, the long-term detention of undocumented migrants and/or asylum-seekers awaiting deportation in police stations without adequate facilities; the severe overcrowding in prisons; the lack of comprehensive training of medical personnel and law-enforcement officers at all levels on the provisions of the Convention.

403. The *European Committee for the Prevention of Torture* conducted an ad hoc visit to Greece in October/November 1999, as well as its third periodic visit in September/October 2001. The CPT reviewed the treatment of persons detained by law enforcement officials and conditions of detention in police stations, transfer centers, border guard posts and holding facilities for aliens. As regards prisons, it reexamined the situation with respect to overcrowding and the regime provided to prisoners. In its Reports, which have subsequently been made public together with the response of the Greek authorities, the CPT identified areas of concern in a variety of fields, but also noted the improvements made.

404. The *Council of Europe Commissioner for Human Rights* visited Greece in June 2001 and discussed, among others, the problem of overpopulation in prisons, as well as the situation of aliens detained pending expulsion.

405. The *European Court of Human Rights* considered, in the case of *Dougoz v. Greece*²¹ that the conditions of detention of the applicant in the Alexandras Police Headquarters and the Drapetsona detention centre, in particular the serious overcrowding and absence of sleeping facilities, combined with the inordinate length of his detention, amounted to degrading treatment contrary to Article 3 of the European Convention on Human Rights (ECHR). Furthermore, the same Court, in the case of *Peers v. Greece*²² considered that the conditions of the applicant's detention in the segregation unit of the Delta wing of the Koridallios prison amounted to degrading treatment within the meaning of Article 3 ECHR.

406. The *Greek Ombudsman* has been issuing on a regular basis recommendations for improving detention conditions, after conducting on-site investigations in prisons, police departments (in Athens, as well as all over Greece), as well as in detention premises for aliens who have entered illegally in Greece.

407. Finally, on 12 December 2002, the *NCHR* adopted a report on the “Detention Conditions in Greece in 2002”. This report contains an overview of the relevant reports of international bodies and mechanisms and the responses of the Greek authorities, as well as a series of recommendations with a view to ensuring, inter alia, the following: full compliance of Greece with the recommendations of the competent United Nations and Council of Europe bodies; promotion and strengthening of the continuous education of all personnel involved in the detention process; creation of detention centers of aliens under deportation according to Aliens’ Law 2910/2001; special legislation for and attention to asylum seekers under detention (information about the asylum procedure and their relevant rights, provision of legal aid, facilitation of asylum seekers’ communication with any person they wish to contact in order to inform them about their case, creation of new permanent state reception centers for asylum seekers); establishment of a detainee complaint procedure in all detention centers; decongestion of the prison and detention centers in the area of Athens through establishment of new prisons and detention centers in other regions; special treatment of detainees who are drug addicts and their strict separation from other detainees in all prisons and detention centers.

408. The competent authorities have put a lot of effort in order to improve conditions of detention, taking also into account the relevant conclusions and recommendations of international and national mechanisms for the protection of human rights.

Efforts to improve conditions of detention in police establishments

409. The improvement of conditions of detention, specifically of aliens awaiting deportation who are held in Police Establishments, falls into the strategy employed by the Ministry of Public Order. The detention of aliens awaiting deportation constitutes a problem that is a cause for particular concern and, for this reason, every possible effort is being made to eliminate its negative impact. In this context, the minimization of prolonged periods of detention of such aliens (which cannot exceed three months) is pursued.²³

410. If the administrative expulsion of an alien is for whatever reason rendered impossible, his or her temporary stay in the country is allowed, and until obstacles are lifted, restrictive terms shall be imposed on him or her (settlement in and travel to certain places, exercise of a certain profession or obligation to appear before Police Authorities).²⁴

411. The procedure for the regularization of aliens who resided in our country, lawfully or unlawfully, for at least one (1) year prior to 2 June 2001, has contributed decisively to the decongestion of police holding establishments. Further decongestion was made possible because foreigners were released so that they might be given the opportunity to submit the supporting documents required, on condition of course that they had observed the prerequisites of the law.

412. Furthermore, according to the regulations of the Greek Police, detention facilities should meet the necessary conditions of hygiene and security to prevent detainees’ escapes and suicides or self-infliction of wounds. Such facilities should be spacious, clean, disinfected and maintained. To this end, continuous control is exercised and express orders and instructions are given to the competent services.

413. By a series of Orders issued since 1999, specific instructions were given to regional Police services with a view to eliminating unfavorable situations and creating the best possible conditions of hygiene and decent living for detained persons.

414. More particularly, the following orders were given to the above Services:

(a) To carry out an inspection of all places of detention of their subordinate services, and if shortcomings were observed, to make provision for their immediate settlement in cooperation with the competent Directorates of the Ministry of Public Order, where necessary, taking at the same time the statutorily prescribed disciplinary measures against the persons held accountable;

(b) To further provide stringent orders and explicit instructions with a view to the constant and unwavering observance of the obligations of their subordinate services with respect to the cleanliness, appearance, disinfection and outfitting of holding facilities and of conditions of hygiene in general, the provision of food at appropriate hours, the securing of the prescribed medical supervision and care, the impeccable conduct of all parties involved in the treatment of detainees and the absolute respect of the above-stated rights within the framework of the Constitution, the legislation in force and the applicable international conventions;

(c) To follow-up on a continuous basis and with due diligence the implementation of all measures that have been ordered and to control in the future without hesitation any deviation from the stipulated instructions.

415. However, despite repeated orders the situation in the places of detention had barely improved, and following the observations of the CPT during its visit in Greece as well as the observations of the Ombudsman who conducted an ad hoc inspection of the holding facilities of the Security Directorate of Attica in May 2001, there was issued Order No 9009/20/847/9-a, dated 28 January 2002; the said order was dispatched to the regional services in order for the unfavorable situations to be limited to the minimum or to be entirely eliminated if possible and in order for the proper conditions of hygiene and living of the detainees to be created.

416. In particular, above services were ordered:

(a) To commission their Deputy-Director, who is senior in rank, to make provision, on his own personal responsibility and within a prescribed time frame, for the conduct of an ad hoc inspection of all places of detention concerning foreigners awaiting deportation and of all services to which these premises belong, so that a detailed recording of the existing situation from the viewpoint of the shortcomings, observance and implementation of all the statutorily prescribed terms and conditions of detention be made;

(b) Likewise, according to ascertainties made, above services were ordered to promptly issue specific orders and instructions to be sent to the competent Departments for the purpose of settling, on the one hand, all existing pending matters, remedying shortcomings observed and effecting improvements, and on the other, upholding on a continuous basis and by analogy, all terms and conditions of detention referred to in the Correctional Code;

(c) It was also stressed that the abovementioned Deputy Commanders in charge should monitor the application of this Order, as well as the implementation of all previous orders, by carrying out continuous inspections and by imposing disciplinary sanctions with respect to any deviation observed;

(d) Finally, instructions were given to the general Police Directors to exercise strict supervision and control aimed at the precise observance of the aforementioned Order.

417. For the tackling of the problems existing in the holding premises of the services abovementioned, clear orders and instructions have been provided with respect to their maintenance and general state of repair so that the conditions of detention for the detainees be improved.

418. Thus, efforts are being made towards the improvement of the conditions of detention in the law enforcement Agencies that are housed in public buildings.

419. However, as regards the rented buildings housing Police services, there are difficulties in redressing the problems encountered, on the one hand because many of these buildings cannot withstand improvement works, and on the other, because many owners are reluctant to incur the cost of the outlay involved.

420. The overall tackling of the problems will be attained only through the construction of public buildings at the seat of Police Directorates. Holding cells will, *inter alia*, be constructed in these buildings meeting the necessary requirements for the safe and hygienic custody of the detainees.

421. In cooperation with the Public Real Estate Company, a program for the improvement of the building infrastructure of the Greek Police is in progress.

Efforts to improve conditions of detention by port police authorities

422. The Ministry of Merchant Marine has given instructions and orders to the Port Authorities to respect the dignity of all persons arrested and to faithfully comply with the current criminal procedure provisions concerning the rights of detainees (information on their rights, access to a lawyer, communication with relatives and/or the consular authorities of their country, provision of medical and pharmaceutical care, sustenance, hygiene - living conditions).

423. The 2003 budget of the Ministry of Merchant Marine contains, for the first time ever, an amount to be spent on nutrition of the detainees. The provision of an amount for the same cause has already been proposed for inclusion in the 2004 budget. The Special Conditions to be fulfilled by the detention facilities are now always applied on all facilities constructed by the Ministry. Furthermore, there is an ongoing attempt to update and improve already existing facilities.

Efforts to improve conditions of detention in prisons

424. Many institutional and operational interventions have taken place in order to improve the conditions of detention in prisons. Some of these are the enactment of the new Correctional Code, the establishment of the Body for the Inspection and Monitoring of Correctional Facilities,

the enactment of Internal Operation Regulations of Correctional Facilities, the operation of junior and senior High Schools within Correctional Facilities, the operation of new workshops and programs for professional training, education and sports, the construction and operation of libraries, the hiring of more correctional personnel etc.

425. In order to tackle the problem of overcrowding in prisons, an ambitious construction program is rapidly progressing as announced. This program entails the construction of 17 new correctional facilities and 3 new rehabilitation centers for addicted persons of total occupancy of 5,660 persons. 8 new correctional facilities and one rehabilitation center in Cassandra (Chalkidiki) are already under construction, while existing facilities are undergoing renovation and modernization. The construction of 2 more facilities will shortly start; property has been bought for 1 more construction, while the procedure for acquiring property for 3 more constructions is under way.

426. As regards the measures adopted by the Greek authorities on the issue of alternative sanctions in lieu of custodial sentences, the Correctional Code currently in force already provides for alternative ways of serving custodial sentences in Chapter 8, such as halfway houses, partial service of sentence and community service.

427. Finally, major contributions to the decongestion of prisons are made by: the institution of leave (regular, extraordinary, educational) and work outside the detention facility (combined with the aforementioned provisions on halfway houses).

428. Efforts are continuously being made to increase prison staff, to improve the training of the correctional personnel and to upgrade such training to continuing education status, as provided for by the Civil Servants' Code. Training of detention facility directors is currently being planned by the Personnel Directorate of the Ministry, to be provided in the near future.

Efforts to improve conditions in mental health services

429. The basic principles for the provision of mental health services, as well as the protection of the rights of persons with mental disorders are defined under the Law 2716/1999, titled "Development and Modernization of mental health services". According to this Law "the State is responsible for the provision of mental health services aiming at prevention, diagnosis, treatment, care, as well as psychosocial rehabilitation and social reintegration" (section 1.1). Additionally, the same Law states that "Mental health services operate on the basis of sectorization and social psychiatry, giving priority to Primary Care, outpatient care, deinstitutionalization, psychosocial rehabilitation and social reintegration, continuity of psychiatric care, as well as community education and voluntary involvement in mental health promotion" (section 1.2). Section 2 of the same Law gives full details on the formation and responsibilities of the "Special Committee for the Protection of the Rights of Persons with Mental Disorders", which "supervises and monitors the protection of the rights of persons with mental disorders, such as the rights of decent living conditions in Mental Health Services, specialized personal treatment, arguing on involuntary hospitalization, discussing in private with an attorney, having access to his files, protecting his belongings and the right of social reintegration".

430. In pursuance of the Law 2716/1999, the following Ministerial Decrees were published:

- (a) On determining the conditions, the method and the process in providing hospitalization at home services and special mental health home care services;
- (b) On determining the operational method and the staffing of Mental Health Mobile Units;
- (c) On determining the conditions and the organization of the operation of the Foster Families programs;
- (d) 26 Ministerial Decrees on the establishment of an equal number of mental health sectors and mental health sectors for children and adolescent in various areas of the country.

431. The first phase of the “Psychargos” program, co-financed by the EU, was completed with the introduction of 55 hostels of psychosocial rehabilitation all over Greece, where approximately 600 chronic patients of mental hospitals were transferred. Approximately 600 mental health professionals (psychologists, social workers, occupational therapists and nurses) have been employed for the operation of these hostels. The new professionals attended a 300-hour educational program immediately after their appointment.

432. 10 Psychosocial Rehabilitation Units were established by national resources, in which 100 chronic patients of “Dromokaitio” Mental Hospital were transferred. They operate in Attica and in other prefectures with a personnel of 130 mental health professionals of various specialties.

433. In the Attica State Mental Hospital (Dafni), which suffered serious damages during the 1999 earthquake resulting in the demolition of 9 buildings, 5 brand new buildings were inaugurated in October 2001. Each one of these buildings has 25 double rooms and 2 of them operate only with new admissions. In addition, the execution of a series of improvements concerning the environment, the water supply, the sewerage and the electricity supply is in progress with a view to the operational restoration of the Hospital’s services for the period that it will operate, given that, according to plan, the Hospital is to be gradually withdrawn from active service while its services will be replaced by modern community mental health services.

434. There are still reactions from citizens and local communities against the establishment of Hostels and Boarding Houses of Psychosocial Rehabilitation in their areas albeit to a lesser extent compared to last year. To this contributed the fact that in five cases that were brought to justice the Court rejected the claims of the protesting citizens.

435. Issues related to the rights of persons with mental disorders are of high priority to the Ministry of Health and Welfare, which strives continually for diminishing inequalities, discrimination and prejudice against persons with mental disorders, which are still present in all developed and developing countries. To this end, the Ministry of Health and Welfare organized, within the framework of the Greek Presidency of the European Union, a European Conference with ministerial participation in March 2003, titled “Mental Illness and Stigma in Europe: facing

up to the challenges of social inclusion and equity”. The Greek Presidency forwarded the Conference proposals to the Council of the European Union, which adopted and published its conclusions on combating stigma and discrimination in relation to mental illness.

Article 11: Prohibition of detention for debt

436. Article 1047 (1) of the CCivP provides for personal detention in case of inability to fulfill contractual obligations.

437. According to article 1047 (1), personal detention may be ordered against merchants for commercial claims.²⁵

438. A prerequisite for the ordering of the said personal detention is that the defendant must be a merchant, and that the act *sub judice* must have been an act of commercial character at the time of the transaction, irrespective of whether that character was later abolished. Personal detention can also be ordered against the legal representatives of all legal entities, except for S.A.s and Ltd.s (article 1047 (3) CCivP). Detention is ordered solely against the debtor, and cannot be ordered against his or her heirs.

439. The law provides for a series of cases where personal detention may not be ordered:

(a) In case of a claim for judicial expenses acknowledged by a civil court or in case of a claim for no more than € 1,500, unless the latter claim is based on a negotiable instrument (article 1047 (2));

(b) Personal detention may not be ordered, according to article 1048 CCivP:

— Against minors that are subject to parental care or to guardianship and against persons under guardianship due to their inability to take care of themselves;

— Against members of the Parliament during their term and for four weeks after the expiry of the term;

— Against persons of more than 65 years of age;

— Against minister of any known religion.

440. *Procedure.* According to the provision of article 1049 CCivP, the order for personal detention may be executed only after the relevant judicial decision has been rendered final and without appeal, and after it has been served to the person against whom personal detention has been ordered. The person against whom personal detention has been ordered shall be arrested by a judicial clerk, in the presence of a witness summoned for that reason. The judicial clerk must submit a relevant report. The arrest is not allowed to take place: (a) in the session room of the court, and while the court is in session, (b) in any place of worship of any known religion during mass, (c) between the 1st and the 31st of August.

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441. A civil action for the ordering of personal detention does not need to be brought during any on-going trial. In the latter case, the competence lies with the Justices of the Peace, if the claim does not exceed the limit of subject-matter competence of the said court, or the Court of First Instance, if the claim exceeds the aforementioned limit.

442. *Judicial guarantees.* According to article 1050 CCivP, if the arrested person objects the personal detention, he or she shall immediately be brought before the President of the Court of First Instance in the district of which the arrest took place. The latter shall try the case under the procedure of provisional measures and decide on the objections. Unless otherwise provided for, any dispute regarding the execution of personal detention falls within the jurisdiction of the Three-Member Court of First Instance of the district where the detention is executed. The President of the Court of First Instance shall set an early date for the hearing, as well as a time limit for the notification of the adverse party (article 1054 (1) CCivP).

443. *Place of detention.* The detained person is held in a correctional facility, in a section different than those where persons detained pending trial or convicts are held. He or she may be held in another prison or any other facility while awaiting transfer (article 1050 (2) CCivP). If the detainee is ill or if he or she becomes ill during detention, the President of the Court of First Instance may allow the detention of the person in a hospital or a private residence, at the detainee's own cost. The President may also allow the detainee's release, if the illness is of such character, that the prolongation of his or her detention may prove dangerous (article 1053 CCivP).

444. *Release.* The detained person is released (article 1052):

- (a) If the term of detention ordered by virtue of the relevant court decision has been served;
- (b) If the amount of the debt is deposited to the Deposits and Loans Fund, along with the amount of the interest and the amount of the enforcement expenses;
- (c) If the creditor that requested the personal detention consents in writing, along with all other creditors that requested prolongation of the personal detention;
- (d) If the detainee reaches 65 years of age; and
- (e) If the creditor(s) did not provide the State with the detainee's living expenses during detention.

445. In cases (a), (c) and (e), the detainee is released by the Director of the prison. In all other cases, the detainee is released following a decision of the President of the Court of First Instance of the district of the prison.

Justification of the regulation

446. The regulation aims at the establishment of wide personal responsibility of all merchants, so as to ensure security of transactions and to achieve a greater degree of trust in the financial sector. The greater aim lies in the promotion of commercial activities. It should be noted that,

according to some scholars, Greek legislation does not provide for some mechanisms for the monitoring of the application of the fundamental maxim *pacta sunt servanda*, which are in force in other countries, where the institution of personal detention for contractual debts is not known.

447. Naturally, if this regulation is applied in an absolute manner, a problem of respect of the principle of protection of human dignity arises (article 2 (1) of the Constitution). In view of that, the judge has three possibilities: (a) to continue to apply the relevant provisions with a view to ensuring the normal operation of the market, (b) to deny the application of these provisions in an absolute manner, or (c) to discern, on the basis of the reason underlying the non-payment of the contractual debt, and to apply the relevant provisions only in cases of intended non-payment, i.e. when the debtor suppressed assets with intent.

448. After the entry into force of the ICCPR, Greek judges stopped applying the first alternative. They applied the second alternative in some cases, and, finally, they have decided to apply the third alternative in all cases.

Greek jurisprudence after the entry into force of the ICCPR

449. Before the entry into force of the ICCPR in Greece, the Greek courts had adjudicated that the institution of personal detention for merchant debts did not run counter to the Constitution, even when the debtor's inability to fulfill the obligation was not due to any lack of diligence.

450. The courts' position on the issue changed radically after the ratification of the CCPR. Two phases can be discerned: in the first phase, the national authorities considered the relevant provisions as abolished. In the second phase, the authorities construed the relevant provisions according to the provisions of the CCPR and limited the former's scope of application.

First Phase: Refusal to apply the provisions of the CCivP

451. Immediately after the ratification of the Covenant, the Ministry of Justice notified, by circular 25497/01-03-97, all the competent administrative and judicial organs, i.e. the Presidents and Public Prosecutors at the Courts of Appeal and Courts of First Instance, as well as the Presidents of all the Greek Bar Associations, of the publication in the Official Gazette of Law 2462/1997, by which the CCPR was ratified. The Ministry of Justice drew the attention to the provision of article 11 of the CCPR. By a second circular (64127/30-05-97), the Ministry notified the aforementioned authorities, as well as the Directors of all correctional facilities, of the entry into force of the Covenant.

452. According to the first decision of a Greek court that applied the provision of article 11 CCPR, article 1047 (1) CCivP had been abolished by virtue of the Covenant, at the time of publication of Law 2462/1997, even before the fulfillment of the other prerequisites for the entry into force of the Covenant in Greece (article 49 (2) CCPR). According to the court's decision, article 11 has a direct effect and is to be applied immediately, without the need for any other prerequisite, because it establishes a fundamental human right.²⁶ According to another decision of the Court of Appeal, "the mandatory wording of this provision of the Covenant (article 11) leads to the conclusion that personal detention, which falls under the concept of imprisonment, since the latter is the consequence of personal detention as a measure for compulsory enforcement, is not allowed to be ordered in order to bring about the fulfillment of contractual

obligations. Thus, personal detention as a means of compulsory enforcement of contractual obligations according to article 1047 (1) CCivP should be limited to tort claims”.²⁷ Other courts rendered similar decisions.

453. The Piraeus Court of Appeal found that the entry into force in the Greek legal order of the CCPR brought about a legislative amendment of the provision of article 1047 CCivP,²⁸ whereas, in another decision it found that, according to the true meaning of article 11 of the Covenant, “personal detention as a means of compulsory enforcement of the fulfillment of a commercial obligation has been abolished by the entry into force of the Covenant”.²⁹ Finally, according to another decision, “the scope of application of the provision of article 1047 (1) CCivP is limited by the entry into force of the Covenant, as far as it provides for personal detention of merchants for commercial claims”.³⁰

Second Phase: Interpretation of the CCivP in the light of the Covenant

454. This new trend is analyzed in a 1998 decision of the Athens Court of Appeal.³¹ The Court made recourse to the preparatory works (travaux préparatoires) on the wording of article 11 of the Covenant. It found that “the drafters pointed out that, in all countries, debtors who have the ability, but not the will to fulfill their contractual obligations could be punished with imprisonment”. The fact that a stricter wording of article 11 (“No person shall be imprisoned or held in servitude in consequence of the mere breach of contractual obligations.”) was not accepted provides proof on that. The aforementioned interpretation is also supported by the teleological method, which, in combination with the preparatory works, indicates that “the drafters intended to allow for the personal detention for commercial debts of merchants who are not willing to fulfill their contractual obligations, although they possess the financial means to do so [...] and, on the other hand: merchants who cannot fulfill their obligations without their own fault are not to be detained”. The drafters intended to retain personal detention as a means of enforcing fulfillment of contractual obligations by bad-faith debtors. In that sense, the court moved to construe article 11 by integrating the aforementioned interpretative approach to its wording. It thus interpreted article 11 as follows: “personal detention as a means of compulsory enforcement of fulfillment of a contractual obligation by a debtor is allowed, unless the latter does not possess the necessary financial means to fulfill the said obligation”.

455. According to recent jurisprudence of the AP, article 11 CCPR is a norm that overrules the provision of article 1047 (1) CCivP. That norm, in conjunction with the provisions of articles 2 (1) [protection of human dignity] and 25 (3) of the Constitution [prohibition of abuse of rights] and the principle of proportionality, provides that personal detention as a means of compulsory enforcement against a merchant for commercial claims, may only be ordered against a person who has the financial ability to fulfill his or her obligation, but refuses to do so with intent, especially by suppressing financial assets or by other acts that nullify the satisfaction of the creditor’s claim. Thus, the action requesting personal detention should mention not only the claim and the facts that the debtor is a merchant and that the claim has a commercial character, but it should also mention all the facts that substantiate the debtor’s intentional conduct that nullified the satisfaction of the creditor’s claim. The person invoking such intentional conduct also bears the relevant burden of proof.³²

456. Naturally, one should admit that the institution of personal detention for the fulfillment of contractual obligations has been abolished in the majority of the States parties to the Covenant. The enactment of alternative means of securing commercial faith in the market could lead to the harmonization of the Greek legislation with the international trend. However, the current Greek practice is the outcome of a serious and sincere effort of the Greek courts to interpret a provision that has not yet been the object of case-law or General Comment in the correct legal terms. This practice, in our view, falls well within the framework of respect of the ICCPR.

Article 12: Freedom of movement

457. Freedom of movement is established in article 5 (4) of the Constitution, which provides for:

- (a) The prohibition of individual administrative measures restrictive of the freedom of movement or residence in the country of every Greek citizen;
- (b) The subsequent freedom of movement and residence of every Greek citizen, which stems implicitly from the abovementioned prohibition;
- (c) Exceptions from the aforementioned prohibition (art. 5 (4) (b) and interpretative clause).

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458. The specific aspects of this right are the following:

- (a) Freedom of movement and choice of residence of Greek citizens within the country;
- (b) Freedom of Greek citizens to leave the country;
- (c) Right of Greek citizens to enter the country.

459. Of course, freedom of movement and residence applies also to all citizens of the member States of the European Communities by virtue of the relevant primary and secondary community law.

Freedom of movement and choice of residence of Greek citizens within the country

460. This freedom is a direct consequence of Greek citizenship. It consists of the freedom to move anywhere, anytime and in any possible way. Its exercise is not subject to any kind of state permission and no obligation of prior notice may be incumbent upon citizens.

Restrictions

461. Article 5 (4) of the Constitution provides that “individual administrative measures restrictive of the free movement or residence in the country, and of the free exit and entrance therein of every Greek shall be prohibited”. According to the case law of the CoS, the aforementioned provision “aims at the exclusion of any possibility that any law will vest the

organs of the administration with discretionary power to issue individual administrative acts limiting the aforementioned freedom”.³³ The legislative restriction of the freedom of movement is in harmony with the Constitution only if the law vests the administrative organs with the power “only to control whether the factual prerequisites that the law provides are fulfilled”.

462. The Constitution provides for three exceptions to the aforementioned rule:

(a) The Public Prosecutor may prohibit any individual to leave the country in case of prosecution on criminal charges (interpretative clause on article 5 of the Constitution). This measure must respect the principle of proportionality;

(b) Restrictive individual measures may be imposed only as additional penalty following a criminal court ruling, in exceptional cases of emergency and only in order to prevent the commitment of criminal acts, as specified by law (article 5 (4) of the Constitution, as amended in 2001);

(c) Measures necessary for the protection of public health or the health of sick persons may limit the said freedom in accordance with the relevant provisions of the law (interpretative clause on article 5 of the Constitution).

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Freedom of Greek citizens to leave the country

463. The right of all individuals of Greek citizenship not under personal detention or under detention pending trial and not serving a term of deprivation of liberty to leave the country at any time stems from article 5 (3) (establishing personal freedom) and article 5 (4) of the Constitution (freedom of movement). The freedom to leave the country enshrines both temporary migration and immigration.

464. The exercise of the right to leave the country does not depend on the discretionary power of the Administration. All Greek citizens have the right to request a passport for unlimited travelling outside the country within the time-frame of validity of the passport, the renewal of which is obligatory for the Administration.

465. It is also noted that the law, which provided the exercise of the right to vote as a prerequisite for the issuance of a passport, has been abolished.

Restrictions

466. The most important restriction was the prohibition for Greek citizens who were debtors to the State or the Social Security Foundation, or for Greek citizens who were members of the board of directors of companies who are debtors to the State or the Social Security Foundation, to leave the country (articles 1 of Law 395/1976, 27 of Law 1882/1990, and 21 (7) of Law 1902/1990). The relevant provisions have been abolished by virtue of articles 23 (3) of Law 2768/1999 and 12 of Law 2873/2000.

467. It is noteworthy that the Greek Ombudsman had found that the prohibition for Greek citizens to leave the country on the basis of debts of their companies to the State or the Social Security Foundation runs counter to article 12 of the Covenant.

Right of Greek citizens to enter the country

468. In no case shall entry into Greece be denied to any Greek citizen. Although the possession of a valid passport constitutes full proof of Greek citizenship, from which stems the right of entry into Greece, its possession is not a prerequisite for the exercise of the said right. It is accepted that the exceptions provided for in article 5 (4) (b) and in the interpretative clause to article 5 of the Constitution do not refer to the Greek citizens' rights to enter Greece.

Freedom of movement and residence of aliens

469. According to article 42 of Law 2910/2001, aliens who have settled in Greece enjoy freedom of movement and establishment throughout the Greek territory. A presidential decree, issued upon a proposal from the Minister of Interior, Public Administration and Decentralization, the Minister of Foreign Affairs, the Minister of National Defense and the Minister of Public Order, may prohibit aliens from staying or settling in specific geographical areas of the country. Any other competent minister may impose on a specific alien, for reasons of national security, public order or public health, restrictions relating in particular to his settlement, stay, visit to specific places, practice of a particular profession or obligation to report to the police authorities.

470. As far as asylum seekers are concerned, article 2 (8) of Presidential Decree 61/1999 provides that during the entire examining procedure, the asylum seeker is obliged to remain in the place or residence which has been stated by him or her, or has been assigned to him or her. In case of arbitrary departure, the procedure for the examination of the asylum claim is interrupted following relevant decision issued by the Secretary General of the Ministry of Public Order, which is notified to the asylum seeker, considered as a person "of unknown residence".

471. As far as stateless persons are concerned, Greece has ratified the United Nations Convention relating to the Status of Stateless Persons (Law 139/1975). The latter convention establishes the freedom of movement and residence of stateless persons (article 26) and the obligation of States parties to provide them with identity papers and travel documents (articles 27-28).

472. All aliens are free to leave the country, provided that they are not currently under personal detention or detention pending trial and that they are not serving a term of imprisonment. According to the law, an alien is obliged to leave the country when his or her residence permit expires, or if he or she is not granted a stay permit or when renewal of the permit has been denied.

Article 13: Protection of aliens against arbitrary expulsion

473. Greek law provides for two forms of expulsion of aliens, the administrative expulsion and the judicial expulsion.

Administrative expulsion

Aliens in general

474. The administrative expulsion (articles 44 *et seq.* of Law 2910/2001) is allowed when:

(a) The alien has been condemned finally and irrevocably to a custodial sentence of at least one year or, irrespective of the sentence, for crimes against the constitution, treason against the country, crimes related to trade in and trafficking of narcotics, money laundering, international financial crimes, high technology crimes, crimes against the currency, crimes of resistance, abduction of minors, crimes against sexual life and financial exploitation of sexual life, theft, fraud, embezzlement, extortion, usury, violation of the law on brokerage, forgery, false certification, libel, smuggling, crimes related to arms, antiquities, trafficking of illegal immigrants in the country's territory or facilitation of their transport and trafficking or provision of accommodation to them with a view to concealing them, provided that his deportation has not been ordered by the competent court;

(b) He or she has violated the provisions of law 2910/2001; and

(c) His or her presence on Greek territory is dangerous for public order or security of the country or public health, provided that the alien suffers from a disease that may be a risk thereto, according to international standards and the WHO, and refuses to comply with the public health protection measures prescribed by the medical authorities, in spite of having been adequately informed.

475. Deportation may be ordered by a decision of the appropriate police authority, after giving the alien a time limit of forty-eight (48) hours to present his objections.

476. If, according to the general circumstances, it is suspected that the alien may escape or he or she is considered dangerous to public order, the competent police authorities may order his or her temporary detention until the issuance, within three days, of an expulsion decision. Following the issuance of the expulsion decision, the detention continues until the decision's execution, but it can not exceed three months (art. 44 (3), as amended by art. 21 (7) of Law 3013/2002). The alien shall be informed about the reasons of his or her detention in a language that he or she understands.³⁴ A detainee alien shall be entitled to present his or her objections to the detention decision before the president of the administrative court of first instance of the region where he or she is detained, who shall rule on its lawfulness, with analogous application of the procedure provided for in article 243 of Law 2717/1999 (Code of Administrative Judicial Procedure).

477. If it is not suspected that the alien may escape or he or she is not considered dangerous to public order or the president of the Administrative Court of First Instance disagrees with his or her detention, the said decision shall set forth a time limit for the alien to leave the country, which may not exceed thirty days (art. 44 (4) of Law 2910/2001).

478. An alien meeting the conditions of paragraph 3 of article 44 (i.e. it is suspected that he or she may escape or is considered dangerous to public order) shall be detained in the premises of the appropriate police authority. Pending the completion of his or her expulsion procedures, he

or she may stay in special facilities, established by decision of the Secretary-General of the Region and operating under the care of the Region. The said decision shall set forth the standards and terms of operation of such facilities (article 48).³⁵

479. Should an alien being on Greek territory become registered in the list of undesirables, he or she shall leave the country within such time limit as shall be set from time to time by the Minister of Public Order. In the event of failure to comply, the alien shall be deported (article 49 (2)).

480. It has been adjudicated that the denial of an alien's request to be removed from the above list, if the said alien is married to a Greek citizen, is legal only when the non-removal is dictated by special and specific reasons of great public interest regarding the protection of public security and public order. If the reasoning of the decision denying the request lies with the fact that the marriage of the alien is recent and cannot be considered as viable, the reasoning is not legal.³⁶

481. The administrative decision ordering an alien's expulsion shall determine the time limit for the alien to leave the country, as well as when entry into Greece will be again allowed for that alien.

482. The alien has a time limit of 5 days from the day of service of the expulsion decision to appeal against the said decision before the Secretary-General of the *ratione loci* competent Region. The Secretary-General shall decide within 3 days as from the lodging of the appeal. The filing of such an appeal suspends the enforcement of the decision (but not the detention, against which the alien has the legal remedies described above). The Secretary-General of the Region may temporarily suspend *ex officio* the expulsion, when this is dictated by humanitarian reasons, force majeure or public concern, as when there are reasons related to the life or health of the alien or his or her family (article 44 (6)).

483. In all cases where immediate expulsion of an alien is not possible, the Secretary-General of the Region may allow the alien to temporarily stay in the country and set forth restrictive terms (article 45 of Law 2910/2001).

484. Furthermore, the expulsion of aliens who stay illegally in the country and denounce acts of procurement to prostitution may be suspended by an order of the Public Prosecutor at the Misdemeanor Court, approved by the Public Prosecutor at the Court of Appeal, until a final decision has been rendered (article 44 (7)). Law 3064/2002 provides that all victims of human trafficking who are aliens illegally residing in Greece may be allowed to have their expulsion decisions suspended, without prejudice to the provisions on repatriation, by an order of the Public Prosecutor at the Misdemeanor Court, approved by the Public Prosecutor at the Court of Appeal, until a final decision that is not subject to appeal has been rendered in the criminal trial against the perpetrator.

485. Finally, the interested alien has the right to exercise the legal remedy of application for annulment before the Three-Member Administrative Court of First Instance against the act ordering the expulsion. In parallel, the alien may submit an application for the suspension of the execution of the act ordering expulsion.

486. Details on the case-law of the Suspension Committee of the CoS with regard to expulsion orders affecting family life of aliens are given below, under article 17 of the Covenant.

487. The courts in general and the Suspension Committee of the CoS in particular, have dealt with another issue, to which they accord great significance. This issue is the respect of the constitutionally protected right to a prior hearing (article 20 (2) of the Constitution). The CoS has referred to this issue, and more specifically to this constitutional provision, in that it annulled an administrative decision of expulsion, on the basis that the Administration did not summon the affected person to express his or her opinion within the time limit prescribed by law.³⁷ Other decisions have referred to the same issue, without direct reference to the constitutional provisions, but with reference to the provisions of the relevant laws (article 44 of Law 2910/2001).³⁸ These decisions grant the requested suspension of the execution of the expulsion decision, on the grounds that the relevant time limit was not provided to the alien under expulsion in order for him or her to express his or her opinions.³⁹

Political refugees

488. Presidential Decree 61/1999 prescribes the procedure for the recognition of an alien as a refugee. During the time required to complete asylum procedures, no asylum seeker is expelled or returned.

489. In case the alien is recognized as a political refugee, he or she is considered as legally residing in Greece. Consequently, the illegal entry of the refugee into Greece, i.e. the fact that he or she does not possess the necessary travel documents or has not followed the legal entry procedure, is not taken into consideration.

490. The expulsion of a refugee is allowed only for the reasons set out in the Geneva Convention relating to the Status of Refugees.

491. In case an alien's request to be accorded political refugee status has been finally denied, the alien is subject to the provisions in force for all other aliens as far as his or her residence in Greece is concerned. However, in the above case, temporary stay in the country may be granted for humanitarian and other reasons.

492. In case a request of an alien to be accorded refugee status has been denied, the alien has the right to bring before the Suspension Committee of the CoS an application requesting the suspension of the enforcement of the expulsion act.

Judicial expulsion

Aliens in general

493. The expulsion of an alien may be ordered by a criminal court, in case the alien under expulsion has been convicted for a felony or a misdemeanor to a term of confinement in a penitentiary or imprisonment. In case the alien has been legally residing in Greece, expulsion may not be ordered unless he or she has been convicted to a term of imprisonment of at least three months. The expulsion may be ordered as a supplementary penalty, without prejudice to relevant provisions contained in international conventions ratified by Greece (article 74 (1) PC, as replaced by article 1 (2) of Law 2408/1996). The court may also order the expulsion from the

country of the alien who has been not only convicted to a penalty involving deprivation of freedom, but also to whom security measures have been imposed. In those cases, the expulsion may be imposed after the issuance of an acquitting or convicting judgment, thus replacing the aforementioned security measures (article 74 (2) PC). Aliens expelled in such a manner have the option to return to the country by virtue of a decision of the Minister of Justice, which is issued following an opinion by a three-member committee. This ministerial decision may be issued three years after the expulsion took place. The decision grants the alien the right to return to Greece for a limited period of time only. This period may be prolonged. The alien under expulsion remains in custody in special sections of the correctional facilities or the therapeutic facilities (article 74 (3) and (4)⁴⁰ PC, as subsequently amended).

494. However, according to article 6 (1) of Law 3090/2002, which amended article 74 (1) PC, if the alien was a minor at the time of commission of the crime, the legal establishment and residence of his or her family in Greece is taken into consideration in the framework of an expulsion procedure. Furthermore, if the alien's family resides in another country, it should be taken into consideration whether the minor will face a serious threat to his or her life, physical integrity or personal or sexual freedom in the country of destination.

495. The judge shall determine, immediately after the conviction of an alien, whether he or she will impose expulsion, along with a deprivation of freedom penalty, taking into consideration the circumstances of the crime and the threat that the perpetrator poses to society.

496. In case of conviction of an alien who has not been granted political asylum to a deprivation of freedom penalty of no more than five years, the court may order the indeterminate suspension of execution of the penalty. This means that the expulsion of the alien shall be executed immediately. The deported alien who had his or her penalty suspended, may return to the country by virtue of a decision of the Minister of Justice, which is issued following an opinion by a three-member council. This decision shall be issued five years after the expulsion took place. The decision grants the alien the right to return to Greece for a limited period of time only. This period may be prolonged (article 99 (3) PC, as subsequently amended).

497. Expulsion as a security measure is executed immediately after the serving of the term of confinement in a penitentiary or imprisonment imposed to the alien as a main penalty, or after his or her release from the correctional facility. The same applies if the expulsion was ordered by the court as a supplementary penalty (article 74 (1) PC).

498. The competent organ to oversee the execution of an expulsion order is the Public Prosecutor at the court which rendered the judgment (article 549 CCP). Furthermore, if any problem arises, or if an objection regarding the alien's identity or the executory character of the expulsion order is submitted, the competent Public Prosecutor and, finally, the court shall rule on them in accordance with the provisions of the CCP (articles 549 (1), 564 (1) and 565).

499. It should be noted that, in cases where the immediate execution of judicial expulsion is not possible for whatever reason, especially because the life of the alien under expulsion is in danger, the competent Public Prosecutor brings the case before the Criminal Court of First Instance where he or she is serving. The court shall rule on whether the suspension of execution of the deprivation of freedom penalty imposed should be lifted or not. If immediate expulsion is not possible even after the serving of the term of deprivation of liberty imposed on the alien, the

competent Public Prosecutor shall bring the case before the aforementioned Criminal Court of First Instance, in order for the latter to rule on the temporary residence of the alien in the country under restrictive terms. When the relevant impediments are lifted, the expulsion is executed immediately, without the need for a new prosecutorial order. The decision on the temporary residence of the alien is recalled by the court that issued it, when there are reasons of national security and public safety, as well as reasons for the protection of public health.

Political refugees

500. The judicial expulsion of a political refugee may be ordered under the condition prescribed by the Geneva Convention on the Status of Refugees.

Article 14: Equality before the courts and the right to a fair and public hearing by an independent court established by law

Access to a court - the right to a fair trial by an impartial and independent court

Access to a court

501. Within the Greek legal order, the right of access to a court is established by article 20 (1) of the Constitution, which provides that “every person shall be entitled to receive legal protection by the courts and may plead before them his views concerning his rights or interests, as specified by law”.

502. The protection provided by article 20 (1) covers all stages of the judicial procedure. More specifically, it comprises:

- The right to *interim* judicial protection which may lead to the suspension of execution of administrative acts or to the ordering of provisional measures;
- The right to have the dispute considered by a judicial organ with full jurisdictional powers. The procedure before this judicial organ must conform to the standards and principles of a fair trial, as it will be explained hereunder;
- The right to compulsory enforcement of judicial decisions. On the compulsory enforcement of judgments rendered against the State or legal entities of public law, see *infra*.

503. An issue which has arisen with regard to the right to a fair trial and to equality before the courts concerns a provision according to which the rate of default interest due by the State is lesser than the rate of default interest due by private individuals (6% compared to 11,25% respectively, as of June 2002). According to the NCHR, this regulation runs counter to the principles of effectiveness and efficiency of judicial protection, of equality of arms, as well as to the right of property.⁴¹

504. This view is shared by the competent section of the CoS, which held that the above “prerogative” is contrary to the principle of equality (article 4 (1) of the Constitution), to the right to judicial protection (article 20 (1) of the Constitution), as well as to articles 6 (1) and article 1 of the First Additional Protocol to the ECHR.⁴² The case is currently pending before the

plenary of the CoS. Ordinary administrative courts have taken the same position, by referring directly to articles 2 (3) (a) and (b), 14 (1) and 26 of the ICCPR.⁴³ On the contrary, the AP held the relevant provision to be in conformity with the right to property, as guaranteed by article 1 of the First Additional Protocol to the ECHR, as well as to the principle of proportionality.⁴⁴

505. Every person, irrespective of nationality, is beneficiary of the right to judicial protection. This applies to natural and legal persons, including legal persons governed by public law. The right to judicial protection is also enjoyed by unions of persons deprived of legal personality (article 62 (2) CCivP and article 25 of the Code of Administrative Judicial Procedure).

Right of access to administrative justice

506. The Council of State and the ordinary administrative courts (Administrative Court of First Instance and Administrative Court of Appeal) have jurisdiction on administrative disputes, without prejudice to the competence of the Court of Auditors (article 94 (1) of the Constitution). Article 95 of the Constitution specifies the respective competences of the Council of State and the ordinary administrative courts.

507. The same article guarantees either direct access to the CoS (through the lodging of an “application for annulment” against enforceable administrative acts) or the lodging of legal remedies against judgments of the ordinary administrative courts.

508. It is important to note that all disputes arising from administrative acts may be brought before the administrative courts.⁴⁵ Only a very few categories of administrative acts are exempted from judicial control, such as the so-called “governmental acts” (“*actes de gouvernement*”), i.e. those concerning the country’s international relations or the relations between the legislative and the executive branch (e.g. dissolution of the Parliament).

Right of access to civil courts

509. According to article 94 (2) of the Constitution, all private disputes fall under the competence of the civil courts. Therefore, the Constitution establishes one’s right to lodge a law suite before the competent civil court concerning all private disputes.

Competence of criminal courts

510. According to article 96 of the Constitution, the punishment of crimes and the adoption of all measures provided by criminal laws belong to the jurisdiction of ordinary criminal courts. The law may assign the trial of police offenses punishable by fine to authorities exercising police duties and the trial of petty offenses related to agrarian property to agrarian security authorities. However, in both cases, judgments shall be subject to appeal before the competent ordinary court; such appeal shall suspend the execution of the judgment (article 96 (2) of the Constitution).

511. Felonies and political crimes are tried by mixed jury courts, composed by 4 jurors and 3 ordinary judges (article 97 (1) of the Constitution and relevant legislation), whereas crimes of any degree committed through the press shall be under the jurisdiction of ordinary criminal courts, as specified by law (article 97 (3) of the Constitution).

512. The Constitution also provides for juvenile courts and specifies that the constitutional provisions concerning the jury system, the public hearing of a case and the public pronouncement of a judgment need not apply to them (article 96 (3)). There are one-member and three-member juvenile courts, as well as a juvenile court of appeal.

513. Special laws provide for the establishment of military courts (article 96 (4) of the Constitution). The military, naval and air force courts shall have no jurisdiction over civilians (article 96 (4) (a)). The members of the judicial branch of the armed forces enjoy the guarantees of functional and personal independence specified in article 87 (1) of the Constitution. As far as the procedure and the issuing of judgments by military courts is concerned, the provisions of article 93 (2), (3) and (4) of the Constitution apply (publicity of hearings, public pronouncement of the judgment, special and full reasoning of the judgments, incidental control of constitutionality of the laws).

514. The system of military justice has been substantially upgraded in 1995, with the entry into force of the new Military Penal Code (Law 2287/1995) and of the Code of the Judicial Body of the Armed Forces (Law 2304/1995). It is noted that the CCP applies fully in every military criminal procedure. The PC and all special criminal laws also apply.

Right of access to the Court of Auditors

515. According to article 98 of the Constitution, the Court of Auditors is competent to try disputes concerning the granting of pension as well as the audit of accounts of accountable officials and of the local government agencies or other legal entities subject to the audit. This court also is competent for the trial of cases related to liability of civil or military servants.

Judicial independence

516. Article 87 (1) of the Constitution distinguishes the personal from the functional aspect of judicial independence. Under the former, all judicial officers acquire life tenure after a training and trial period. Compulsory retirement is now fixed to sixty-five or sixty-seven years according to rank. During tenure, they may only be dismissed pursuant to a court judgment resulting from a criminal conviction or a grave disciplinary breach or illness or disability or professional incompetence, confirmed as specified by law and in compliance with the guarantees provided for in article 93 (2) and (3) of the Constitution (article 88 (4) of the Constitution).

517. The *status* of judicial officers (promotions, assignments, transfers detachments etc.) is within the authority of the Supreme Judicial Councils. The latter are exclusively composed by members of the respective Supreme Courts, with no participation whatsoever of governmental or parliamentary representatives. Should the Minister of Justice disagree with the decision of a Supreme Judicial Council, he or she may refer the matter to the plenum of the respective highest court as specified by law; the judicial officer concerned may also take recourse to the aforementioned plenum. The decisions of the plenum, as well as the decisions of the Supreme Judicial Council with which the Minister has not disagreed shall be binding upon him or her (article 90 (3) and (4) of the Constitution). Only the promotion to the office of President or Vice-President of the three Supreme Courts shall be effected by presidential decree issued upon

proposal of the Cabinet, by selection from among the members of the respective Supreme Court; the same applies to the promotion to the office of Supreme Court Prosecutor (article 90 (5) of the Constitution). The Constitution sets a *maximum* of four years for these offices (Art. 90 para. 5).

518. Finally, article 88 (2) of the Constitution provides that the remuneration of judicial officers shall be commensurate with their office. Matters concerning their rank, remuneration and their general status shall be regulated by special laws.

519. The functional aspect of judicial independence encompasses the independence of the judiciary from the legislative and executive branch. According to article 87 (2) of the Constitution, in the discharge of their duties, judges shall be subject only to the Constitution and the laws; in no case whatsoever shall they be obliged to comply with provisions enacted in violation of the Constitution. The courts are, moreover, bound not to apply a law whose content is contrary to the Constitution (article 93 (4)). Functional independence exists within the judiciary itself as well; as in other civil law countries, the binding force of judicial precedents is not formally recognized. In practice, however, courts tend to follow established jurisprudence, in particular of the Supreme Courts.

Impartiality

520. The aforementioned guarantees on the independence of the judiciary establish its objective impartiality. As far as subjective impartiality is concerned, several provisions in the Codes of Civil, Criminal and Judicial Administrative Procedure provide for the exemption of judges that may impair the impartiality of the court in a given case, due to their connection with the case or one or more of the parties to the dispute.

Special courts

521. Article 8 of the Constitution provides that no person shall be deprived of the judge assigned to him or her by law against his or her will (para. 1); it also prohibits the establishment of judicial committees or extraordinary courts (para. 2).

The right to compulsory execution of judicial decisions

522. In the last years, both the constitutional and the common legislator have taken measures to prevent instances of non-compliance to judicial decisions or to non-execution of such decisions. The European Court of Human Rights has issued judgments against Greece, in which it found that Greece had violated the ECHR in that the Administration denied to comply with judicial decisions.⁴⁶

523. Article 94 (4) of the revised Constitution explicitly prescribes that judicial decisions are subject to compulsory execution also against the State and the public sector in general, local government agencies and legal entities of public law, as the law specifies. Furthermore, according to the said article, the law assigns to civil or administrative courts the competence to adopt measures for compliance of the Public Administration with judicial decisions.

524. In the same vein, article 95 (5) of the Constitution provides that the Administration shall be bound to comply with judicial decisions. A breach of this obligation shall render liable any competent agent as specified by law.

525. In execution of the aforementioned constitutional provisions, the legislator enacted Law 3068/2002, article 1 of which provides that the Administration, the local government agencies and the legal entities of public law are bound to comply without delay with the decisions of all courts and to take all necessary measures in order to fulfill that obligation and to execute the above decisions. The competence for taking the necessary measures to ensure compliance of the Administration with the judicial decisions is vested with judicial organs (3-member boards) of the highest rank, which belong to the same jurisdiction that issued the decision to be complied with. Article 3 of the aforementioned law provides that if the authority under consideration does not comply with the decision within the given time limit, the competent council may define an amount of money to be paid to the affected parties as penalty for non-compliance. At the end of every year, the council places all cases of non-compliance on record. This record is submitted to the Prime Minister, the President of the Parliament, the Minister of Justice and the Minister of Interior, Public Administration and Decentralization.

526. Article 4 of the same law expressly provides for the compulsory execution of a monetary claim against the Administration, the local government agencies and the legal entities of public law. This may be ensured by the seizure of their private property. In that way, the prohibition of compulsory execution against the State is lifted. As we have already mentioned, this prohibition was found by the courts to run contrary, among others, to articles 2 and 14 of the ICCPR. Finally, article 5 provides that the non-fulfillment of the obligation of compliance or the provocation to such non-fulfillment constitutes a special disciplinary offence for any competent agent, which is punished more severely if the omission of compliance was done with intent of the agent to get, for himself or for a third party, illegal benefit.

527. In a report dated 9.7.2002, the NCHR found that the new legislative framework does not fully satisfy international and constitutional requirements for the effectiveness of judicial protection and has suggested a number of amendments.

528. It is further noted that article 198 of the Code of Administrative Procedure (Law 2717/1999) stipulates that administrative authorities shall be bound to comply, by positive acts or by abstention from every contrary action, with judgments, which are issued with respect to disputes brought before administrative courts. Failure by the administrative authority to comply as stated above shall have as a consequence prosecution of the responsible person for dereliction of duty and personal liability for damages.

529. The ratification of the Covenant by Greece brought about some important changes in the field of compulsory execution of judgments rendered against the State, which previously was prohibited by article 8 of Law 2095/1952. In addition to what has been discussed on the relevant issue in the Core document, it should be noted that the Grand Chamber of the Areios Pagos considered the provision of article 8 of the aforementioned law as abolished from the time of the enactment of the law ratifying the ICCPR. The said provision was found contrary to article 2 (3) (c) of the ICCPR, along with articles 14 ICCPR, 6 ECHR and 20 (1) of the Constitution, which establish the principle of effective judicial protection.⁴⁷

530. It is obvious that the Greek courts invoked the provisions of the Covenant in order to fill an important gap in the field of effective judicial protection. It is worth noting that this gap was filled using the provisions of the Covenant, and not those of the ECHR, despite the fact that

Greek judges have become more accustomed to the latter. This recent jurisprudence has now a solid constitutional basis. Thus, the Covenant served as an indirect source of revision of the Constitution in the critical field of the right to effective judicial protection.

531. An issue which has arisen concerns a provision according to which the rate of default interest due by the State is lesser than the rate of default interest due by private individuals (6% compared to 11,25% respectively, as of June 2002). According to the NCHR, this regulation runs counter to the principles of effectiveness and efficiency of judicial protection, of equality of arms, as well as to the right of property.⁴⁸

532. This view is shared by the competent section of the CoS, which held that the above “prerogative” is contrary to the principle of equality (article 4 (1) of the Constitution), the right to judicial protection (article 20 (1) of the Constitution), as well as to articles 6 (1) and article 1 of the First Additional Protocol to the ECHR.⁴⁹ The case is currently pending before the plenary of the CoS. Ordinary administrative courts have taken the same position, by referring directly to articles 2 (3) (a) and (b), 14 (1) and 26 of the ICCPR.⁵⁰ On the contrary, the AP held the relevant provision to be in conformity with the right to property, as guaranteed by article 1 of the First Additional Protocol to the ECHR, as well as to the principle of proportionality.⁵¹

533. The AP has also held that article 923 CCivP, according to which the prior consent of the Minister of Justice is a precondition for the enforcement of a decision against a foreign State, is not contrary to articles 2 (3) and 14 ICCPR. The said measure, in view of its aim, which consists in ensuring respect for the generally acceptable principles of international law and avoiding disturbances in the country’s international relations, is not disproportionate and does not affect the main kernel of the right to effective judicial protection.⁵² A relevant application lodged before the European Court of Human Rights has been declared inadmissible as manifestly ill-founded.⁵³

Publicity of hearings

534. According to article 93 (2) of the Constitution “the sittings of all courts shall be public, except when the court decides that publicity would be detrimental to the good usages or that special reasons call for the protection of the private or family life of the litigants”. According to paragraph 3 of the same article “every court judgment must be specifically and thoroughly reasoned and must be pronounced in a public sitting”.

535. Article 329 of the CCP provides for the specifics of the publicity of hearings in criminal courts and sets out restrictions due to the capacity of the court room where the hearing is held or the age of persons wishing to attend the hearing. Article 330 construes the aforementioned constitutional restrictions to the publicity of hearings, especially where it provides for the restriction of publicity in cases of offenses against sexual freedom and economic exploitation of sexual life.

536. The Constitution provides that the hearings of juvenile courts need not be held publicly, whereas the relevant decisions may also not be rendered publicly (article 96 (3)).

537. Indirect publicity, namely publicity through the press is also protected by the Greek legal order. The media coverage of a trial is free. However, according to article 8 of Law 3090/2002, television or radio broadcasting, as well as filming and taping of the sittings of a civil, criminal or administrative court, in whole or in part, is prohibited. In exceptional cases, the court may allow the aforementioned acts, provided that both the Public Prosecutor and the parties give their consent, and that the broadcasting or filming is in the public interest. The broadcasting, filming or photographing of persons being brought before judicial, prosecutorial, police or other authorities is prohibited.

538. Article 113 (1) of the CCivP provides for the publicity of hearings in civil courts. Art. 114 construes the aforementioned constitutional restrictions to the publicity of hearings.

539. Any breach of the principle of the publicity of hearings constitutes a point of law on which an appeal in cassation may be lodged, both in civil (article 559 CCivP) and in criminal procedure (article 510 CCP).

Reasonable length of proceedings

540. In Greece, like in many other States Parties, great delays in the rendering of judicial decisions have been noted. Many judgments of the European Court of Human Rights concern violations of article 6 ECHR due to unreasonable length of proceedings before Greek courts.

541. In an attempt to tackle this important problem, the Parliament enacted Law 2915/2001. This law amended significant parts of the CCivP, in order to accelerate the procedure before the civil courts. Indeed, without compromising the safeguards for a fair trial, Law 2915/2001 introduced a simple procedure, according to which all claims and evidence are brought before the court in one single hearing, which leads to a final decision. Furthermore, there are fewer possibilities for postponing the hearings, etc. As far as criminal procedure is concerned, the Parliament enacted Law 3160/2003, in order to achieve similar acceleration in the rendering of criminal justice, both at the stage of preliminary procedure and of main procedure, namely the procedure before the court. There are more possibilities to request the recess of the court, instead of requesting a postponement, which is extremely time consuming, whereas the Law prescribes that an order for recess must be specially reasoned. Furthermore, the Law provides for increasingly strict prerequisites for the granting of a second postponement.

542. It is clear that measures aiming at the acceleration of judicial procedures must refrain from unduly restricting the individual right to judicial protection.⁵⁴

Safeguards in criminal proceedings

Presumption of innocence

543. According to the principle of the presumption of innocence: (a) no person is obliged to prove its innocence. The burden of proof lies with the prosecution. Object of the criminal proceedings is the determination of guilt and not the determination of innocence of the accused; (b) *in dubio pro reo*: the accused has the benefit of doubt; (c) no person may be sentenced,

pronounced guilty, or be subjected to penalty or other sanction, unless it has been tried in accordance with the law and after a legal judicial procedure. This principle is to be applied during criminal proceedings, every time that the question of guilt of the accused is posed.

The right to be informed of the charge

544. This right is expressly established in the CCP. More specifically, article 101 (1) of the CCP provides that the investigating authority is obliged to inform the accused of the contents of the accusation and of the all other investigation documents. The accused is also allowed to review the documents him- or herself or have them reviewed by his or her counsel. The accused may submit a written request in order to obtain copies of the indictment and of all the other investigation documents at his or her own cost. According to paragraph 2 of the same article, the investigating judge has the same obligations, and the accused enjoys the same rights, whenever the latter is summoned to provide additional pleas. If, however, the investigation has lasted for more than one month after the first or every additional plea, the accused has the right to exercise his or her rights once per month.

545. In addition, article 103 CCP provides that the investigating judge is obliged to clearly explain to the accused all of his or her (aforementioned) rights, immediately after the accused person's identity has been confirmed.

546. After that, the person in charge of the investigation is obliged to inform the accused, clearly and in detail, about the act of which he or she is being accused. The former shall invite the accused to enter a plea and determine his or her means of defense (article 273 (2) CCP). The accused must be invited to provide all the reasons that help his or her defense (article 274 CCP). The investigating judge shall appoint an interpreter whenever he or she is to interrogate an accused person who does not speak or understand the Greek language, in accordance with article 233 CCP.

547. According to article 104 (1) CCP, the provisions regarding notification of the investigation documents and information of the accused on his or her rights also apply in case of a preliminary investigation. However, knowledge of the documents and provision of copies once per month is not obligatory in the preliminary investigation procedure.

548. It should be noted that article 31 CCP, as amended by Law 3160/2003, which refers to the procedure for conducting a summary investigation (in order to determine if criminal charges are to be pressed), affords protection to fundamental rights of the "suspect". Among others, the person suspected of having committed a criminal offence is summoned in order to provide explanations. The latter may also request copies of the (criminal) complaint lodged against him or her. The person conducting the above summary investigation shall inform the accused, prior to his or her examination, of the offence, to which the investigation refers to, as well as of his or her relevant rights.

549. Finally, any possible violation of all of the aforementioned rights shall result in the absolute nullity of the procedure, in accordance with article 171 (1) (d) of the CCP.

Preparation of the defense

550. The right of the accused to have adequate time and facilities at his or her disposal for the preparation of his or her defense, and the right to communicate with a counsel of his or her choice, is adequately safeguarded by the CCP.

551. More specifically, the accused person has the right to request a 48-hour time limit, which can be prolonged, upon the accused person's request, by the investigating judge, during which he or she is not obliged to plea (articles 102 and 104 (a) CCP). This right is valid every time the accused person pleads, whether it is the first time or not, and at every stage of the investigation. This right also applies in the case of provision of explanations during summary investigation (article 31 CCP).

552. As already mentioned above, the CCP establishes the accused person's right to review all documents of the investigation.

553. Finally, article 100 (4) CCP provides that "in no case shall the communication between the accused person and his or her counsel be prohibited". More specifically, the accused has the right to be visited by his or her counsel, without any limitation (article 52 CorrC). The accused may also communicate with the counsel freely and without obstructions, both in writing as well as orally. Furthermore, according to article 49 of Legislative Decree 3026/1954 (Attorney Code), it is prohibited to the authorities to search the residence or the professional premises of the attorney, as well as to perform body search of the attorney or to confiscate documents that he or she has in his or her possession, as long as the said attorney is the accused person's legal representative or counsel.

Right to defense

554. Article 96 (1) of the CCP provides that every party involved in a criminal proceeding may be represented or accompanied by one or two counsels during the pre-trial stage and by a *maximum* of three counsels before the court. The accused person has the right to have his or her counsel present when examined or entering his or her plea and to communicate with him or her (article 100 (1) and (4) CCP). The accused has the same right both during preliminary investigation (article 104 (1) CCP) and during summary investigation (article 31 (2) CCP).

555. By virtue of article 97 (1) CPP, the parties (i.e. the accused, the civil claimant and the civilly liable third party) may through their counsel be present at every act of investigation, except of the examination of witnesses and of the accused. But the accused him- or herself has the right to be accompanied by his or her counsel, in each appearance before the investigating authorities, in order to defend him- or herself or to be questioned or to confront other accused or witnesses. If the accused person is held in custody, he or she will have to be brought before the competent organ, unless such an action might cause obstructions to the procedure (article 97 (2) CCP).

556. In article 100 (3) CCP it is clearly provided that the investigating judge is obliged to appoint *ex officio* a counsel, if the accused person so requests. In the hearing before the court, the presiding judge is obliged to appoint a counsel to any defendant who is being tried for a

felony. The appointed counsel shall have immediate access to the case file (article 340 (1) CCP). Article 376 CCP provides that, at appeal, the presiding judge of the Court of Appeal has the same obligation and that Article 340 (1) applies *mutatis mutandis*.

557. Law 3160/2003 has extended the right of the accused not to be present him- or herself at the hearing before the court, but to be represented by a counsel, according to article 340 (2) CCP. This right has been extended to cover misdemeanors, as well as the appeal proceedings. This new provision will drastically limit the cases of postponements of proceedings, leading to an acceleration of the criminal procedure. In parallel, care is being taken in order for the court to be able to order that the accused be brought before it, need it be, by force.

558. The Grand Chamber of the Areios Pagos had already held, in applying article 6 of the ECHR, that the right of the accused to be heard, in connection with his or her right to be represented by counsel, includes the right of the accused person to be represented by his or her counsel, if he or she does not wish to be present in person. The legislator is not allowed to “punish” the defendant by depriving him or her of his or her right to be defended by a counsel, even if the defendant’s absence is intended and unjustified, since his or her presence in person may be realized through other means and not through deprivation of the accused person’s right to defend him- or herself.⁵⁵

Right to legal assistance

559. Following the ECtHR judgments in the *Twalib*⁵⁶ and *Biba*⁵⁷ cases, Parliament adopted Law 2721/1999, which added, after article 96 of the CCP a new provision (article 96A, now abolished) enlarging the court’s obligation to provide free legal aid in cases where an accused person does not have the means to engage a lawyer. More precisely, this provision extended, on the one hand, this possibility in cases concerning misdemeanors. On the other hand, it provided for the compulsory appointment *ex officio* of a lawyer until the end of the proceedings in every instance as well as for the lodging of legal remedies. Consequently, it covered the whole proceedings before the Court of Cassation. The lawyer was to be chosen from a list drawn up by the local Bar every three years in June and transmitted to all courts.

560. The recently adopted Law 3226/2004 establishes a comprehensive system of legal aid to persons with low income.⁵⁸ According to article 1 of the said law, beneficiaries of legal aid are EU nationals as well nationals of third states and stateless persons if they, legally, have their residence or usual stay within the European Union. As “low income” is defined the yearly family income which does not exceed the two-thirds of the minimum yearly wages provided for by the National General Collective Labor Agreement. However, in many cases, envisaged in the CCP (such as the appointment of counsel by the investigating judge, the conduct of a psychiatric expertise, the appointment of counsel at the hearing, etc), fulfillment of the above prerequisites is not required. The examination of the application for the granting of legal aid is conducted by a judge; the relevant decision must be reasoned. The counsels shall be appointed on the basis for separate catalogues for criminal and civil and commercial cases, compiled by the Bar Associations. In addition, the latter shall compile daily catalogues for the provision of legal aid for the investigation and trial of felonies and misdemeanors caught in the act.

561. In criminal cases, the legal aid consists in the appointment of counsel. Counsels are appointed to a defendant in cases of (a) felonies, for the investigation and the hearing, (b) misdemeanors under the jurisdiction of the Three-Member Misdemeanor Court for which imprisonment of at least 6 months is provided, for the hearing of the case, (c) appeal, appeal in cassation, application for the reopening of procedure, depending on the penalty imposed.

562. It is to be noted that counsels shall also be appointed for drafting and submitting a complaint or a civil claim at every instance to victims of torture and other offenses against human dignity, discrimination and violation of equal treatment, crimes against life, against personal and sexual freedom, against economic exploitation of sexual life, against property and property interests, bodily injuries and crimes related to marriage and family, provided that they constitute felonies or misdemeanors under the jurisdiction of the Three-Member Misdemeanor Court, punishable with a penalty of imprisonment of at least 6 months. For legal aid to be granted, the relevant legal remedies must be admissible and not manifestly ill-founded.

563. Legal aid is also provided for, under certain conditions, in civil and commercial cases, consisting in the exemption from payment, in whole or in part, of legal costs and, upon special request, in the appointment of a counsel, a notary or a bailiff. It can also be extended by Presidential Decree, to all administrative disputes, or categories thereof.

Right to call and examine witnesses

564. Articles 273 (2) (a) and 274 (b) establish the right of the accused to request the examination by the investigating authority of all proposed evidence and the exercise of every act of interrogation that may prove helpful to the accused person's defense. The investigating authority is obliged to examine every piece of evidence proposed by the accused, in order to reveal the truth, because otherwise he or she violates the respective right of the accused person. Thus, the investigating authority is obliged to examine the defense witnesses proposed by the accused, if he or she has already examined the prosecution witnesses. During the hearing before the court, the accused person is not under an obligation to inform the Public Prosecutor or the other parties of the witnesses he or she will summon, with some exceptions, e.g. if he or she is accused of an offence for which the law allows the proof of truth (article 326 (3) CCP). The Public Prosecutor is obliged to subpoena all substantive witnesses both for the prosecution and for the defense (article 327 (1) CCP). The accused person has the right to summon witnesses at his or her own expense. However, he or she also has the right to request the competent authority to subpoena at least one witness of his or her choice, if he or she is accused of a misdemeanor, and at least two, if he or she is accused of a felony (article 327 (2) CCP).

Right to free assistance of an interpreter

565. According to article 233 (1) CCP, the judge directing the procedure must appoint an interpreter when the accused, a witness or a civilly liable third person does not comprehend or speak the Greek language. The right to free assistance of an interpreter includes the right to have documents of interest to the trial translated. The breach of the obligation to appoint an interpreter may lead to an annulment of the procedure. Furthermore, the Greek legal order provides for the assistance of an interpreter also in civil proceedings (article 252 (1) CCivP).

Prohibition of self-incrimination

566. The principle of prohibition of self-incrimination is provided for in the Code of Criminal Procedure. More specifically: (a) according to article 223 (4), a witness is not obliged to give testimony on facts that may serve as the basis for his/her conviction for a criminal offence. (b) According to article 273 (2) (b), the accused has the right to refuse to answer any question during the interrogation (without the court being able to base its decision on his or her guilt on the fact of his or her silence). Article 366 (3) CCP provides for the accused person's possibility to refuse to plea or to answer any question, something that shall be mentioned in the trial transcripts. Both the Constitution and the aforementioned Code prohibit the use of interrogative methods which violate human rights and amount to torture and other inhuman or degrading treatment. For more details, see this Report, under article 7 of the Covenant.

Rights of a juvenile accused

567. This issue is dealt with *in extenso* in Greece's Report to the Committee on the Rights of the Child. In this Report, we will confine our comments to the following:

568. According to article 45A CCP, which was added by Law 3189/2003, if a minor has perpetrated an offence, which constitutes a petty crime or a misdemeanor, the Public Prosecutor may choose not to prosecute the offender, if he or she deems, when investigating the circumstances of the alleged offence and the personality of the minor in general, that prosecution is not necessary in order to deter the minor from committing other criminal offences in the future. The Public Prosecutor may order that one or more reformatory measures of the measures provided for in article 122 (a) to (k) PC be imposed on the minor. The former may also order that the latter shall have to pay up to € 1,000 to a non-profit or charity legal entity. The same order shall also determine the time limit for compliance.

569. Every effort is made to ensure that cases involving crimes committed by minors are heard as soon as possible after the perpetration of the crime, and in all cases no more than six months after it. The hearing takes place before the competent Juvenile Court, which hears the case *in camera*, so as to protect the minor's personality.

570. In the event of a minor being accused of having committed a criminal act as the accomplice of adults, the case will, as a rule, be heard separately as regards the minor, who will be tried by the juvenile court (article 130 (3) CCP). Throughout the hearing, the minor will have the support of his/her lawyer, the probation officer, and the parents or lawful representative if this is not considered contrary to the minor's interests.

571. Both the minor defendant and his/her advocate are entitled to question witnesses, experts, technical advisers, etc. (article 357 (3) CCP). During both the investigation and the main hearing, minors are questioned without an oath, and the testimony of the minor's relatives to the second degree is compulsory (articles 221 (a) and 222 of the CCP).

572. Not all the sentences imposed on juvenile offenders are subject to the legal remedy of appeal. Law 3189/2003 has extended the circle of the persons allowed to submit an appeal in a juvenile case and provided for the right to appeal in all cases where detention in a special institution for minors has been ordered.

573. Appeals lodged against judgments rendered by juvenile courts are heard by the juvenile appeal courts, which have three members presided over, if possible, by a juvenile judge.

Right to review of conviction and sentence

574. The main remedies provided by the Greek legal order for the review of conviction and sentence by a criminal court are the appeal and the appeal in cassation. These remedies are available for almost all misdemeanors and all felonies. The legal remedy of the “reopening of procedure” merits to be mentioned, as it has been recently enhanced in order to ensure compliance with ECtHR’s judgments on criminal cases.

575. *Appeal*: The accused may lodge an appeal against decisions rendered in the first degree. The appellate court tries the case again as to all offenses and points mentioned in the appeal and passes a new judgment which replaces the one rendered by the court of first instance. The case is re-tried from all sides -both of law and of fact- and the procedure is basically the same as before the court of first instance. The legal position of the accused may not be worsened (*reformatio in pejus*) if the appeal has been lodged by the accused or by the Public Prosecutor in favor of the accused.

576. *Appeal in cassation*: The accused may lodge an appeal in cassation only on points of law and only against judgments that cannot be appealed, or have been rendered on an appeal. The points of law that can serve as the basis for the lodging of an appeal in cassation are the relative or absolute nullity of acts that have taken place in court, lack of reasoning, violations concerning the publicity of the hearings or the competence of the court, incorrect application or interpretation of a substantive legal provision, violation of the *res judicata* principle, etc. Some of the aforementioned reasons are examined *ex officio* by the court of cassation (which is the AP). If the appeal in cassation is sustained, the court of cassation annuls the judgment and sends the case to the same court in order to have it re-try the case by other judges. However, in the case of erroneous application of the law, the court of cassation may apply the provision correctly and decide to acquit the accused.

577. *Reopening of procedure*: Reopening of procedure is an extraordinary remedy provided for judgments that can be neither appealed nor appealed in cassation, if new facts render the judgment convicting the accused obviously erroneous. In accordance with article 525 (1) (e) CCP (which was added by article 11 of Law 2865/2000 in order to harmonize the Greek legal framework with the recommendations of the Council of Europe), the reopening of the procedure is allowed if a judgment of the ECtHR has determined that there has been a violation of a right referring to the fairness of the procedure followed or the substantive provision applied. Furthermore, article 525A CCP (which was added by Law 3060/2002) provides that any person that has sustained damages may request the reopening of the procedure, in the part that the latter led to a decision denying the obligation of the State to pay compensation or determining inadequate compensation in the cases of article 533 (compensation for wrongfully detained or convicted persons). In order for the aforementioned person to request the said reopening of the procedure, there must be a judgment of the ECtHR holding that there was a violation of the ECHR at the stage of reaching the relevant judgment.

Right to compensation for miscarriage of justice

578. Article 533 to 545 CCP establish the institution of compensation by the State to all persons that have been wrongfully deprived of their personal freedom, either because they were wrongfully convicted, or because they were wrongfully detained pending trial. This issue has already been dealt with in this Report under article 9 (5) of the Covenant.

579. It is also reminded that, according to article 533 (1) CCP, all persons detained pending trial have the right to claim compensation if they were subsequently definitely acquitted by a decision of the Judicial Council or the court. This right is also enjoyed by all persons detained on the grounds of a convicting decision, which was subsequently annulled after the exercise of a legal remedy, as well as by all persons convicted and detained and subsequently acquitted by a judicial decision after a reopening of the procedure. Furthermore, the right to claim compensation is enjoyed by all persons who have served a sentence greater than the one to which they were ultimately convicted.

Freedom from double jeopardy

580. If a person was convicted or acquitted through a judgment which is not subject to appeal, he or she may not be prosecuted again for the same act, even if the latter is now qualified as a different offence (article 57 (1) CCP). However, in exceptional cases (such as subsequent discovery that the evidence in the trial was false, or discovery of new evidence) the law provides for the possibility of reopening the case (article 57 (2) CCP). Against the acquitted person, the reopening is possible mainly for grounds consisting of criminal offences which influenced the decision (e.g. forgery of documents or bribery of judge), while in favor of a condemned person, also on account of the discovery of new facts or evidence.

581. The issue whether article 14 (7) of the Covenant establishes the obligation of recognition of the *res judicata* principle stemming from a foreign criminal judgment has repeatedly been dealt with by the Areios Pagos. Many decisions accepted that the Covenant establishes the obligation to acknowledge the *res judicata* of foreign judgments,⁵⁹ while others denied that.⁶⁰ The issue has also been dealt with by the Grand Chamber of the AP, which held that the meaning of the said provision is obviously that no person shall be tried or punished again by the courts of each State party to the ICCPR, i.e. of the same country.⁶¹ Consequently, foreign criminal judgments do not generate *res judicata* or an analogous commitment on the grounds of the provision of article 14 (7) of the Covenant, because the latter refers to the internal legal order of every State party.

Article 15: Prohibition of retroactive criminal laws

582. The prohibition of retroactive criminal laws is established by article 7 (1) of the Constitution, according to which “[t]here shall be no crime, nor shall punishment be inflicted, unless specified by law in force prior to the perpetration of the act, defining the constitutive elements of the act. In no case shall punishment more severe than that specified at the time of the perpetration of the act be inflicted”. Article 1 PC provides that “no penalty shall be imposed, unless as punishment for the commission of an act, which constitutes a criminal offence, in accordance with a provision enacted before the perpetration of the act”, whereas article 2 provides for the retroactivity of more favorable laws, in case between the perpetration of the act

and the final conviction two or more relevant laws were enacted and in force. Furthermore, in accordance with the same article, if a subsequent law has qualified the act as not constituting a criminal offence, the execution of the punishment imposed and its criminal consequences shall cease.

583. The critical time of perpetration of the act is, according to article 17 PC, the time at which the perpetrator acted or was obliged to act, whereas the time at which the result occurred is not relevant.

584. All interpretative penal laws, namely those that authentically interpret a preexisting provision, are considered as violating the principle of non-retroactivity, if the interpretation results in the establishment of a new criminal offence, or in the more severe conditions or punishment of a preexisting criminal offence.

585. The prohibition of retroactivity applies also in the case of the imposition of penalties. Thus, an act that occurred at a time when it was already established as a crime cannot be punished by a penalty which was not provided for at the time of occurrence, but which was established by a subsequent penal law.

586. Furthermore, if a penal law was amended so as to more severely punish an already existing criminal offence after the time of the latter's occurrence, the more severe consequences shall not be imposed. Consequently, a more recent penal law threatening a more severe penalty or more severe consequences for the defendant may not be applied.

587. It is also prohibited to impose a more severe penalty through the analogous application of another penal provision or through the extensive interpretation of a preexisting provision, or even through the restrictive interpretation of a provision reducing the criminal consequences of an act.

Article 16: Recognition of legal personality

588. The right of everyone to be recognized as a person before the law is taken for granted in the Greek legal order. Thus, the right has never been the subject of ambivalence or restrictions. The constitutional basis of the aforementioned right is article 2 (1) of the Constitution, which establishes the principle of human value and dignity.

589. According to article 34 of the Civil Code, "every person is capable of being the subject of rights and obligations". Each person commences to exist at the time that he or she is born alive and ceases to exist at the time of his or her death (article 35 CC). The embryo (*nasciturus*) is considered as born, as far as the rights accorded to it are concerned, as long as it is ultimately born alive (article 36 CC). Article 57 CC affords protection to the right of personality, in providing that any person that has been illegally injured in his or her personality has the right to request the cessation and the non-repetition of the wrongful act. The concept of personality encompasses all the tangible and intangible elements, which constitute one's physical, emotional, intellectual, moral and social existence. The Civil Code grants a general action for the protection of one's personality against any unlawful intrusion, invasion or infringement.

Article 17: The right to respect of privacy, family, home and correspondence and protection of honor and reputation

Constitutional framework

590. Articles 2 and 5 of the Constitution, already mentioned, form the cornerstones of the Greek fundamental law and they safeguard human dignity and personality. These two provisions are of a general character and encompass, among others, constitutional protection of honor and reputation. Article 9 (1) of the Constitution categorically establishes the inviolability of one's privacy and family life; Article 9A, adopted in 2001, enshrines the right to protection of personal data; article 19 (1) establishes the absolute inviolability of one's correspondence and communication by any other means. Furthermore, article 21 (1) safeguards the institution of family, providing for the protection by the State of the institution of marriage, of maternity and of childhood.

Content of article 9 of the Constitution

591. The terms *privacy* and *family life* in the sense of article 9 (1) refer to a certain "sphere of confidentiality", namely to a sum of information concerning aspects of each person's life that the latter does not have the right or does not wish to disclose. The other aspect of the "sphere of confidentiality", is that the State may not interfere in such a manner as to force any person to abide by specific standards on issues of private and family life that should be left to the latter's free will (e.g. sexual life, family programming etc.). Also, the State may not demand information belonging to the aforementioned "sphere of confidentiality".

592. Article 9 (1) establishes the inviolability of one's home. According to this provision, one's home constitutes sanctuary. The term "home" is understood as encompassing every non-generally accessible place of residence or work that one defines as such. Every person may have more than one "homes". The duration of residence is irrelevant. The term "sanctuary" stands for the prohibition of entry or stay of State authorities in one's home, without the latter's knowledge and explicit and valid consent. In that sense, the secret installation of microphones or of any other type of surveillance instruments is prohibited as well. State organs may not hinder any person from entering his or her home.

593. Home searches are prohibited, except when and as specified by law and always in the presence of representatives of the judicial power, as it will be explained hereunder.

594. Article 9 (2) provides that violators of the abovementioned right shall be punished for violating the home's asylum and for abuse of power, and shall be liable for full damages to the victim, as specified by law.

Content of article 9A of the Constitution

595. Article 9A provides that all persons have the right to be protected from the collection, processing and use, especially by electronic means, of their personal data, as specified by law. The protection of personal data is ensured by an independent authority (the Hellenic Data Protection Authority), which is established and operates as specified by law.

Content of article 19 of the Constitution

596. The constitutional protection of secrecy of letters and all other forms of free correspondence or communication extends over any kind of private, namely non-public, communication, irrespective of whether it constitutes communication for personal or professional purposes. All State organs are prohibited from accessing the message and from communicating its content or even the sole fact of the communication to third parties. The law specifies the guarantees under which the judicial authority shall not be bound by this secrecy for reasons of national security or for the purpose of investigating especially serious crimes. The above secrecy is ensured by a new independent authority (article 19 (2)). Use of evidence acquired in violation of articles 19, 9 and 9A of the Constitution is prohibited.

Content of article 21 (1) of the Constitution

597. According to this article, the family, being the cornerstone of the preservation and the advancement of the Nation, as well as marriage, motherhood and childhood, shall be under the protection of the State. Family life is to be clearly distinguished from the concepts of private and public life. Family life is life within a family, including primarily husband and wife, along with their children, even if they are adopted, or if they do not reside in the same house. The existence of a valid marriage does not constitute a prerequisite for the constitutional protection of family and family life. Each person has the right to form a family and to shape, without interference, his or her life within the framework of that family.

Beneficiaries

598. Beneficiaries of the protection afforded by the aforementioned articles are all natural persons irrespective of citizenship. Furthermore, as far as the protection afforded by articles 9 (1) (regarding the sanctuary of “home”) and 19 (1) is concerned, it extends also to legal entities of private law (e.g. corporations) as well as to unions of persons lacking legal personality.

Special legal provisions

599. Numerous legal provisions, both of civil and criminal law, safeguard, in implementation of the above constitutional provisions, the inviolability of private and family life, of home, correspondence, honor and reputation.

Home searches

600. Home searches are provided for, primarily, in the CCP, in the framework of investigations, but also by the CCivP and the CCPI in the context of compulsory enforcement procedures.

601. The search is allowed, according to article 253 CCP, (a) if there is an ongoing investigation concerning a felony or a misdemeanor, or (b) if it can be reasonably assumed that the exposure of the crime, the exposure of the perpetrators and their subsequent arrest or the restitution of the damage occurred can be realized or facilitated only through this search. The same apply in the case of search of a private residence in the framework of compulsory or administrative enforcement (execution).

602. Home search during nighttime is allowed only in cases of extreme gravity or urgency, and, in fact, if the search would facilitate the arrest of a legally prosecuted person, if a person is caught in the act of committing a felony or a misdemeanor in the residence, if there is a gathering in a private residence used for professional gambling or for professional debauchery or if the said premises may be accessed freely by night (article 254 (1) CCP). In the field of compulsory or administrative enforcement, a nighttime search is allowed only in cases of extreme urgency or for the avoidance of imminent danger (article 929 CCivP in combination with articles 686 *et seq.* CCivP) or in cases of possible flight of the debtor to the State or in cases where it is possible that the State will sustain damage (article 11 in combination with article 8 CCPI).

603. According to the CCP, the search may be ordered, as an investigation act, by the Public Prosecutor. In that case, it shall be conducted by the investigating officers, which, however, may also act *proprio motu* in caseS danger may arise from the delay or in cases of offenders caught in the act (article 251 in combination with article 243 (2) CCP).

604. As already mentioned above, the presence of a member of the Judiciary is mandatory during a search. The CCP provides for the conduct of a search in the absence of a member of the Judiciary in exceptional cases: (a) in the case of a nighttime search, if the Public Prosecutor, the investigating magistrate, the justices of the peace or members of the petty offenses courts are not available. In that case the search is conducted by police officers (article 254 (1) CCP) and (b) if the search is conducted by police officers and there is no member of the Judiciary available in the region where the search is to take place. In that case, the President of the local community is requested to be present during the search (article 255 (2) CCP). However, the aforementioned provision of article 255 is deemed as running counter to the Constitution and is therefore inapplicable, as long as it provides for the conduct of a search in the absence of a member of the Judiciary.

605. It is also noted that the constitutional order of article 9 (1) (c) of the Constitution complements the relevant provisions of the CCivP and the CCPI regarding the participation of a member of the Judiciary during the conduct of a search.

606. Regarding the way the search shall be conducted, article 256 CCP provides for the strict application of the principle of proportionality. More specifically, it provides that “During the conduct of a home search, every measure should be taken to avoid any publicity and inconvenience of the residents which is not absolutely necessary. Care should also be taken for the safeguarding of the dignity and the personal secrets that are not in any way connected to the alleged offense. The search should be conducted in a respectable manner. The person conducting the search shall invite the person residing in the premises to be searched to be present during the search. In case the latter is absent, a neighbor is invited to be present”.

607. As already stressed, paragraph 2 of article 9 provides for the criminal punishment of all persons violating the aforementioned constitutional provisions regarding the violation of home sanctuary and the abuse of power. The relevant provisions of the PC are contained in articles 239 and 241. The same paragraph establishes direct responsibility of the violating officer to pay full compensation to the victim. Thus, both the officer and the State incur civil liability in whole.

Confidentiality of correspondence

608. Articles 248 to 250 PC afford protection to the constitutionally established confidentiality of correspondence. The said articles provide for the punishment of the violation of confidentiality by postal, telegraph and telephone employees. Further protection is afforded by articles 370 and 370A PC, which provide for the punishment of any violation of the confidentiality of correspondence and telephone calls and of oral communication respectively.

609. Article 19 (1) (b) of the Constitution provides that the law shall determine the guarantees, under which the judicial authority is not bound by the secrecy of correspondence for reasons of national security or for the purpose of investigating especially serious crimes. The relevant Law 2225/1994, as amended by Law 3115/2003, contains a list of felonies, for the detection of which the confidentiality is lifted. According to article 4 (2) of Law 2225/1994, the lifting of confidentiality is allowed solely if the competent Judicial Council determines that the investigation of the case or the detection of the place of residence of the accused person is impossible or substantially difficult without the lifting. The lifting occurs only against a specific person or persons who are connected to the case under investigation, or who have been determined, on the basis of specific incidents, to have been receiving or sending specific messages from or to the accused persons or to have been acting as his or her links.

610. It should be noted that the aforementioned law sets specific time limits for the lifting of confidentiality. According to article 5 (6), the duration of the lifting of confidentiality may not exceed two months. Any prolongation of that duration, which do not exceed two months each, may be ordered according to the procedure provided for the imposition of the measure and given that the reasons for the lifting are still valid and existent. In any case, the prolongations may not exceed ten months in total. This limit does not apply in cases where the lifting is ordered for reasons of national security. After the duration of the lifting has expired, or after the *maximum* duration of the lifting has expired, the lifting of confidentiality ceases automatically.

611. It is also provided that the affected persons shall be informed, under certain preconditions, of the imposition of the measure of lifting, after the latter has ceased. Guarantees shall also be provided for the legal use of the collected evidence, as well as for the mandatory destruction of the material that was not connected to the reason for the imposition of the measure.

Independent authorities in the field of data protection and secrecy of correspondence

612. As already mentioned, the existence and operation of an independent data protection authority is guaranteed by Article 9A of the Constitution, adopted in 2001. In our Core document, we refer in detail to the mandate of the Hellenic Data Protection Authority.

613. Article 19 (2) of the Constitution, which was adopted during the constitutional revision of 2001, provides for the establishment of an independent authority which will ensure the secrecy of communication. Law 3115/2003 indeed establishes an independent Authority for the Guarantee of Communications Secrecy (hereinafter: “the Authority”), which replaced the National Committee for the Protection of Communications Secrecy, established by Law 2225/1994. The new law creates a framework for the control and monitoring of the conditions and the procedure for lifting the communications secrecy, so as not to affect the

private life and the personality of all persons, unless, as much as and for as long as it is absolutely necessary for the protection of great public interest. Just like all other independent authorities, the Authority possesses all the necessary guarantees for independence and transparency during its operation and the fulfillment of its duties.

614. In parallel, the Authority is entrusted with many control and normative competences both of preventive and of repressive character with regard to all natural persons and legal entities operating in the field of communications. The Authority conducts regular and unscheduled controls of facilities, technological equipment, files, data banks and documents of public services, organizations and enterprises belonging to the wider public sector and of private enterprises active in the field of communications. It also receives information and invites persons to take part in hearings, when it considers that those persons may prove helpful to the accomplishment of its goal. It may also summon representatives of the aforementioned organizations, enterprises and corporations in order to hold hearings, and request information. The Authority may confiscate means facilitating the violation of the communications secrecy and to investigate complaints regarding the protection of persons affected by the operation and the procedure of lifting of confidentiality.

615. Finally, articles 10 and 11 of the aforementioned Law provide for criminal and administrative sanctions that may be imposed on any person or entity violating the secrecy of communications or the terms and the procedure of lifting secrecy.

Family reunification

616. Law 2910/2001 contains special provisions, which establish the right of aliens to family reunification.

617. According to article 28 of Law 2910/2001, an alien living legally in Greece for at least two years may apply for the entry and settlement of members of his or her family in the country, provided that:

(a) The members of his or her family are going to live with him or her; and

(b) The applying alien proves that he or she has steady personal income, sufficient to cover the needs of his or her family, which may not be lower than the wages of an unskilled employee, as well as the appropriate accommodation and medical treatment insurance that may also cover the members of his or her family supported by him or her.

618. The following persons are considered family members:

(a) The spouse;

(b) All single children below 18; and

(c) All single children below 18 of the spouse, provided that the latter has been awarded custody of the children.

619. By virtue of the aforementioned provision, the right to family reunification is extended so as to cover all persons legally residing in Greece, and is not restricted to those working in Greece. The duration of legal residence in Greece that is required for the alien to request reunification with the members of his or her family (“waiting time”) has been reduced from five to only two years.

620. The residence permit is granted for a time period of up to one year. It may be renewed for a time period of up to one year and shall follow the course of an alien’s work permit.

621. Article 31 of the aforementioned law provides that persons admitted for family reunification shall be allowed to work as employees or provide independent services or exercise an independent economic activity. For this purpose, they shall obtain a work permit or a permit to exercise an independent economic activity by producing the stay permit for family reunification. In that way, the members of the alien’s family are accorded the right to immediately exercise any professional activity.

622. According to article 32, persons admitted for family reunion may acquire an independent right to reside in Greece when:

- (a) They become major;
- (b) The alien deceases;
- (c) The alien exercises violence on such persons; and
- (d) A divorce decision is issued concerning the alien.

623. The duration of an independent residence permit may not exceed one year and may be renewed for one plus another year and in all cases until the alien reaches the 21st year of age. Further renewal of the permit is allowed in accordance with the provisions of the law on aliens.

624. Furthermore, the law provides for the granting of stay permits to third country nationals who are spouses of Greek citizens or European Union citizens. More specifically, according to article 33 of Law 2910/2001, as replaced by article 19 (5) of Law 3013/2002, the alien spouse of a Greek citizen or EU citizen shall be granted a stay permit of at least five years, without the requirement to obtain a work permit. This permit is automatically renewed for at least another five years. The same permit covers all single children of the alien below the age of 18, provided that he or she is entitled to exercise the parental authority. Paragraph 2 of the aforementioned article contains regulations regarding marriages proved to have been celebrated with a view to circumventing the provisions of the law. All aliens who are spouses of repatriated Greeks or of alien ethnic Greeks or who are widowed provided that the spouse who died was Greek citizen or European Union citizen or repatriated Greek or alien ethnic Greek fall within the scope of application of the aforementioned paragraphs.

625. According to paragraph 4 of the aforementioned article, as added by article 11 (3) of Law 3074/2002, the following are considered as members of the family of a Greek or an EU citizen:

- (a) The spouse;
- (b) All children below the age of 21;
- (c) The parents of the spouse, provided that they live with him.

626. The aforementioned aliens may be granted an independent stay permit for one of the grounds provided for in Law 2910/2001, as long as the following prerequisites are met:

- (a) They have completed the age of case (b) of the aforementioned paragraph;
- (b) Their spouse who is Greek or EU citizen exercises violence against them;
- (c) A divorce decision has been issued.

Expulsion of aliens and protection of family life

627. In general, article 46 of Law 2910/2001 prohibits the expulsion of an alien, if the latter: (a) is a minor and his or her parents reside legally in Greece; (b) is the parent of a Greek minor whose custody he or she has or whom he or she is obliged to support and he or she indeed performs such obligation; and (c) has exceeded his or her 80th year (article 46 (1)).

628. Expulsion in cases (b) and (c) above shall not be prohibited if the alien constitutes a danger to public order, national security or public health, provided that the alien suffers from a disease that may be a risk thereto, according to international standards and the WHO, and refuses to comply with the public health protection measures prescribed by the medical authorities, in spite of having been adequately informed.

629. The jurisprudence of the Suspension Committee of the Council of State clearly shows that the level of respect of the rights of aliens regarding all matters related to expulsion is satisfactory and constantly improving. There is already a clear trend towards protecting aliens in the field of expulsion. The Committee has already an extensive *corpus* of jurisprudence which points out the concept of “damage which is difficult to redress” that may be sustained by the alien if the administrative decision on his or her expulsion is enforced. This is considered an adequate reason for the suspension of the execution of the aforementioned decision.

630. Many court decisions have endorsed the aforementioned interpretative approach.⁶² These decisions mainly refer to a damage which is difficult to redress or to an irreparable damage, which may be caused by the destruction of the alien’s living relationships. This destruction is usually connected with the fact that a possible expulsion would separate the alien from members of his or her family.

631. It is noteworthy that both the Council of State and the Areios Pagos take often into consideration the alien's family ties and other situations that tie the alien to Greece, in conjunction with the duration of the alien's residence in Greece, when trying expulsion cases. More specifically, the AP has adjudicated that "the court has the power to judge whether expulsion is necessary or not. In order to do that, the court takes into consideration the specific crime, its consequences, the duration of the alien's residence in Greece, his or her general conduct, his or her professional orientation, the existence of family".⁶³ The CoS has adjudicated that the provisions regarding stay permits (article 19 of Law 1975/1991, previously in force) must be interpreted under the light of articles 9 (1) and 21 (1) of the Constitution, which establish the inviolability of private and family life and which afford State protection to family and childhood.⁶⁴

632. The Suspension Committee of the CoS shall weigh the damage sustained by the applicant alien in case of immediate compulsory departure from the country and separation from his or her family environment against the reasons related to public interest, which, according to the Administration, demand the enforcement of expulsion orders. In many cases, the Suspension Committee has found that the suspension of the execution of the expulsion acts is necessary.⁶⁵

633. Furthermore, the Administration is bound to grant the request of an alien for a stay permit, if the said alien is married to a Greek citizen and the two are in fact living together. The authority's decision on the above conditions must be based on facts.⁶⁶

634. The CoS Suspension Committee has repeatedly adjudicated that a "damage which is difficult to redress" usually has greater bearing than the reasons of public interest invoked by the Administration.⁶⁷ Furthermore, in a series of cases, the Committee found that the Administration did not invoke specific reasons of public interest for the justification of the expulsion decision,⁶⁸ whereas in other cases it found that the reasons invoked by the Administration did not even exist.⁶⁹ There are of course cases where the Committee, taking into account the reasons of public interest invoked by the Administration, does not grant a suspension of execution of the decision for expulsion.⁷⁰

Protection of private life and mass media

635. See this Report on article 19 of the Covenant (freedom of expression).

Article 18: The right to freedom of thought, conscience and religion

636. The presentation of Greek laws and practices in matters concerning the freedom of religion will be divided in two parts. In the general part, reference shall be made to the Greek constitutional framework safeguarding the various aspects of freedom of religion, to the beneficiaries of the right, to its general limitations, as well as to the relation between article 3 of the Constitution, which provides that the religion of the Eastern Orthodox Christian Church is the prevailing religion, and article 13 which enshrines freedom of religion. In the special part, the most important issues and problems in the field of freedom of religion within the Greek legal order will be brought to the Committee's attention.

General part

Content and manifestations of the freedom of religion

637. The Greek Constitution provides for freedom of religion in article 13, which is not subject to revision, according to article 110 (1) of the Constitution. Reference to freedom of religion is also made in article 5 (2) (providing that all persons within the Greek State are granted an absolute protection of their life, dignity and freedom, without any kind of discrimination, based, among others, to their religious beliefs) and 16 (2) (providing that education aims, among others, at the shaping of a religious conscience. Finally, article 3 regulates the relations between the State and the Church.

638. The right to freedom of religion encompasses (a) freedom of religious conscience; and (b) freedom of worship.

639. (a) According to article 13 (1) of the Constitution, “freedom of religious conscience is inviolable. The enjoyment of civil and political rights does not depend on the individual’s religious beliefs”. This freedom further encompasses the following rights:

- One’s right to adopt a religion of one’s own choice, not to adopt any religion at all, or to be an atheist or an agnostic.⁷¹ This right refers to any religion, as well as to any “schismatic” or “heretical” teachings;
- One’s right to manifest or not to disclose one’s religious beliefs;⁷²
- One’s right to abide to, change or abolish one’s religious beliefs;⁷³
- One’s right not to suffer any consequences due to one’s religious beliefs or due to the lack of such beliefs;⁷⁴
- One’s right to exercise one’s civil rights in order to disseminate one’s religious beliefs (freedom of expression, freedom of assembly and freedom of association for religious purposes), as well as one’s right not to be influenced by the religious beliefs of others.⁷⁵

640. (b) Freedom of worship encompasses the manifestation of faith and religious beliefs, and the exercise of religious procedures and rituals. Art. 13 (2) of the Constitution provides that “all known religions shall be free and their rites of worship shall be performed unhindered and under the protection of the law. The practice of rights of worship is not allowed to offend public order and morals. Proselytism is prohibited”. The issues concerning the term “known religion”, the freedom of building and operating churches and houses of worship, and the prohibition of proselytism will be thoroughly discussed in the special part. It should be noted here, however, that the Constitution dictates to the legislative body to take all necessary legislative and administrative measures to ensure protection of worship. In accordance with this constitutional order, the legislator has established criminal protection against crimes violating the religious peace (articles 198 - 201 PC: ill-intended blasphemy,⁷⁶ defamation of religions, impediments to religious assemblies, desecration of the deceased), against grand theft of artifacts dedicated to religious worship from churches or houses of worship (article 374 (a) PC), against the usurpation

of the functions of a minister of the Greek Orthodox Church or of another known religion (article 175 (2) PC) and against the unauthorized wearing of the uniform or the insignia of a minister of the Greek Orthodox Church or of another known religion (article 176 PC).

641. Furthermore, every person is free, under Greek law, to undertake the duties of a minister of any religion. Any direct or indirect limitation of this right is contrary to the Constitution, as is i.e. the establishment by law of an impediment to the access to public office for ministers of any religion.⁷⁷ The wage limitation of ministers of a religion, who are at the same time employed as teachers, does not constitute a violation of the freedom of worship, as long as it does not actually prohibit the priest from freely choosing to be employed as a teacher as well.⁷⁸ Greek courts have ruled that it is allowed to prohibit a priest from being an attorney (in accordance with article 26 of the Greek Attorney's Code), as constant participation in litigation is not consistent with the ideals of priesthood.⁷⁹ It is also constitutionally allowed to prohibit a priest from running for mayor in the elections in order to protect the freedom of conscience of the electors, a freedom that is safeguarded by article 52 of the Constitution.⁸⁰

642. In addition, Greek law provides that priests, monks and trainee monks of any known religion be relieved from military service, if they so wish. This provision aims at protecting the exercise of their powers and authorities. To that effect, ministers of any known religion, irrespectively of their rank, are not subject to detention (article 1048 (d) CCP, article 4 (1) (d) of Law 1867/1989).

Beneficiaries of the right to freedom of religion

643. The beneficiaries of the right to freedom of religion are principally natural persons, without any distinction as to their citizenship. These persons are also granted freedom of assembly and freedom of association for religious purposes. The Council of State has adjudicated that the rejection of an application for citizenship filed by a foreign national constitutes a breach of Art. 13 (1) of the Constitution, in so far as the reasons produced for the rejection refer to the applicant's religious beliefs.⁸¹

644. As far as minors are concerned, the right to choose, maintain, change or abolish certain religious beliefs is exercised by their parents or legal guardians, according to the provisions of the Civil Code regarding the exercise of parental care (articles 1510 *et seq.*, 1518). It has been adjudicated that it is forbidden for the Court to take into consideration the religious beliefs of either one of the parents, when asked to deliver a judgment on the assignment of the exercise of parental care for a minor.⁸² In the special part, reference shall be made to the right of parents to demand that their children be excused from the attendance of the class of Religious Education in High School.

645. Legal entities and other associations for religious purposes are also granted freedom of religion. This also applies to religious organizations, which operate as legal entities under Greek public law. Specific reference to the issue of legal personality of religious communities in Greece shall be made in the special part.

The obligation to comply with the laws of the State

646. Art. 13 (4) of the Constitution provides that “no person shall be exempt from discharging his obligations to the State or may refuse to comply with the laws by reason of his religious beliefs”. Thus, the invocation of religious or conscientious reasons may not serve as an excuse for the non-implementation of the law. For instance, no tax payer may refuse to pay taxes due to the fact that these taxes are being used by the State for purposes contrary to his or her religious beliefs.

647. There are, however, cases where the legislator establishes exceptions from the general application of the law, in order to safeguard and uphold respect for the religious beliefs of certain persons. The recognition of the rights of conscientious objectors constitutes a striking example of such an exception, to which reference shall be made in the special part.

The issue of “prevailing” religion

648. According to article 3 (1) of the Constitution, “the prevailing religion in Greece is that of the Eastern Orthodox Church of Christ”. This reference has constituted the opening clause (article 1) of all previous Constitutions dating back to 1844 and through to 1952. It should be noted that the provision of article 3 does not go so far as to characterize the Orthodox Church as official or State Church; this article characterizes the religion of the Orthodox Church as the “prevailing” religion, which means the religion of the majority of the Greek people. In other words, the provision under consideration constitutes a pragmatic recognition of the fundamental role that the Orthodox religion has played, and continues to play, in the history and cultural life of the Greek nation. In no way, however, does this imply that the Constitution grants a hegemonic role to the Orthodox Church. This conclusion is verified by the history of this constitutional provision. To that effect, the Constitution of 1975 has eliminated the obligation of the Head of State, under the Constitution of 1952, to follow the Orthodox Dogma and to protect the prevailing religion, whilst it has extended the prohibition of proselytism in such a way, as to encompass any religion, and not only the prevailing one. In other cases, the Constitution of 1975 has extended the constitutional protection so as to include protection of any religion, and not only the prevailing one, as was the case under the Constitution of 1952. For instance, the Constitution of 1975 has established the right to confiscate written material due to an offense against the Christian or any other known religion (article 14 (3) (b)).

649. The provision of article 3 refers principally to the organizational relations between the State and the Church and justifies, among others, the adherence to the Orthodox Festivities’ Calendar by the administration and schools, the conduct of benedictions and doxologies during national holidays and official ceremonies, the fact that the wages of the clergy are paid by the State budget, and the fact that the Eastern Orthodox Christian Church operates as a legal entity under public law.

650. Other manifestations of the prevailing religion in the Constitution:

- The invocation of the “Holy, Consubstantial and Indivisible Trinity” in the preamble of the Constitution;

- The religious oath of the President of the Republic (article 33 (2)). As noted above, the obligation of the President of the Republic to protect the prevailing religion according to article 43 of the Constitution of 1952 has been eliminated from the text of the oath;
- The religious oath of the members of the Parliament before taking up their duties (article 59 (1)). Members of the Parliament who are of a different religion or dogma take the oath according to the provisions of their own religion or dogma (article 59 (2));
- The fact that the text of the Holy Scriptures may not be altered in any way. Official translation of this text into any other form of language has to be authorized by the Autocephalous Church of Greece and the Great Church of Christ in Constantinople (Art. 3 para. 3).

651. It should be mentioned, that the United Nations Special Rapporteur of the Commission on Human Rights on freedom of religion or belief noted in his Report on Greece⁸³ that the establishment of a State Religion is not in itself in contradiction to international instruments. This would be the case, only if the establishment of State Religion justified or introduced any kind of discrimination against the other religions. That is not the case concerning the recognition of a “prevailing” religion in Greece, as shall be clear from the thorough analysis of specific issues related to the freedom of religion in Greece.

Special part

The concept of “known religion”

652. Article 13 (2) of the Constitution provides that all known religions are free. Starting already 1975, the CoS adjudicated that every religion which has beliefs that are being taught publicly and that also has no secret worship procedures is considered as falling within the scope of the term “known”. The purpose of the concept is to draw a distinction between religious beliefs to which each person may have access and dogmas or sects whose practice is secret and which could prove dangerous. According to the jurisprudence of the CoS, the fact that a certain dogma may be considered as “heretic” in relation to the religion of the Eastern Orthodox Church of Christ is irrelevant, due to the freedom of religious beliefs provided for in the Constitution. Furthermore, it is also irrelevant, whether the followers of any dogma adhere to ecclesiastic principles or whether its ministers are sacred, in the way that this is meant by the Eastern Orthodox Church of Christ. In addition, any dogma that meets the abovementioned criteria does not need to obtain an approval act or any other kind of recognition act by the State or the Orthodox Church.⁸⁴ Every religion is considered “known”, unless proven to be secret or contrary to public order or morals.

653. The CoS has adjudicated that the following religions are considered to be “known”: the protestant dogma of the Free Evangelic Church,⁸⁵ the dogma of the Church of the Christian Brothers,⁸⁶ the dogma of the protestant Adventists of the Seventh Day⁸⁷ and Jehovah’s Witnesses.⁸⁸

654. In recognizing all known religions, the Constitution establishes their equality to the “prevailing” religion. Starting already 1952, the CoS has based itself on this principle on several decisions, applying the right to be relieved from military service, not only to monks of the Orthodox Church, but also to monks of any other known religion.⁸⁹

655. In 1997, the European Court of Human Rights condemned Greece for the arbitrary detention of the applicants, ministers of the Jehovah’s Witnesses.⁹⁰ More specifically, the Military Authorities refused to recognize Jehovah’s Witnesses as a known religion and to subsequently relieve the applicants from the obligation to provide military service, on the basis of being ministers of a known religion, in accordance with the law. Following this decision of the ECtHR, the competent authorities disseminated by circular the text of the aforementioned judgments to the military authorities, in order for them to abstain from similar breaches of the law in the future.

656. In conclusion, one must note that the term “known religion” has been fully defined by the competent courts and it is always broadly interpreted. It is noteworthy that all the religions to which the Special Rapporteur refers in his Report have long been recognized as “known” religions. For these reasons, there is neither legal insecurity, nor any kind of disharmony with the Declaration of 1981 for the elimination of all kinds of discrimination based on religion or belief.

Criminalization of proselytism

657. The prohibition of proselytism is provided in article 13 (2) of the Constitution. According to the law in force (article 4 (2) of obligatory law 1363/1938, as amended by article 2 of obligatory law 1672/1939), “by proselytism is meant, in particular, any direct or indirect attempt to intrude on the religious beliefs of a person of a different religious persuasion, with the aim of undermining those beliefs, either by any kind of inducement or promise thereof, or moral support, or material assistance, or by fraudulent means, or by taking advantage of another’s inexperience, trust, need, low intellect, or naivety”.

658. In other words, the law prohibits proselytism which uses fraudulent means or promises of any type of material gain. It is evident, that the prohibition of proselytism under the Constitution protects religious conscience in general and not only the prevailing religion. In no case does this prohibition, however, affect one’s right to change or to manifest one’s religious beliefs. A person teaching his religious beliefs, confessing his faith or even trying to change somebody else’s mind on the issue of religious beliefs, is not exercising proselytism. According to jurisprudence of the CoS, the attempt to change one’s religious beliefs constitutes prohibited proselytism only when it is done not solely by spiritual teaching, but by the exercise of compulsion or by fraud or by any other illicit act.⁹¹ The publication, dispensing and mailing of papers, public lecturing, as well as the declaration of the religion or dogma that is being disseminated are not considered illicit acts.

659. As explained in the following paragraph, the implementation of the legislation on proselytism has been found in two cases contrary to the ECHR by the European Court of Human Rights. The National Commission for Human Rights has proposed the repealing of the applicable provisions in force on proselytism,⁹² a proposal endorsed by the Council of Europe Commissioner for Human Rights in his report dated 17/7/2002.⁹³

660. It is to be noted that Law 1363/1938 criminalizing proselytism has been found to be, as such, in conformity with the ECHR by the European Court of Human Rights. Greece was only condemned for the failure of the competent courts to produce sufficient reasons for the conviction of the applicants on the basis of the above Law. The European Court found, in the *Kokkinakis*⁹⁴ and *Larissis*⁹⁵ cases, that the aforementioned Law satisfies the principles of certainty and foreseeability and that it may be applied in conformity with the European Convention. The *Larissis* case is, in part, an example thereof (the Court found that the punishment of the officers for attempted proselytism was in conformity with the ECHR in so far as this proselytism referred to members of the Army, but not in so far as it concerned civilians). Following the *Kokkinakis* judgment, the Committee of Ministers of the Council of Europe adopted Resolution DH (97) 576 according to which, following the dissemination by circular of the European's Court judgment "the prosecutors and the indictment chambers of the tribunals have adapted their interpretation of Greek legislation to the requirements set by the Court's judgment so that the tribunals were involved only in very few cases of proselytism and that no conviction has been pronounced in a case similar to the *Kokkinakis* case. Since 1994, there have been only two convictions for proselytism to minors".

661. There are no prosecutions on grounds of proselytism pending at this time.

The right to build and operate temples and houses of worship

662. According to article 1 of obligatory Law 1363/1938, as amended by article 1 of obligatory Law 1672/1939, the construction or operation of a temple of any denomination is subject to the issuing of an authorization by the recognized ecclesiastical authority and the Ministry of Education and Religious Affairs. Article 1 of the Royal Decree of 20.05./02.06.1939 provides that it is for the Minister of Education and Religious Affairs to verify whether there are "essential reasons" warranting the authorization to build or operate a place or worship of a different religion or dogma than the Eastern Christian Orthodox one.

663. However, it is to be noted that the opinion expressed by the "recognized ecclesiastical authority" of Orthodox Church lacks the character of an administrative act, but is of an advisory character. According to the jurisprudence of the Council of State, the permit of the ecclesiastic authority required for the erection and operation of a church or house of worship, is of a fact-finding character and has no binding force whatsoever, which means that the competent Minister is not bound by it in any way.⁹⁶

664. In case the permit is refused, the application for judicial review before the CoS provides an effective remedy, as illustrated by the 1995 judgment in the *Kirche Jesu Christi der Heiligen der Letzten Tage* case. The CoS had also annulled an act by the Minister for Education, which refused the application for a license to operate a Jehovah's Witnesses' house of worship in Athens. The CoS found that the reasons produced for the refusal were inadequate, for they were based on the alleged exercise of proselytism, but they were not substantiated by any facts, such as acts of initiation by means of compulsion, fraud or any other illicit means.⁹⁷ In another case, the CoS found that the administrative decision refusing an application on the grounds of exercise of proselytism was inadequately reasoned, since the applicants produced evidence, according to which they were neither prosecuted nor convicted for exercising proselytism.⁹⁸

665. There were cases in the past, where the application of this legislation and jurisprudence proved to be rather problematic. This led the ECtHR to find a violation by Greece of article 9 ECHR. In the case of *Manoussakis v. Greece*,⁹⁹ the ECtHR found that, in the particular circumstances of the case, the conviction of followers of a certain dogma on the grounds of having operated a place of worship without first obtaining the authorizations required by law was contrary to the freedom of religion. It found, furthermore, that in the case under examination the State used the existing legal framework in a way so as to impose rigid, or indeed prohibitive conditions on practise of religious beliefs by certain non-Orthodox movements. It is noteworthy, however, that the Court acknowledged the fact that the authorization system is not contrary, as such, to freedom of religion, as long as it is intended to allow the Minister to verify whether the formal conditions laid down in the relevant legislation are satisfied.

666. In the similar case of *Pentidis v. Greece*,¹⁰⁰ the competent authorities issued the relevant permit, and subsequently the ECHR did not move to examine the merits of the case. The friendly settlement of the *Pentidis* case, following the finding of violation by the Court in the *Manoussakis* case, is an example of the effort to harmonize the practice of the Administration with the requirements of the Convention.

667. In 2002, the Council of Europe Commissioner for Human Rights recommended to the Greek authorities to amend the legislation in force concerning permission to set up places of worship. In 2001, the National Commission for Human Rights had proposed the abolition of the relevant legislative provisions. According to the NCHR, only the granting of the permit by the local urban planning authority should be maintained and applied in the light of the principle of non-discrimination in the exercise of religious freedom.

668. In 2001, the Grand Chamber of the Areios Pagos held that the system of prior authorization is compatible with the Constitution and the ECHR, as long as some prerequisites are met. More specifically, the control exercised by the competent Minister of Education and Religious Affairs must be restricted to the review of the conditions set out in articles 13 (2) of the Constitution and 9 (2) of the ECHR (known religion, no offense to public order or morals, no exercise of prohibited proselytism), along with some formal conditions required for the granting of the permit.¹⁰¹ This permit has essentially a fact-finding character and must always be granted, unless the aforementioned exceptions apply. On the other hand, the provision of discretionary power to the administration, in order for the latter to determine whether the building or the operation of a church or a house of worship covers the real need of the persons submitting the application and subsequently to deny the authorization runs counter both to the Constitution and the ECHR. It is noteworthy that the Areios Pagos has tried to construe the legislation in force, in order for the latter to be in harmony with the Constitution and the international conventions for the protection of human rights.

669. In the period 1997-1999, 64 applications for opening houses of worship were approved. In 1999, 19 such authorizations were issued. In 2002, all applications were approved, with the sole exception of an application filed by the "Dodecatheon" religious movement.

670. Article 7 of Law 2833/2000 provides for the construction of an Islamic Cultural Center, which will also include a mosque, on an area ceded by the Ministry of Agriculture to the Municipality of Paiania, which is located in the Athens Metropolitan Area.

671. In conclusion, the Greek legislation, as construed by the competent courts, and practice does not hinder the exercise of religious freedom of non-Orthodox communities.

Religious education and teaching

672. As far as the issue of freedom of religious teaching and religious education in general is concerned, article 16 (2) of the Constitution provides that education aims, among others, to the development of a religious conscience as well. This provision is to be interpreted in the light of article 13 of the Constitution, article 9 of the ECHR and article 2 of the First Protocol to the ECHR.

673. According to the jurisprudence of the CoS and in the light of the widely known fact that the overwhelming majority of the Greek population adhere to the religion of the Eastern Orthodox Church of Christ, the abovementioned articles lead to the conclusion that one of the aims of education provided in the schools is the development of religious conscience of the Greek youth according to the principles of the orthodox Christian teachings. That is because their parents are considered to aim at the provision of such education, unless otherwise proven, not to mention the fact that the parents have the right to ensure the religious and moral education of their children in conformity with their own convictions. The students are obliged to participate in religious festivities organized by the school as well as to attend the class of Religious Education, which is to be taught according to the principles of the orthodox Christian teachings.

674. At the same time, however, the CoS acknowledged the right to be relieved from the obligation to attend the class of Religious Education. More specifically, it has adjudicated that: “It is evident, however, that one or more students, or their parents, exercising their constitutional right of article 13 as well as the right granted by the aforementioned provisions of the Rome Convention [ECHR], may declare in any way to the principal of the school that due to reasons of religious conscience, that is because they have different religious beliefs, they follow a different dogma or they are atheists, they do not wish to attend the class of Religious Education or any other religious festivities of the school program. In this case the principal is officially obliged by the aforementioned provisions to proceed with all the necessary actions as prescribed by law, in order for the students in question not to attend the religious festivities and the class of Religious Education. This abstention, however, may not in any way result in any kind of school penalty, e.g. the registering of extra absent days, the change of the characterization of behavior and any other disciplinary measures etc. Even if the refusal of the student or his parents is not coupled with the invocation of reasons of religious conscience, the principal is again obliged by the aforementioned provisions to examine whether this refusal may be based on such reasons, in so as to act in a manner as prescribed by law”.¹⁰²

675. In a later case, related to the attendance to the class of Religious Education, the CoS found that it is self-evident that the following students must be relieved from the obligation to attend the aforementioned class without any negative consequence, as long as they file a credible declaration themselves or their parents: atheists, followers of a different dogma, or followers of a different religion. This statement does not in any way contradict article 13 of the Constitution, since it aims at facilitating the student to enjoy without any obstacle the freedom of religious conscience, as well as the exercise of the respective right of his or her parents. Of course, this exemption must not make the pupils subject to unfavorable treatment.

676. It is also to be noted that, in the same case, the CoS found that the reduction of the weekly teaching hours of Religious Education in upper secondary classes to one hour only was excessive and contrary to constitutional principles.¹⁰³

677. Starting already 1987, the Council of State found that the expulsion of a student from the Theological School of the University on the grounds that he was not a follower of the Orthodox Church, is unconstitutional. The classes taught in that School can constitute subject of research for persons not belonging to the Orthodox Church, although these classes relate mainly to the dogma of the Orthodox Church. The CoS reminded that the Constitution establishes the equality of various religious beliefs, that is one's right to enjoy, regardless of his beliefs, all the rights acknowledged by the legal order. In other words, one must enjoy not only civil rights and liberties, but also social rights, such as the right to education, a rule stemming from the principle of equality.¹⁰⁴

The recognition of rights of conscientious objectors

678. Greece adopted in 1997 legislation providing for service of a non-combatant or civilian character (articles 18-24 of Law 2510/1997, which entered into force on 1 January 1998).

679. According to this law, anyone who invokes religious or ideological beliefs in order not to fulfil his military obligations on the grounds of conscience may be recognized as a conscientious objector in accordance with the following provisions.

680. The grounds of conscience are regarded as being related to a general approach to life, based on religious, philosophical or moral beliefs to which the specific individual subscribes and are manifested by a pattern of behavior and conduct corresponding to such beliefs. Conscientious objectors are invited to carry out either unarmed military service or alternative civilian social service.

681. The qualification of a person as a conscientious objector is not possible in the following cases: (a) the person in question has provided armed service in the Greek or foreign Armed Forces or Security Corps; (b) the person in question has applied for or has been granted a permit to carry a weapon or participates in activities involving the use of weapons; or (c) the person in question has been charged with or convicted for a crime involving the use of weapons, ammunition or illicit violence.

682. Those who are recognized as conscientious objectors will only be obliged to carry out unarmed service or civilian service, equal in duration to the service that they would have done had they served in an armed capacity, increased however by 12 months for those who choose to carry out unarmed service and 18 months for those who choose to perform civilian service. In 2001, an amendment was introduced to Law 2936/2001, providing for the decrease of the service of the "unarmed" service and of the "alternative civilian service" for those conscientious objectors who are liable to a reduced service. Given the policy of progressively reducing the term of service, which was completed in 2003, and in accordance with the principle of proportional equality, which justifies the longer term of the alternative service, since armed service is more unfavorable, the Ministry of National Defense has promoted a draft law for the reduction of the term of alternative service.

683. The application of the relevant provisions of the law concerning conscientious objectors is subject to a decision by the Minister for National Defense, following an advisory opinion by a special committee, set up to examine the necessary prerequisites for a person to be recognized as a conscientious objector, either through the filed supporting documents, or through a personal interview, if necessary. This committee consists mainly of non-military personnel. More specifically, it consists of two University Professors, a member of the Legal Council of the State,¹⁰⁵ and two higher-ranking officers belonging to the recruit sector and to the sanitary and health inspection sector of the Greek Armed Forces respectively. One can bring an application for annulment against the decision of this Committee before the Council of State.

684. In case of refusal to provide unarmed service, the consequences are the same as in the case of refusal to provide armed service, according to the relevant provisions. All those who refuse to fulfill alternative civilian social service are declared “insubordinate”, according to the relevant recruit provisions.

685. The alternative civilian social service is carried out in agencies of the public sector responsible for running welfare services. The persons who perform alternative civilian social service:

- (a) Will not have a military capacity and therefore will not be subject to the authority of military courts;
- (b) Will be regarded only as quasi-enlisted in the Armed Forces;
- (c) Will not be considered as holding a post in the public agency where they serve but will receive equal treatment with the employees of such an agency as concerns health care and other benefits provided by the administration;
- (d) Will be entitled to obtain food and lodging from the agency to which they are assigned and, if the latter is unable to render all these services, a salary will be paid to them, equal to the amount granted for food, lodgings, clothing and transport of soldiers;
- (e) Will be entitled to leave of absence of two days for each month of service.

686. One may no longer enjoy the aforementioned right in the following cases: (a) if one ceases to fulfill the prerequisites of article 18 for the acknowledgement of the right to alternative civilian social service; (b) if one is declared “insubordinate”; (c) if one commits a disciplinary offence or a crime which may result to interruption or termination of the employment contract for any given employee of the respective public sector; (d) if one exercises trade unionist activities or participates in a strike during the alternative civilian social service; (e) if one is punished for violating the provisions regarding the issuing of leaves of absence, as these provisions are in force for the employees of the respective public sector.

687. According to article 24 (2), in times of armed conflict, the implementation of the provisions regarding alternative service, may be suspended following a decision by the Minister for National Defense. In that case, those fulfilling alternative civilian social service are considered as obliged to provide unarmed military service.

688. Until June 2003, 771 requests had been submitted by conscientious objectors. 758 of these were satisfied (98%). The interested persons are safeguarded against the acts or omissions of the administration, since they have the right to submit their objections, both against the decision rejecting their request to be qualified as conscientious objectors (which fall within the jurisdiction of the administrative courts), and against the act of the director of the Conscription Service regarding loss of the conscientious objector *status* (which fall within the competence of the Conscription Directorate of the Hellenic National Defense General Staff). All interested persons have direct access to the procedure for obtaining the *status* of a conscientious objector by applying to their Military Personnel Office. The gathering of the necessary material for the application may be realized in a reasonable time, without any time-consuming procedures.

689. It is to be noted that the length of alternative service has been examined by the European Committee of Social Rights (ECSR) in the context of a complaint against Greece under the 1995 Additional Protocol to the European Social Charter providing for a system of collective complaints.¹⁰⁶ The ECSR considered that the additional 18 months civilian service performed by conscientious objectors in Greece, during which the persons concerned are denied the right to earn their living in an occupation freely entered upon, do not come within reasonable limits, compared to the duration of military service. It therefore considered that this additional duration, because of its excessive character, amounts to a disproportionate restriction on “the right of the worker to earn his living in an occupation freely entered upon”. On 6 March 2002, the Committee of Ministers of the Council of Europe adopted Resolution ResChs(2002)3, in which it noted that the Greek Government had taken certain measures, including the decrease of the length of military service and had undertaken to take the matter into consideration with a view to bringing the situation into conformity with the Charter in good time.

690. The Council of Europe Commissioner for Human Rights recommended the amendment of the legislation on the alternative civilian service in order, in particular, to reduce its length. The NCHR has also made proposals on the issue of alternative service, suggesting, among others, a more reasonable length.

691. By virtue of a regulation dated 23.10.2001, the conscientious objectors can be transferred, in special cases, to another institution due to family, economic or social reasons, in order to accomplish their civil-social service.

692. The European Court of Human Rights found that the refusal of the Executive Board of the Greek Institute of Chartered Accountants to appoint the applicant, a Jehovah’s Witness who had been convicted by a court martial for insubordination for having refused to join the Army on grounds of religious conscience, was contrary to the ECHR.¹⁰⁷ This decision highlights the problem of indirect consequences of the conviction of a conscientious objector before the entry into force of Law 2510/1997. In order to remedy this situation, and to conform with the European Court’s judgment, the Greek Parliament adopted Article 27 of Law 2915/2001, which provides for the writing off of the criminal record of all penalties which have been imposed to conscientious objectors for the military offense of insubordination, committed before the entry into force of Law 2510/1997, provided that they have served their sentence or have conditionally been released.

The inscription of one's religion on identity cards

693. Until recently, Greek legislation provided that for the compulsory inscription of one's religious affiliation in his or her identity card. This issue had been brought up by resolutions of the European Parliament, as well as by the United Nations Special Rapporteur freedom of religion or belief. On 13.7.2000, the NCHR adopted a resolution according to which the inclusion of religious affiliation in Greek citizens' identity cards is not in accordance with articles 5 (1), (2) and 13 of the Constitution, or with current international and European human rights law (in particular articles 18, 26 and 27 ICCPR, 9 and 14 ECHR), as well as European Community Law.

694. The Hellenic Data Protection Authority ruled, on 15.4.2000, that recording certain information, including the bearer's religion, on identity cards constituted processing of personal data which was incompatible with Law 2472/1997 on the protection of individuals with regard to processing of personal data. The Authority pointed out that this information concerned a matter of individual conscience and was therefore not indispensable for establishing identity. It also took the view that the individual's consent did not necessarily make the processing of all this information legitimate, since such consent could not have the effect of authorizing processing which was illegitimate in itself or contrary to the aim pursued or the principle of necessity.

695. Subsequently, a joint ministerial decision was issued by the Ministers of Finance and Public Order. This decision determines, among others, the data to be indicated in Police ID cards which do not include the cardholder's religion, in accordance with the aforementioned decision of the HDPDA.

696. Applications for annulment of the said ministerial decision have been rejected by the Council of State, which held that recording religion in identity cards would breach Article 13 of the Constitution, whether it was voluntary or compulsory.¹⁰⁸ A relevant application filed before the European Court of Human Rights was declared inadmissible as manifestly ill-founded.¹⁰⁹

The taking of religious oath

697. According to article 13 (5) of the Constitution, "no oath shall be imposed or administered except as specified by law and in the form determined by law". On the grounds of this provision, the State has the right to request an affidavit by the citizens. It is up to the legislator to determine the imposition of an oath and the latter's form.

698. In 1998, the Council of State found that from the freedom of religious conscience stems one's right to refuse to take an oath. The Supreme Administrative Court held that if a person who is obliged by a specific provision to take a religious oath declares to the competent authority that he or she cannot take such an oath on conscientious grounds, he or she may instead make a solemn promise referring to his or her honor or conscience, even if this possibility is not provided for by law as a substitute for the religious oath.¹¹⁰

The recognition of legal personality of religious communities

699. According to article 1 (4) of Law 590/1977, the Greek Church, its Metropolises, parishes and parish churches, as well as the Monasteries, the Apostolic Diaconate, the Greek Clergy Insurance Fund and the Inter-orthodox Church of the Church of Greece are public law entities. All other ecclesiastic institutes are private law entities. The Central Israelite Council and the Israelite Communities are public law entities. *See infra*, the following paragraphs, regarding the institutes of the Catholic Church. As far as the other religious communities are concerned, the Greek legal order does not contain any special institutional mechanism for attributing them legal personality. In order to acquire legal personality, the interested persons may turn to the competent courts, choosing the type of legal personality they desire and they consider as suitable for their purposes and their dogmatic teachings, in accordance with the provisions of the Civil Code. They may also choose to let their religious community to operate as a union of persons.

700. With regard to the legal personality of the Catholic Church in Greece, the following should be stressed. In 1999, the Greek Parliament enacted legislation that reaffirmed the legal personality of the establishments of the Catholic Church. More specifically, Article 33 of Law 2731/1999 provides that “Among legal persons lawfully constituted at the date of the adoption of the Civil Code, and maintained as such by Article 13 of the Civil Code’s Introductory Law, are included all establishments of the Catholic Church, founded or operating in Greece before 23 January 1946”. Article 13 of the Introductory Act to the Civil Code provides that: “Legal persons that were lawfully constituted at the date of the adoption of the Civil Code shall continue to exist. As regards their legal capacity, administration or functioning, the relevant provisions of the Code shall apply”. Both the Civil Code and the Introductory Act entered into force on 23 February 1946.

701. This legislation was enacted to ensure compliance with the judgment of the European Court of Human Rights in the case of the Canea Catholic Church.¹¹¹ The Supreme Civil and Criminal Court had previously held that the establishments of the Catholic Church in Greece did not fulfil the prerequisites for the acquisition of legal personality and thus did not acquire legal personality and subsequently could not take, as such, legal proceedings. The European Court of Human Rights ascertained a violation not of article 9 of the ECHR, but of article 6 (right of access to a court).

702. In the above-mentioned way the problem of “access to a court” as well as the broader issue regarding the legal personality of the establishments of the Catholic Church in Civil Code Greece was settled, through an authentic interpretation of the Introductory Law to the by the national legislator.

The punishment of blasphemy

703. Article 198 PC punishes blasphemy to God and to the divinity in general, while article 199 punishes insults in public and with bad faith against the Eastern Orthodox Church of Christ, as well as other known religions. Finally, article 200 PC provides for the punishment of disturbance of religious assemblies.

704. It has to be noted that article 14 (3) provides, in exceptional cases, for the seizure of newspapers and other publications by order of the public prosecutor, among others on the grounds of insult of the Christian or any other known religion.

705. Recently, the question arose whether it is allowed to order provisional measures prohibiting the circulation of a book allegedly containing “indecent” passages that insult Jesus Christ. In its judgment dated 22/06/2000, the Athens Court of First Instance rejected the applications for ordering provisional measures, noting, among others, that, according to article 16 (1) of the Constitution, art is free, and its promotion and development constitute an obligation for the State. According to the Court’s decision, the book in question constitutes a work of art, thus not falling within the meaning of the term “indecent written material” and thus not being subject to seizure.¹¹²

Freedom of religion of the members of the Muslim minority in Thrace

706. See *infra*, under 27 of the Covenant.

Cremation of the deceased

707. Finally, in a report dated 7.12.2000, the NCHR, invoking article 18, 26, 27 ICCPR proposed the modification of the current legislative framework so as to ensure protection of the right of any individual to choose, without any discrimination whatsoever, to be cremated or buried when deceased.

Article 19: Freedom of expression

708. The presentation of Greek laws and practices in matters concerning the freedom of expression will be divided in two parts. In the general part, reference shall be made to the Greek constitutional framework safeguarding the various aspects of freedom of expression, to the beneficiaries of the right and to its general limitations. In the special part, the most important issues and problems in the field of freedom of expression within the Greek legal order will be brought to the Committee’s attention.

General part

Content and manifestations of the freedom of expression

709. Freedom of expression is enshrined in article 14 of the Constitution, according to paragraph 1 of which “every person may express and propagate his thoughts orally, in writing and through the press, in compliance with the laws of the State”. Article 14 (1) establishes both a positive and a negative aspect of the freedom of expression. The positive aspect encompasses the right to receive, to formulate, to express and to propagate opinions without being subject to any kind of hindrance, harassment or any other negative legal consequence. As far as the negative aspect is concerned, it is evident from the formulation of paragraph 1, that no one is indeed obliged to express an opinion.

710. A special and fundamental manifestation of the freedom of expression is the freedom of press and the freedom of electronic media in general. Due to its significance, reference shall be made to these aspects in the special part.

Beneficiaries of the right of freedom of expression

711. As it is evident from the formulation of article 14 (1), all natural persons, irrespective of nationality, are indiscriminately beneficiaries of the right of freedom of expression. Furthermore, legal entities of private law, as well as unions of persons without legal personality are beneficiaries of the aforementioned right.

712. The enjoyment of the aforementioned right for certain special categories of beneficiaries, e.g. public servants, members of the armed forces, members of the police etc., may be subject to additional restrictions. This issue will be dealt with in the special part.

Restrictions of the freedom of expression

713. Freedom of expression is subject to the obligation to comply with the laws of the State. According to the Areios Pagos, this obligation encompasses those laws aiming at the protection of the individual or the society against abusive exercise of the right of freedom of expression or of propagation of information.¹¹³ However, any general restriction of the freedom of expression is to be deemed unconstitutional, even if it does not refer to political beliefs solely. The AP has found article 36 of law 75/1975, providing that athletes, coaches and members of the board of any sports club are forbidden from expressing opinions concerning the referees, to be unconstitutional, on the grounds that the aforementioned article does not simply introduce a restriction of the freedom of expression, but it literally abolishes this freedom for the said beneficiaries.¹¹⁴

714. Greek law includes several criminal provisions, which constitute permitted restrictions of the freedom of expression. Articles 361-369 of the PC provide for the punishment of crimes against the honor of another person (insult, defamation, slander). This restriction is self-evident, since article 5 (2) of the Constitution provides for the absolute protection of the dignity of all persons within the Greek State. Of course, there is a need for harmonization of this absolute protection with the right to exercise criticism (article 367 PC), for which specific reference shall be made in the special part, when analyzing the freedom of press.

715. Furthermore, the PC contains following articles constituting permitted restrictions of the freedom of expression:

- Article 146: violation of State confidential records;
- Article 155: insult against the insignia of another State;
- Article 168 (2): insult against the dignity of the President of the Republic;
- Articles 183-185: threat to public order;
- Article 186: provocation to commit a felony or misdemeanor;
- Articles 198-199: threat to religious peace;
- Article 365: insult against the memory of the deceased;
- Article 371: violation of professional confidentiality.

Special part

Special categories of beneficiaries

716. Article 14 of the Constitution applies to all public servants. However, freedom of expression is subject, in those cases, to special restrictions, apart from the general restrictions provided by law for all citizens. Still, those special restrictions must be in compliance with the nature of public service and the obligations that stem there from, and thus fully justified by it. In no case may the special restrictions conferred upon civil servants void the freedom of expression *per se*. The CoS has adjudicated that the submission of the exercise of the said freedom to the issuing of an administrative authorization constitutes an unconstitutional restriction of the freedom of expression, even for public servants.¹¹⁵ Public servants are not allowed either to make use of their position to propagate their own ideas and beliefs, or to be affected by their political beliefs or the political beliefs of the citizens being served, while exercising their duties. Public servants are not subject to any special restrictions of the freedom of expression while being off duty, but they must always conduct themselves in a manner manifesting respect towards the State, bearing in mind their position in the administrative structure.

717. Article 29 (3) of the Constitution establishes restrictions to the freedom of expression of some specific categories of persons, in connection to the activities of political parties. According to this provision, as amended in 2001, manifestations of any nature whatsoever in favor of or against a political party by judicial functionaries and by those serving in the armed forces and the security corps, are absolutely prohibited. Manifestations of any nature whatsoever in favor of or against a political party, in the exercise of their duties, by public servants, employees of local government agencies, of other legal entities of public law or of public enterprises or of enterprises of local government agencies or of enterprises whose management the State appoints by administrative act or as a shareholder, are absolutely prohibited.

718. The Council of State found that the provisions of article 6 of PD 538/1989, which prohibits police officers from making public any opinion through the press or any other medium without a permit from their commanding officers, runs counter to the Constitution and the ECHR.¹¹⁶ Furthermore, the CoS found that a general prohibition to trainee police officers not to possess or read, while in the premises of the Police Academy, written materials not directly connected to the courses taught in the Academy was unconstitutional as well.¹¹⁷

719. As far as the judiciary is concerned, there is no disciplinary offence for the public expression of an opinion, except if the expressed opinion aims at undermining the prestige of Justice, or is in favor or against a political party or any other kind of political organization, as provided by article 91 (5) Law 1756/1988, amended by article 14 (3) of Law 1868/1989. The Grand Chamber of the Areios Pagos reiterated this view when interpreting the aforementioned provision in conjunction with articles 14 (1) and 29 (3) of the Constitution and 10 (2) of the ECHR.¹¹⁸

720. The freedom of expression of members of trade unions is of great importance. The Athens Administrative Court of First Instance found that the opinion expressed, and the criticism exercised, by a member of the police officers' trade union regarding wages and promotions and

the relevant standpoint of the leadership of the Police falls within the freedom of expression guaranteed by article 14 (1) of the Constitution, since it did not reveal any official confidential information and it was expressed in a polite manner and in respect of good faith.¹¹⁹

Freedom of the press

Content of the freedom of the press

721. Article 14 (2) of the Constitution provides that “the press is free. Censorship and all other preventive measures are prohibited”. Furthermore, article 14 (3) prohibits the seizure of newspapers and other publications, before or after their circulation. Freedom of Press encompasses all stages, commencing from the preparation for publication and through to the circulation and availability to the public. More specifically any natural person or legal entity may publish newspapers or any other type of written material, irrespective of nationality, age etc.

722. The collection of information, the drafting of content and the choice of shape, number of pages, number of copies and the form of the publication in general is free. In the same context, the CoS has found that the price of newspapers may not be regulated by law, for it constitutes an aspect of the freedom of Press and falls therefore within the scope of article 14 (2) of the Constitution.¹²⁰ Newspapers are free to choose their personnel, which does not have to (solely) comprise of professional journalists. According to article 14 (8) of the Constitution, the law provides for the necessary prerequisites for the exercise of the profession of a journalist. This provision, however, does not exclude all those not filling the abovementioned criteria from the ability to publish any kind of articles or information in the Press. Such an interpretation would be in direct contradiction to article 14 (1) and (2). According to the AP jurisprudence, the issuing of the law provided for in article 14 (8) is not obligatory for the legislator.¹²¹

723. All journalists are free not only towards the State, but also towards their editor. No journalist may be forced to express an opinion contrary to his personal beliefs.¹²²

Special provisions safeguarding the freedom of press

724. Preventive measures prohibited according to article 14 (2) of the Constitution may include the obligatory payment of guarantee, the confiscation prior to circulation, the heavy and unreasonable taxation of paper etc. It has been adjudicated, that the confiscation of written material that has already been published, or the prohibition of its circulation is not possible, even if it contains inaccurate information about a certain person.¹²³

725. Exceptionally, seizure of written material is permitted, if the prerequisites set in paragraphs 3 and 4 of article 14 of the Constitution are met. According to paragraph 3 of article 14, “the seizure of newspapers and other publications before or after circulation is prohibited. Seizure by order of the public prosecutor shall be allowed exceptionally after circulation and in case of:

(a) An offense against the Christian or any other known religion”. It is noted that the Athens Court of First Instance has held, in the framework of a case regarding a book that allegedly cursed the Christian religion, that there was no evidence of ill-intent of the author of

the book, and thus there was no offense to the personality of the orthodox Christian applicants. The court also noted that the confiscation of a book is prohibited, because the latter constitutes a work of art, even if the books content is considered as inappropriate;¹²⁴

(b) An insult against the person of the President of the Republic;

(c) A publication which discloses information on the composition, equipment and set-up of the armed forces or the fortifications of the country, or which aims at the violent overthrow of the regime or is directed against the territorial integrity of the State. It must be noted, however, that seizure is allowed only in cases where the information disclosed is confidential;

(d) An obscene publication which is obviously offensive to public decency, in the cases stipulated by law". Works of art or scientific publications may in no case be considered as falling under the term "obscene", as they enjoy constitutional protection provided by article 16 (1).¹²⁵ The obscene character of a publication is to be concluded on the basis of the whole scope and content of the said publication.¹²⁶

726. Paragraph 4 of article 14 provides for effective legal remedies in case of seizure on the abovementioned grounds. According to this paragraph, "In all the cases specified under the preceding paragraph, the public prosecutor must, within twenty-four hours from the seizure, submit the case to the judicial council, which, within the next twenty-four hours, must rule whether the seizure is to be maintained or lifted; otherwise it shall be lifted *ipso jure*. An appeal may be lodged with the Court of Appeals and the Supreme Civil and Criminal Court by the publisher of the newspaper or other printed matter seized and by the public prosecutor".

Special restrictions to the freedom of the press

727. The Constitution includes a number special restrictions in paragraphs 5, 7 and 9 of article 14, aiming at securing a proper balance between the exercise of the freedom of the press with other constitutionally protected rights and interests. These restrictions relate mainly to the right to reply afforded to persons offended by an inaccurate, insulting or defamatory publication (para. 5), as well as to the principle of transparency with regard to the ownership status, the financial condition and the financing means of information media (para. 9). The application of these restrictions applies also to electronic mass media, to which special reference shall be made forthwith.

728. Furthermore, according to paragraph 7 of article 14, civil and criminal liability of the press and all other mass media shall be provided by law. The relevant cases shall enjoy a faster, expeditious process before the competent courts.

Electronic mass media - radio and television

729. Article 14 (1) of the Constitution guaranteeing the freedom of expression, applies to all audiovisual means as well, since it does not limit its field of application solely to the press.

730. Article 15 (1) of the Constitution provides that the protective provisions for the press do not apply to films, sound recordings, radio, television or any other similar medium for the transmission of speech or images. Paragraph 2 of the same article provides that radio and

television are subject to the direct control of the State. This control is exercised by an independent administrative authority, called “National Radio and Television Council” (hereinafter: NRTC). It primarily aims at ensuring (a) the objective and under equal terms broadcasting of information and news reports, as well as works of literature and art; (b) the quality level of programs in consideration of the social mission of radio and television and of the cultural development of the country; (c) the respect of the dignity of the human being and the protection of childhood and youth.

731. However, this “direct control” does not lead to a State monopoly of audiovisual means. In fact, an important number of private electronic media are operating in Greece. According to the Council of State, the “principle of objectivity” is interpreted as the principle of use and availability of all radio and television media in such a manner as to ensure that all views are represented and broadcasted without exception.¹²⁷ In a number of other decisions, the CoS has adjudicated that radio and television media are to enjoy a framework of constitutional protection similar to that of the Press.¹²⁸ Furthermore, article 3 (22) of Law 2328/1995, combined with article 8 (4) establishes the political pluralism of radio and television, in the sense that all radio and TV stations are obliged to broadcast all views of the political parties represented both in the Greek and the European Parliament concerning every issue at hand, especially in their news programs. The division of airtime provided to political parties during the pre-election period is a matter of great importance. The issue is regulated by article 10 (1) of Law 3023/2002, which provides that the time to be determined is divided between the parties on the basis of the principle of proportional equality and that the said broadcasts are free of charge.

The role of the National Radio and Television Council

732. As mentioned above, the State control is exercised by the National Radio and Television Council, an independent authority, whose operation is enshrined in the revised Constitution and is regulated mainly by the provisions of Laws 2173/1993, 2328/1995, 2644/1998, 2863/2000 and 3021/2002. The NRTC has its own budget and personnel. It is not subject to State control and it is not a part of the State hierarchical structure (thus independent). Its members enjoy both functional and personal independence and may not be removed before the end of their term. The NRTC drafts codes of ethics to be ratified by the Minister of Press and to be published as Presidential Decrees in the Official Gazette (article 3 (15) of Law 2328/1995). It is also competent for the TV coverage of the pre-election period. The NRTC is competent for the issuance, renewal or revocation of any permit of operation of private TV and local radio stations. Furthermore, it is the competent authority to conduct an administrative investigation regarding radio and TV stations and to impose sanctions for violation of the State law.

733. Law 2863/2000 has strengthened the independence of the NRTC by providing for the total organizational (administrative) and financial independence of the authority against all other organs of the executive branch. The members of the NRTC shall be elected by the Council of the Presidents of the Parliament by a 4/5 majority (article 2 (2)).

734. Article 4 of the aforementioned law determines the competences of the NRTC. These competences implement the constitutionally provided direct control of the State in the field of provision of radio and television services. This control, as well as the respective competences of the NRTC, is exercised through the issuance of executable individual administrative acts.

735. More specifically, paragraph 1 codifies the competences of the NRTC, which are provided in the two relevant basic laws, which regulate the field of radio and television (Laws 2328/1995 and 2644/1998), as well as in Presidential Decrees 310/1996 and 100/2000, as follows:

- Provision, renewal and revocation of every kind of permits and approvals that are provided for in the relevant radio and television legislation in force;
- Control of the respect of the terms and conditions, as well as of the rules and principles in general, that are provided for in the radio and television legislation in force, for the transparent and quality operation of both public and private carriers, which operate in the field of provision of radio and television services;
- Safeguarding of political and cultural diversity and pluralism in the mass media;
- Control of the respect of the rules of free financial competition in the wider field of mass media and communication;
- Imposition of the provided administrative sanctions and measures on the operators of radio and television services;
- Examination of applications for redress in case of offenses against personality and human dignity.

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736. The aforementioned competences are exercised exclusively by the NRTC.

737. Paragraphs 2 and 3 provide that the NRTC may address directives, recommendations, indications and questions in all of the aforementioned matters. It may also request the assistance of other administrative and judicial authorities, as well as of social or professional groups.

738. The decisions of the NRTC, with the exception of the above acts, constitute executable administrative acts, as well as executable claims titles in the sense of the CCPI. The decisions of the NRTC as communicated to the Minister of Press and Mass Media. All remedies provided for in the legislation and the Constitution may be exercised against the decisions of the NRTC.

Self-regulation and self-control of mass media operators

739. Articles 8 and 9 of Law 2863/2000 provide for special procedures of self-regulation and self-control of the operators who are active in the extended field of the mass media.

740. More specifically, the following is provided:

- The obligation of concluding multilateral contracts of self-commitment by the radio and television operators for the determination of rules and principles of conduct regarding the content of informational and recreational radio and television programs;

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- Mechanisms of self-control for the respect of the content of contracts of self-commitment (Ethics Committees);
- The obligation of publication of the contracts of self-commitment in newspapers of wide circulation, with a view to ensuring publicity for the information of the receivers of the provided services.

741. In case the Ethics Committees determine that the relevant rules and principles contained in the self-commitment contracts have been breached, they shall impose sanctions of a moral character. The relevant decisions of the Committees shall be transmitted to the NRTC.

742. The non-compliance with the sanctions of moral character imposed by the Ethics Committees constitutes a violation of the radio and television legislation and results in the imposition of the provided administrative sanctions by the NRTC.

743. Article 9 of the aforementioned law also establishes a special organ of self-control of advertisement messages, before or after their broadcasting by the electronic media. It also provides for the compulsory establishment of internal committees for the rating of television programs, as well as the compulsory establishment of committees for the exercise of the right to respond on behalf of the affected person.

744. The NRTC shall take into consideration, during the exercise of control for the legal operation of stations, all codes of journalistic conduct, codes of ethics for broadcasts and advertisements and any product of self-commitment or collective negotiations of radio and television stations, associations and employees in the mass media (article 3 (16) of Law 2328/1995). Furthermore, in the framework of the procedure for the licensing of a station, the self-commitment of the station regarding the codes of conduct that the station shall submit and declare that it is willing to implement, shall be taken into consideration, as a criteria of the station's suitability (articles 2 (6) (d) and 3 (16) of Law 2328/1995).

745. In 2003, PD 77/2003 ratified the Code of Ethics of news and other journalistic and political broadcasts, which was drafted by the NRTC, and which replaced the preexisting regulations of the NRTC in the relevant matters. The aforementioned Code contains general principles, which shall apply in all news and other journalistic and political broadcasts, in order to ensure their quality.

746. The provision regarding the absolute protection of private life, the prohibition of recording, depicting or publicizing personal moments or communications of citizens without their consent, as well as the prohibition of broadcasting pictures that have been recorded without warning, by the use of a camera or a tape recorder for the recording, depicting or publishing of a testimony or an interview or the moves of any person (article 6 of the Code) is to be mentioned. Furthermore, the broadcasting of information that have been acquired through illegal tapping of phones, hidden microphones or cameras or any other relevant means is prohibited.

747. Extreme importance is accorded to the provision of article 11 of the Code, which obliges the mass media to absolutely respect the presumption of innocence of any citizen or accused person.

748. Further reference to the above Code of Ethics is made in this Report, under article 20 ICCPR.

749. It is brought to the attention of the Committee that relevant provisions are also contained in the Code of Professional Ethics and Social Responsibility of the Journalists' Union of the Athens daily newspapers and in the Greek Code of Advertisement.

750. The Department of Communication and Mass Media of the University of Athens conducted a very important research on "Human Rights and the Greek Television News Broadcasts" in co-operation and on behalf of the NCHR. Many of the findings of the research constitute the basis of the regulations contained in articles 5, 14 and 15 of the Code which refer to the method and the methodology of broadcasting of incidents and news, the prohibition of dramatic enactment or directing tricks and the clear distinction between news, comments and opinions.

Sanctions

751. According to the new legislative framework (Law 2836/2000, article 11 (2)), the Ministry of Press and Mass Media does not have any competence for the issuance of executable administrative acts on issues of provision, renewal and revocation of licenses for radio and television stations, of control of the implementation of the rules of operation, of imposition of administrative sanctions, etc.

752. Sanctions are imposed by the NRTC in cases of violation of the relevant internal legislation, EC law, international law, or of the codes of conduct published as Presidential Decrees in the Official Gazette (article 4 of Law 2328/1995). The sanctions provided for are the following, depending on the gravity of the violation: warning, fine, temporary suspension for up to three months or permanent disruption of the broadcasting of certain programs of the station, temporary suspension up to three months of all broadcasting of the station, revocation of the license of operation of the station, or sanctions of a moral character (e.g. obligation to broadcast a certain announcement).

753. The Ministry of Press and Mass Media may no longer exercise control of legality on the relevant decisions of the NRTC (article 11 (2) of Law 2863/2000).

754. A large number of decisions on the reprimanding or the imposition of fines on television stations with regard to the protection of personality, professional activity, honor and reputation of persons, the protection of minors and other rights has already been issued.

755. In the year 2003, the NRTC issued 6 decisions ordering the cease of operation of television stations, given that they did not comply with the constitutionally provided quality of the programs and with the legislative provisions regarding the protection of minors and the respect of human dignity. Three decisions were issued regarding the imposition of sanctions due to offences against "the dignity of the television viewers" and "the respect of human dignity". Five decisions of the NRTC regarded the violation of provisions referring to "respect of private life", whereas one decision imposed a sanction due to "offence to personality". Ten decisions of the NRTC referred to the imposition of sanctions on television stations due to violation of the principles and provisions on the "protection of minors".¹²⁹ Furthermore, three decisions of the

NRTC imposed sanctions due to the broadcasting of shows or/and advertisements that may cause “danger of moral damage to minors” and constitute “abuse of superstitions of the people”. Three more decisions concerned violations of the provisions and the rules on the “quality of programs”, while another five regarded violations of the provisions and rules on “objective depiction of the current events”. Finally, a decision of the NRTC referred to violation of the principle of presumption of innocence of the accused person.¹³⁰

Content of programs

756. According to Law 1730/1987, which established ERT SA (Hellenic Radio Television SA), and in particular according to article 3, ERT radio and television programs are inspired among others by the ideals of freedom, democracy, peace and the friendship among peoples. Radio and television programs are governed by the principles of objectivity, pluralism, the respect of individual personality and private life. Finally, ERT is entitled not to broadcast advertisements which are contrary, among others, to the principle of the respect of the personality of women or which contain elements of violence, which may have a negative effect on individual personalities.

757. The same obligations are incumbent upon all television stations (article 3 (1) of Law 2328/1995), all radio stations (article 8 (1) of the Law 2328/1995), as well as all subscriber television and radio services (article 10 (1) of Law 2644/1998).

758. Law 2328/1995 provides for television programs regulations, which must ensure respect for human dignity. According to article 3 (1) (b) of the said Law “all radio and television shows and broadcasts (as well as advertisement messages) must respect the personality, the honor, the dignity, the private and family life and activities of every person”.

759. The obligation of television and radio stations to keep an archive and their obligation to send a copy of these recordings upon request of NRTC or every legal or natural person concerned, in order to enable the exercise of the right to reply or the right to judicial protection, is established as well (article 3 (12) of Law 2328/1995). The same obligation is incumbent upon all subscriber radio and television stations (article 10 (1) of Law 2644/1998). A request for redress against a station that offended a person or an entity is dealt with on the basis of article 9 of PD 100/2000, which regulates in detail the relevant matters.

760. Special care is provided for deaf people, with the required broadcasting of daily or fortnightly programs. The adoption of measures for persons with special needs, such as the broadcasting of news and other programs in sign language and with subtitles is obligatory for all television stations (article 3 (20) of Law 2328/1995).

761. Finally, the compulsory free transmission of social messages on issues of health, welfare and social care for persons with special needs is provided for.

762. Ministerial Decision 6138/E/2000 on programs ratings aims mainly to protect minors from watching television programs, the contents of which may influence adversely the smooth intellectual and moral development of their personality.

763. The Greek legislation ensures the freedom of the public to receive and watch television programs from all States-members of the EU (article 4 (1) of PD 100/2000).

764. In addition to the general principles of respect for civil rights and fundamental freedoms, which govern the operation of the Media in Greece, the following broadcasts take place within the scope of public Radio and Television's activities:

- Hellenic Radio (ERA) for Eastern Macedonia and Thrace, and in particular the district radio station of Komotini, broadcasts on a weekly basis an hourly informational program in the Turkish language, entitled "Helicon", which is prepared and presented by a journalist, member of the Muslim minority of Thrace. It also broadcasts on a daily basis a half-hourly news bulletin in the Turkish language, which is prepared by a minority journalist. On a weekly basis, ERA for Eastern Macedonia and Thrace in Komotini broadcasts a musical, cultural and informational program entitled "We, the others", which is prepared by two journalists, one of whom is a member of the aforementioned Muslim minority;
- In these last years, another radio station was added to the ERA network, namely radio "Friendship". The station aims at allowing the immigrants residing in Greece to maintain their connection with their country of origin and to be informed on a daily basis in their mother tongue. It also aims at operating as a means for the elimination of prejudices and xenophobic beliefs. "Friendship" radio station broadcasts, in 12 different languages news bulletins concerning these countries of origin and does not limit itself in translating the Greek news bulletins. The station also broadcasts information and reports on current issues with a view to informing all immigrants and facilitating their integration into Greek society. It is stressed that Radio "Friendship" is often the communication sponsor of many cultural events organized by immigrants and NGOs, such as the Anti-Racist Festival (Summer 2003) and the Festival for Immigrants and Refugees (October 2003). The station co-operates closely with NGOs, such as the "Médecins sans frontières" and the "Médecins du monde", as well as with the communities of the immigrants.

Mass media and transparency

765. The transparency of the ownership status of mass media constitutes a concern both for the constitutional and the ordinary legislator, in order to avoid inappropriate interventions in the financial, social and political life of the country. The new article 14 (9) of the Constitution, which was added during the recent constitutional revision, contains detailed provisions, according to which "the ownership status, the financial condition and the financing means of media enterprises should be disclosed, as specified by law". Furthermore, the law specifies the measures and restrictions necessary for fully ensuring transparency and plurality in information. Concentration of the control of more than one information media of the same type or of different types is prohibited. More specifically, concentration of more than one electronic information media of the same type is prohibited, as specified by law. The capacity of owner, partner, main shareholder or management executive of an information media enterprise is incompatible with the capacity of owner, partner, main shareholder or management executive of an enterprise which undertakes towards the Public Administration or towards a legal entity of the wider public sector to carry out works or supplies or to provide services. This prohibition also applies to all

types of intercalated persons such as spouses, relatives, financially dependent persons or companies. The constitutional legislator entrusts the common legislator with the mandate to set out the specific regulations, the sanctions which may be carried to the point of revoking the license of a radio or television station and to the point of prohibiting conclusion of or annulling the relevant contract, as well as the means of control and the guarantees for deterring infringements of the above measures.

766. In execution of the aforementioned constitutional provision, the Parliament enacted Law 3021/2002. This law defines the notion and the content of the aforementioned incompatibility, as well as of the respective prohibition of conclusion of public contracts, determines certain monitoring mechanisms and procedures for the implementation of the provided prohibitions and limitations and, finally, provides for administrative, criminal and other kinds of sanctions against natural persons and legal entities that violate or do not comply with the provisions of the law. The issuing of decisions regarding the existence or inexistence of incompatibility, as well as the imposition of sanctions in case of violations of the law constitutes a competence of the NRTC. Finally, Law 3166/2003 further enhanced guarantees for transparency in the media.

Mass media and the publicity of court proceedings

767. See this Report, under article 14 ICCPR.

Protection of private life, honor and dignity

768. The right to private life is another important right protected by the law. It should be mentioned here that Law 2472/1997 made a very important step towards the protection of private life by the mass media. According to the law, the notion of processing of personal data encompasses not only their possession and their filing in a journalistic archive, but also their dissemination through mass media. The processing of the said data and their dissemination through the media is allowed only following the issuance of a relevant authorization by the HDPA and only if such processing concerns data of “public figures” and is absolutely necessary for the safeguarding of the public’s right to information on matters of public interest, provided that the right to private and family life will not be violated in any way. In an important decision, the HDPA found that “the public’s claim to be informed cannot extend so as for the latter to demand to receive information regarding sensitive personal data, because that would result in the violation of human dignity through a person’s humiliation ...”.

769. Another fundamental right is the right to one’s own image, which is also protected by article 57 CC. It has been accepted, both by the literature and the jurisprudence, that taking picture of a person and display of the picture to public view without the consent of the photographed person is prohibited, unless the pictures only depict daily life or persons that belong to contemporary history. The same aim shares the provision of article 8 (2) of Law 3090/2002, according to which the broadcasting through television or cinema, the recording or the photographing of persons being brought before judicial, prosecutorial, police or other authorities is prohibited. The right to personal identity, namely the right of each person to “be him- or herself”, not to have statements, comments or properties attributed to him or her which are not consistent with his or her personality, is protected on a civil law level by article 57 of the CivC. However, it is mainly protected by the right of reply.

770. The honor and reputation of natural persons are protected by the provisions on insult (article 361 PC), defamation (article 362 PC) and knowingly false defamation (article 363 PC). These three offenses are punishable by pecuniary penalty and imprisonment.

771. By virtue of article 366 PC, “if the information described under article 362 is true, the act shall not be punished; but proof of the truth shall not be permitted if the information concerns solely family or personal relationships which do not affect the public interest and if the assertion or dissemination was done malevolently”.

772. Furthermore, article 367 PC restricts the application of articles 361 and 362 PC, providing the following:

“1. (a) Disapproving criticism of scientific, artistic or occupational developments, or (b) such criticism which appears in a public document issued by an authority concerning the activities of such authority, or (c) such criticism for the purpose of fulfilling lawful duties, of exercising lawful authority or of protecting a right or some other justified interest, or (d) such criticisms in similar cases, shall not constitute an illegal act.

2. This provision shall not apply: (a) when the above criticisms constitute the essential elements of the offence under article 363 (knowingly false defamation), or (b) when intent to insult is apparent from the manner in which the criticism was expressed or from the circumstances under which it occurred.”

773. According to the case law of the Greek courts, the interest derived from the freedom and the social mission of the press is a “justified interest” in the sense of the above provision.¹³¹ It consists in the satisfaction of the need of the people to be informed on all important questions and also on events concerning persons who interest the social life, even if this information is given by means of sharp criticism and negative characterizations.

774. Invoking, among others, article 19 ICCPR, the Areios Pagos held that the right to personality (article 57 CC) has an important place amongst the restrictions of freedom of expression. An important aspect of the right to personality is the honor and the dignity of every person, which is mirrored in the respect and value that is attributed to him or her by the other people.¹³² However, the protection of freedom of expression (as well as of the freedom of research and teaching) aims at the safeguarding of most valued social goods, thus justifying some offenses to the right of personality, which are not deemed unlawful, to the extent that they do not violate human dignity, because the right to personality is deemed, in the specific circumstances of the case, as having less value than the aforementioned social goods and freedoms. This also occurs when a scientist, in drafting a dictionary, which constitutes scientific work, and in his or her systematic and methodical search for the truth, records the various meanings or uses of certain words or phrases which are considered as diminishing or offending for certain persons or members of larger social groups, as long as the scientist does not subscribe to or accept that meaning.¹³³

775. According to the jurisprudence of the AP,¹³⁴ the wrongfulness of the acts of defamation and insult is precluded in the case the latter acts are committed in order to safeguard (protect) a right, or any other legitimate and justified interest. Persons directly connected to the operation of the aforementioned media may have such an interest, stemming from the freedom and the social

mission of the press, and more specifically of newspapers, which are protected by the Constitution and the laws. Thus, publications regarding the information of the public, which are accompanied by harsh criticism and unfavorable characterizations of persons to which they refer to are allowed. However, even in such a case the wrongfulness of a defamatory or insulting expression is not precluded, when the aforementioned expression constitutes knowingly false defamation or when the way of perpetration and the circumstances of the act allow to determine that there was malevolence in the act, meaning an intent to directly injure the value of another person by questioning his or her moral or social value, or by desisting him or her. There exists similar jurisprudence regarding radio stations.¹³⁵

776. Furthermore, if one of the persons in which the public is interested (because they serve a public office or they exercise a public function) has provoked his or her promotion through the television or any other media, by publicly expressing his or her opinions on his or her private or family life and by making public any incidents of his or her private or family life, so as to substantiate his or her opinions serving as examples, then the publication of incidents of his or her private or family life is allowed, in order to substantiate the unfavorable criticism against him or her. However, the aforementioned preclusion of wrongfulness of the act of insult or defamation does not take place, if it can be determined that the defamatory or insulting expressions were uttered with intent to humiliate and diminish the person referred to.¹³⁶

777. It should be noted, that these offences are prosecuted on complaint by the person injured, so that a politician who has been attacked e.g. by a publication and he or she wishes to have the case prosecuted is obliged to bring a complaint to the public prosecutor. It is obvious that the decision to take this step has a certain political cost.

778. At the level of civil sanctions, Law 1178/1981 provides that the owner of every newspaper is obliged to provide full compensation for any illegal material damage and to provide pecuniary satisfaction of any moral damage, which were brought about by a publication that offended the honor or the dignity of every person, even if the culpability or intent or knowledge or negligent ignorance are present in the person of the author of the publication, or, if the latter is not known, in the person of the publisher or the director of the newspaper. By virtue of article 4 (10) of Law 2328/1995, the provisions of the aforementioned law apply also to radio and television stations.

779. It has been adjudicated, in this framework, that the provision of article 1 (4) of Law 2243/1994, according to which the pecuniary satisfaction of at least € 29,000 that must be paid to the plaintiff for the commission of some acts perpetrated through the press, unless the plaintiff requests less, aims at ensuring a *minimum* of protection of citizens from severe - due to the publicity - injuries of their honor and dignity. Thus, the provision is in harmony with article 2 (1) of the Constitution on the protection of human dignity. Furthermore, the provision is not in breach of article 14 (1) and (2) of the Constitution or of article 19 of the ICCPR.¹³⁷

Right of reply

780. Pursuant to Article 14 (5) of the Constitution, 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. The manner in which the right to reply is exercised and in which the full and immediate retraction or publication and transmission of the reply is made shall be specified by law. Relevant provisions are included in articles 37-38 of Compulsory Law 1092/1938, in Law 1178/1981 (regarding the press), in article 3 of law 2328/1995 and in Presidential Decree 100/2000 (regarding radio and television, as we have already mentioned).

Article 20: Prohibition of propaganda for war and inciting national, racial or religious hatred

781. Law 927/1979 “on punishing acts or activities aiming at racial discrimination” penalizes the following acts:

(a) To willfully and publicly, either orally or by the press or by written texts or through pictures or any other means, incite to acts or activities which may result to discrimination, hatred or violence against individuals or groups of individuals on the sole grounds of the latter’s racial or national origin or [by virtue of article 24 of Law 1419/1984] religion;

(b) To form or participate in organizations which intent organized propaganda or any kind of activities tending to racial discrimination;

(c) To express publicly, either orally or by the press or by written texts or through pictures or any other means offensive ideas against any individual or group of individuals on the grounds of the latter’s racial or national origin or [by virtue of article 24 of Law 1419/1984] religion;

(d) To refuse, in the exercise of one’s occupation, to provide goods or supply services on the sole grounds of racial or national origin or [by virtue of article 24 of Law 1419/1984] religion or to subject the aforementioned activities to conditions related to racial or national origin or [by virtue of article 24 of Law 1419/1984] religion.

782. It is to be noted that Article 39 (4) of Law 2910/2001 enables prosecuting authorities to press charges *ex officio* in the case of the abovementioned acts.

783. The penalties provided for the above offences are the following: imprisonment for a maximum of two years and/or a fine in cases (a) and (b); imprisonment for a maximum of one year and/or a fine in cases (c) and (d)”.

784. Up to now, no conviction has been pronounced in application of the aforementioned article.

785. The European Commission against Racism and Intolerance (ECRI) of the Council of Europe, as well as NGOs, have pointed to the need to “activate” the said provisions. It should be stressed, however, that criminalization is not the only means to prevent “hate speech”. Self-regulation may play an important role in this respect, as it will be explained hereunder.

786. In the field of electronic media, article 8 (5) of Presidential Decree 100/2000 (by virtue of which Directive 97/36/EC amending Council Directive 89/552/EEC was transposed into national legislation) provides that “television stations may not broadcast programs which incite to hatred between citizens on the grounds of their different race, religion, citizenship or gender.”

787. The same provision applies to radio stations (article 8 (4) of Law 2328/95), as well as subscriber radio and television stations (article 10 (1) of Law 2644/1998).

788. Article 4 (1) (b) of the aforementioned Presidential Decree provides that State authorities, following the relevant provisions and legal procedures established by the aforementioned Directive, may order the preventive prohibition, by any technical means, of the broadcast of television programs only when “the content of those programs incites to hatred among the population on the grounds of differences related to race, religion, citizenship or gender”.

789. Article 5 (6) (b) of the same Presidential Decree provides that “television advertisements may not introduce discrimination on the grounds of race, gender, religion or citizenship”. This provision applies to radio advertisements by virtue of article 8 (3) of Law 2328/1995, as well as advertisements on subscriber television and radio services according to article 10 (1) of Law 2644/ 1998.

790. Apart from the adoption of legal provisions, the implementation of methods of self-regulation, such as the Codes of Ethics, is promoted.

791. Article 4 of the National Radio and Television Council Code of Ethics for news programs, journalistic and political programs, as ratified by virtue of Presidential Decree 77/2003, provides the following:

792. Article 4 (1) of the Code prohibits “the presentation of persons in such a way, that it may, under the specific circumstances, encourage the person’s humiliation, social isolation or adverse discrimination against him or her on the part of the audience, on the grounds especially of gender, race, nationality, language, religion, ideology, age, illness or disability, sexual orientation or profession”.

793. Paragraph 2 of the same article provides that the broadcasting of degrading, racist, xenophobic or sexist messages or characterizations, as well as of intolerant views is prohibited. In general, ethnic or religious minorities, as well as other vulnerable or weak population groups may not be offended.

794. Directive-Recommendation 5/1998, issued by the National Radio and Television Council on the occasion of a “wave” of criminal acts witnessed in Greece stresses that crime, as the act of an individual, may not be transformed into an accusation against the nationality, the race etc. of the offender. Moreover, it is added that radio and television stations are obliged not only to avoid any provocation, but to disapprove any form of xenophobia or hate against persons belonging to any nationality.

795. Moreover, the Code of Professional Ethics and Social Responsibility of the Journalists’ Union of the Athens daily newspapers states that journalists should not make distinctions among citizens on the basis of their origin, gender, race, religion, political affiliation, economic situation and social status (article 2 (a)).

796. Furthermore, relevant provisions have also been included in the Greek Code of Advertisement and the Greek Code of Advertisement and Communication.

797. Finally, we would like to refer to the 2001 Concluding Observations of CERD, in which the Committee noted “the important role of the National Radio and Television Council, the Code of Journalistic Ethics, and the draft code of ethics for information and other journalistic and political programmes in preventing racial discrimination and racist and xenophobic behaviour and stereotyping in the mass media”.

Article 21: Freedom of assembly

General part

798. Article 11 of the Constitution establishes freedom of assembly. This provision reads as follows: “1. Greeks shall have the right to assemble peacefully and without arms. 2. The police may be present only at outdoor public assemblies. Outdoor assemblies may be prohibited by a reasoned police authority decision, in general if a serious threat to public security is imminent, and in a specific area, if a serious disturbance of social and economic life is threatened, as specified by law”.

799. The term *assembly*, according to the Constitution, refers to the intentional, in principle, and not coincidental, temporary gathering of a respectable number of individuals aiming at the expression or hearing of a communication or opinion regarding a certain issue, the demonstration of a given opinion or a demand of any kind, the collective decision-making or collective exercise of the right to petition the authorities.

800. Article 11 (1) of the Constitution provides to those wishing to exercise the right of assembly, the power to determine the place, time, sort and content of the gathering. A relevant prior authorization is not requested. The freedom to determine the place of the assembly refers to sites that are accessible to everyone. The occupation of public or private spaces is illegal according to the content of the said right. Still, any assembly taking place in those sites shall be temporary. Thus, the occupation of a national road that lasts for a number of days should not be considered as a means of exercise of the freedom of assembly.

801. The freedom of assembly has to be exercised “peacefully and without arms”. The above phrase does not constitute a restriction, but a logical prerequisite which stems from the notion of assembly, as a collective and peaceful process.

Beneficiaries

802. Greek citizens are the sole beneficiaries according to the letter of the said constitutional provision. The above does not mean that a constitutional prohibition of the assembly of aliens is established; the legislator is competent to regulate the said matter according to the relevant provisions of the international conventions. Practically, any assembly organized by aliens is afforded the relevant protection.

803. Natural persons are considered to be the beneficiaries of the aforementioned freedom. Legal entities may assume the responsibility for the organization of the assembly.

Classification of various forms of assembly

804. Article 11 (2) includes the terms “public” and “outdoor” assembly. An assembly is considered public when any individual can come and participate, even under certain preconditions to which everyone can respond. On the contrary, an assembly is considered private when the individuals participating have been invited personally or in any case are under a certain capacity.

805. An assembly is considered “indoor” when the former is taking place in a certain enclosed location, which can be accessed only through a certain entrance, in order for the organizers to be able to exercise an efficient control. In general, an assembly is considered “outdoor” when it is taking place in a generally accessible location, irrespective of whether the said location is public or private, sheltered or not.

806. Taking into consideration the aforementioned distinctions, it is deduced that by virtue of article 11 (2) of the Constitution, police authorities may not be present generally at indoor assemblies, whereas the said assemblies may not be subject to prior authorization. Police may only intervene in order to repress punishable acts which are taking place in the location of the assembly, taking into account the prerequisites set out in article 9 (1) of the Constitution, which protects every person’s home.

Prohibition of assembly

807. The subjection by the legislator of public assemblies to a general regime of prior authorization is not legitimate.¹³⁸

808. The decision of the competent police authority to prohibit an outdoor assembly must be justified on the basis of the dangers posed by the assembly to public security or the socio-economic life. Still, the Constitution does not pose any temporal restriction to the police authority; thus, the decision providing for the prohibition of an assembly may be issued prior to the assembly or during the latter.

809. The prohibition may be either general or local. The general prohibition refers to a specific assembly of which the location, time and scope has been announced. Consequently, the prohibition may not be extended to the prohibition of any similar assembly, for an indefinite period of time in a whole geographical district. The general prohibition has to be justified on the basis of a grave danger to public safety. Mere suspicions may not justify the prohibition of assembly.

810. The local prohibition due to a threat of grave disturbance of the socio-economic life may not result in rendering the organizing of assemblies impossible. Still, the local prohibition may be implemented although the relevant law mentioned in article 11 (2) has not been adopted. In other words, it is possible to implement directly article 11 (2) of the Constitution since the grounds for the prohibition are included *expressis verbis* in the provision.

811. The possible illegality of the decision prohibiting an assembly may be examined incidentally by the competent criminal courts and precludes the wrongful character of the crimes of sedition and resistance against authorities. Furthermore, the *interim* judicial protection accorded by the Suspension Committee of the Council of State may be requested.

812. Spontaneous assemblies, namely these assemblies that take place as a direct response to a current event, are accorded the same level of protection. Still, they may be prohibited if the conditions of Art. 11 (2) of the Constitution are met.

813. The possibility of prohibition of outdoor assemblies relates to the power of the police authorities to dissolve an assembly. According to the relevant provisions, public assemblies may be dissolved if they have been prohibited by virtue of article 11 (2) of the Constitution or if they are turning into violent assemblies and thus cease falling under the scope of protection of paragraph 1 of the said Article. The actions taken with a view to dissolve the assembly have to be consonant with the principle of proportionality and the obligation to respect the right to life.

814. It has to be noted that the provisions referring to the right of assembly are implemented in a highly liberal spirit. While balancing the various freedoms and legally relevant interests involved (e.g. freedom of citizens to circulate), the freedom of assembly is accorded a fundamental legal significance.

Article 22: Freedom of association

815. Article 12 (1) of the Constitution provides that “Greeks shall have the right to form non-profit associations and unions, in compliance with the law, which, however, may never subject the exercise of this right to prior permission”. According to paragraph 2, an association (as well as a union of persons not constituting an association, according to para. 3) may not be dissolved for violation of the law or of a substantial provision of its statutes, except by court judgment.

816. The fact that the aforementioned provision refers explicitly to “Greeks” does not, of course, mean that the associations formed by aliens or those formed by Greeks and aliens are prohibited. The said issue is regulated by the international conventions ratified by Greece and/or Greek legislation. Thus, the legislator may not impose a general prohibition on aliens to participate in associations or the management thereof. Greek courts have refused the provision of article 107 of the Introductory Law to the Civil Code which does not fully allow aliens to manage associations, as being contrary to the Constitution, the ECHR (articles 11, 14 and 16) as well as the more general provisions of the Civil Code, namely article 4, which provides for the equal enjoyment of civil rights between nationals and aliens.¹³⁹

817. It is noted that the competent Court of First Instance is bound to allow the registration of an association if it is satisfied that all the legal requirements have been complied with (article 81 CC). It may only review the lawfulness, but not the desirability of an association.

818. According to article 105 CC, an association may be dissolved by virtue of a decision by the Court of First Instance if its management committee or a fifth of its members or the supervising authority (i.e. the local Prefect) requests so in the following cases: 1. If it is impossible to vote for a management committee or it is impossible for the association to continue

functioning according to its memorandum of association, due to the fact that the number of its members has decreased or due to various other reasons, 2. If the aim of the association has been achieved or it is to be deduced on the basis of the long inactivity of the association that the achievement of the aim has been abandoned, 3. If the association pursues aims different from those laid down in its memorandum of association or if its object or its functioning prove to be contrary to law, morality or public order.

819. The refusal to register or the dissolution of an association (on the ground that the latter's object or functioning are illegal or contrary to public order) must be necessary in a democratic society and correspond to a pressing social need with a view to protecting national security or public safety or to preventing disturbances of public order. The need for the recourse to this restrictive measure is justified when there is a relation of proportionality between the interference in the exercise of the individual right of freedom of assembly and the legitimate aim pursued. Furthermore, the relevant social need has to be direct and justified convincingly. Mere suspicions or speculations with regard to the intentions or the intended activities of the association, as being illegal or running contrary to public order, on the sole grounds of the formulation of the memorandum of association or the interpretation of the terms contained therein, cannot justify, as such, the aforementioned social need calling for to the dissolution of an association. These principles stem from the case law of the Areios Pagos, which interpreted the relevant provisions of the Civil Code in the light of the Constitution and the ECHR.¹⁴⁰

Trade union rights

820. Article 23 (1) of the Constitution safeguards trade union freedom and related rights and obligates the State to adopt all due measures for the unhindered exercise of these rights. Furthermore, the exercise of the right to unionize and the protection of the establishment of a trade union organization are guaranteed in Article 12 of the Constitution, which safeguards the right to form non-profit associations and unions.

821. The necessary requirements for the establishment and the participation of workers in trade unions organizations are regulated by Law 1264/1982 "On the democratization of the Trade Union Movement and the consolidation of the freedom of association of the workers".

822. Law 1264/1982 enshrines the trade union rights of the workers and regulates the issues pertaining to the establishment, organization, functioning and activities of trade unions (article 1). It also provides general protection to trade union organizations, as well as special protection to the members of their administration boards.

General protection

823. State authorities are obliged to apply all necessary measures in order to safeguard the free exercise of the right of establishment and autonomous operation of trade union organizations (article 14 of Law 1264/1982). It shall be unlawful for employers or persons acting on their account or for any third party whatsoever to commit any act or omission likely to impede the exercise of workers' trade union rights.

Protection of trade union activity at the workplace

824. According to article 16 of Law 1264/1982, workers and their trade union organizations shall be protected in the exercise of all their trade union rights at the workplace. The trade unions shall be entitled to have notice boards for their purposes at the workplace and at places agreed upon in each case between the employer and the management of the trade union concerned. It shall be the obligation of the employer, or of a fully authorized representative of the employer, to meet the representatives of the trade union organizations, at least once a month and to provide for the settlement of issues which are a cause of concern to the workers or their organizations. The representatives of the administration board of the trade union of the undertaking, and, if the workers have not established a trade union, the representatives of the Labor Centre for the district, shall be entitled to be present during any inspection carried out by the competent bodies of the Ministry of Labor and Social Security, to submit their observations.

Special protection of trade union members

825. In order to guarantee that trade union members shall be free to perform their duties, special provisions provide for their protection against discriminative treatment (protection against termination of employment relationships and transfers), and special leaves of absence are granted to facilitate the performance of their duties.

Promotion of free collective negotiations

826. Article 22 (2) of the Constitution stipulates that “General working conditions shall be determined by law, supplemented by collective labor agreements concluded through free negotiations and, in case of the failure of such, by rules stipulated by arbitration”.

827. For that purpose and within the scope of realizing the constitutional mandate of article 22, Law 1876/1990 on “Free Collective Bargaining” was adopted. By virtue of this Law, vocational organizations (workers’ and employers’) are granted the right to promote and vindicate their demands collectively and following free collective bargaining, to conclude Collective Labor Agreements by which the working conditions of paid workers are regulated in a binding manner (immediate and binding effect of the clauses of a collective agreement, according to article 7 of Law 1876/1990).

828. More specifically, General National Collective Labor Agreements shall be concluded between the tertiary trade union organizations of workers and the most representative or nation-wide employers’ organizations, and shall set minimum standards in respect of working conditions which shall apply to all workers throughout the country (article 8 of Law 1876/1990).

829. It is also to be noted that article 22 (3) of the Constitution provides that “the matters relating to the conclusion of collective labor agreements by civil servants and employees of local government or of other legal entities of public law, shall be specified by law”.

830. Greece has validated through Law 2738/1999 the institution of collective bargaining in Public Administration, which gives to trade unions of civil servants the right to negotiate with the Administration both the terms of employment and the labor conditions of civil servants, who work in public services, legal entities of public law, and organizations of local authorities.

831. The Supreme Civil Servants Trade Union (ADEDY) and other twenty labor unions of civil servants participated in the first implementation of this institution in 2000.

832. Following the negotiating procedure of 2002, nine Special Collective Contracts and fourteen Special Collective Agreements have been signed.

The right to strike

833. Article 23 (2) of the Constitution stipulates that “Strike constitutes a right to be exercised by lawfully established trade unions in order to protect and promote the financial and the general labor interests of working people”.

834. At the legislative level, in the light of the Constitution and the relevant international conventions ratified by Greece, Law 1264/1982, as amended by Laws 1915/1990 and 2224/1994, protects and safeguards in particular the right of workers to strike.

835. By virtue of article 19 of Law 1264/1982, strike constitutes a right of the workers which is exercised by the trade union organizations as a means of preserving and promoting the economic, labor, trade union, and social insurance interests of the workers, and as a manifestation of solidarity in relation to these objectives.

836. The exercise of the right to strike shall be conditional upon notice being given to the employer or his representative organization at least 24 hours before its implementation.

837. The strike by workers who are parties to employment relationships in private law with the State, local self-government agencies or public bodies corporate, public undertakings or public utility undertakings whose operation is vital to the basic needs of society as a whole is authorized subject to the provisions of article 20 (2) of Law 1264/1982 and of article 2 of Law 2224/1994.

838. In particular, the trade union organizations of the abovementioned bodies or undertakings, prior to the exercise of the right to strike, are obliged to invite their employer to have a public dialogue with them on issues which must be settled. In the rest undertakings, the trade union organization which calls the strike can seek public dialogue with the employer prior to or even during the strike. The employer, too, can seek public dialogue, as soon as he is informed of workers’ claims or of the calling of a strike or in case he considers that the strike can endanger the peace in the undertaking.

839. Workers employed in public undertakings or public utility undertakings whose operation is vital to the basic needs of society as a whole (article 19 (2) of Law 1264/1982) cannot call a strike until four (4) full days have elapsed since the date on which the claims and the reasons for them have been announced by means of a document communicated by a court officer to the employer or employers, to the appropriate Ministry and to the Ministry of Labor and Social Security. The strike must not relate to claims other than those announced.

840. The trade union organization which calls the strike is obliged to secure that the necessary personnel are available during the strike to safeguard the installations of the undertaking and to prevent damages and accidents (article 1 of Law 2224/1994 which replaced article 21 of Law 1264/1982). Especially, in the agencies, bodies and public utility undertakings whose operation is vital to the basic needs of the society as a whole (article 19 (2) of Law 1264/1982 as supplemented by article 3 (1) and (2) and article 4 (1), of Law 1915/1990), in addition to the safety personnel, additional personnel are available to meet basic needs of the society as a whole during the strike.

841. Finally, according to article 22 of Law 1264/1982, strike-breakers may not be hired during a strike; moreover the employer may not proceed to a counter-strike.

Police force

842. The provisions of Law 1264/1982 on “the democratization of the trade union movement and the protection of the trade union freedoms of the employees” have been extended to the police staff of the Greek Police by virtue of Law 2265/1994. It is estimated that 54,000 police officers are covered by the said provisions.

843. Subject to the provisions of the said Act No 2265/1994 (article 1), there is no limitation regarding the establishment of trade union organizations by the police staff. However, as it is mentioned in Article 1 (3) “the exercise of trade union rights of the police officers is not permitted to exceed the limits set due to the peculiarities and the mission of the Greek Police, in particular due to its national and social character which is beyond political parties”.

844. By virtue of Law 2265/1994 (article 1 (4)), the police officers are entitled to establish primary trade union organizations in each prefecture and administrative local district all over the country, as well as federations of trade union organizations at secondary and tertiary level. Each police officer is entitled to be member only of the primary trade union organization established in the prefecture or the administrative local district where he/she serves (article 1 (5)). The trade union organizations of the police officers can join or become members of the International Police Trade Union Organizations (article 1 (10)).

845. There are 64 primary trade union organizations of police officers. Also, 2 secondary trade union organizations have been established with approximately 34.000 members.

846. According to the provisions of the said Law, police officers’ trade union organizations may not participate in strikes, manifestations organized by political or trade union organizations or propagate in favor of the latter. Furthermore, these organizations may not join or become members of other trade union organizations, apart from the International Police Trade Union Organizations, and they may not represent other workers or interfere in any way in issues relating to the administration of the Police Authorities.

847. For more details on the exercise of trade union rights, please refer to Greece’s initial report to the Committee on Economic, Social and Cultural Rights.

**Article 23: Protection of the family, the right to marriage
and equality of the spouses**

848. Article 21 (1) of the Constitution provides, amongst others, for the protection of the institutions of family and marriage by the State. According to the aforementioned Article, family constitutes “the cornerstone of the preservation and the advancement of the Nation” and shall be placed under the protection of the State, together with marriage, motherhood and childhood.

849. Family consists primarily of spouses and their children, including adopted children, even if they do not reside in the same domicile. Even spouses alone do constitute “family” that falls within the scope of the protection granted by the Constitution. Finally the spouses’ parents belong to the notion of “family” as well. The dissolution of marriage does not affect the family ties between the spouses and their children. Marriage does not constitute a prerequisite for the establishment of the constitutional notion of “family” and the thereto-accorded legal protection.

850. By virtue of Law 1329/1983, Greek family law has been modernized and adapted in a manner consonant with the constitutional provision of gender equality.

851. More specifically, it has been established, amongst others, that:

- The woman maintains her family surname after her marriage;
- The future spouses may choose the surname of their children before the marriage; this surname may either be the surname of one of the spouses or of both;
- The age of 18 is considered to be the minimum legal age for both genders as far as marriage is concerned;
- Upbringing and education of the children must be provided without discrimination based on gender;
- Each spouse has been granted a claim over the assets acquired during marriage.

852. Furthermore,

- The spouses may choose to implement the system of community of property;
- The provisions relating to divorce have been modernized and the institution of divorce by mutual consent has been established;
- The rights of the children born out of wedlock have been completely assimilated to those of the children born in wedlock, while the legal status of the unmarried mother has been strengthened.

853. The Greek Civil Code establishes certain preconditions that have to be met in order for a marriage to be considered valid. Also in this respect, the turning point in the Greek family law was Law 1329/1983, which has abolished a certain category of circumstances preventing marriage.

854. The persons to be married have to be at least eighteen years old (article 1350 (2) CC). However, a court may allow minors to marry, if a specific “important reason” concurs. The court so decides after having heard the persons to be married and those exercising custody (article 1350 (2) CC). Any incident that justifies the conclusion of marriage, while taking into consideration the benefit of the minor, despite the lack of legal age constitutes an “important reason”.

855. The Civil Code does not establish *expressis verbis* as a precondition that the persons to be married be of different gender, as it was considered self-evident at the time of the drafting of the Code. Still, it has to be noted that the whole systematic and scope of the provisions included in the CC lead to the conclusion that marriages between homosexuals are prohibited by the Greek legislation.

856. The principle of monogamy is a fundamental principle of the legal framework of the institution of marriage. The conclusion of marriage is prohibited until a previous existing marriage dissolves or is declared void irrevocably by judicial decision (article 1354 CC).

857. The form of marriage may be either civil or religious (article 1367 (1) CC). Prior to the changes brought upon by law 1329/1983, the religious form of marriage was a precondition for the validity of marriage.

858. The CC includes a set of provisions aiming at upholding the personality of the spouses. Namely, article 1388 (1) provides that marriage does not affect the spouses’ surname, although each spouse may use the surname of the other spouse, if the latter consents (article 1388 (2)). Article 1387 (1) establishes a fundamental principle, namely that the spouses decide *in consensu* for any matter relating to family life. Article 1387 (2) provides that the aforementioned decisions should neither hinder each spouse’s professional or any other activities nor violate his/her personality sphere.

859. Further details on the principle of equality of spouses are given in Greece’s periodic reports to the CEDAW.

Article 24: Rights of the child

860. The measures taken by Greece in the field of the rights of the child are described in detail in Greece’s Initial Report to the Committee on the Rights of the Child.

861. In the present Report, we shall confine our comments to recent legislation regarding the criminal treatment of minors, the combating of trafficking in human beings, the protection of minors in employment and the new institution of the “Ombudsman of the Child”.

Reform of juvenile criminal law

862. Law 3189/2003 has amended the framework of juvenile criminal law in order to achieve the harmonization of the legislation with the Convention of the Rights of the Child and, in general, with international standards. The most important changes brought about by the aforementioned law are the following:

- The definition of the “child” for criminal law purposes has been set according to the Convention of the Rights of the Child and the relevant Observations of the Committee on the Rights of the Child. More specifically, the minimum age limit has been raised from the age of 7 to the age of 8. Furthermore, the maximum age limit has been raised from the age of 17 to the age of 18. Thus, penal and civil majority have been harmonized. Moreover, the distinction between children and adolescent has been abolished. Still, the classification of criminal responsibility according to age has not been abolished in the cases where it was considered appropriate. Minors who have completed their 8th, but not their 13th year of age cannot be held criminally responsible for their actions. If a minor who has not reached the age of 13, commits a punishable act, he may be subject only to reformatory and therapeutic measures. Even after the age of 13, reformatory and therapeutic measures constitute the rule and the deprivation of liberty in a special institution for the detention of minors shall be only exceptionally imposed;
- Supplementary reformatory and therapeutic measures have been made available to the competent courts, in order for the best possible treatment of juvenile offenders to be achieved;
- The cases where deprivation of liberty of minors, by means either of reformatory or therapeutic measures or the detention in a special institution for minors, is possible have been limited;
- The relative vagueness of the restrictive measure of detention in a special institution for minors has been eliminated: the decision of the competent court fixes the exact period of this restriction, as explained in this Report, under article 9 of the Covenant;
- The combination of measures, which do not involve deprivation of liberty, has been provided for, in order to achieve the best possible result for the minor;
- New measures have been established such as the offer of community service, the compensation of the victim, the attendance of professional training schools etc;
- The role of the Public Prosecutor has been further enhanced. The latter has been granted the power, instead of prosecuting a juvenile offender, to order reformatory measures which do not involve deprivation of liberty. The new Law has also extended the circle of the persons allowed to submit an appeal in a juvenile case and provided for the right to appeal in all cases where detention in a special institution of minors has been ordered.

863. In its report dated 29.5.2003, the NCHR recognized that the above bill improved the relevant legislative framework. The Commission submitted to the Ministry of Justice a series of recommendations on the protection that should be afforded to the physical and mental health of minors. It stressed, among others, the need for special protective measures aiming at the rehabilitation and social integration of juvenile offenders, as well as for specialized psychological care. The NCHR also emphasized the need to avoid institutionalized treatment of juvenile offenders.

Protection of minors in employment

864. In 2003, Law 3144/2003, entitled “Social dialogue for the promotion of employment and social protection and various provisions” was adopted. Article 4 of the said law, entitled “protection of working minors” provides that persons under the age of 18 shall not be employed in any form of work or activities that may result in harming the minors’ health, security or offend their morality, due to the nature of this work or the conditions under which it is conducted. These jobs were determined by virtue of a decision by the Minister of Labor and Social Security, issued on 2.7.2003, which took into account the particular criteria mentioned exhaustively in the law (e.g. unhealthy environment, employment during nighttime or lasting for a period of many hours, employment during which the minor is exposed to physical, psychological or sexual exploitation or abuse, employment involving the use of dangerous equipment or manual transportation of heavy loads, employment under the surface of the earth or under water, on dangerous heights etc.). The said law provides for the establishment, by virtue of a decision of the Minister of Labor and Social Security and other competent Ministers, of Programs of Action for the protection of minors at work. By virtue of a decision of the Minister of Labor, the organization of the Labor Inspectorate Body shall be determined in order for the latter to develop targeted action for the protection of minors, within the limits of its competence. Finally, it is established that the employer violating the provisions of the said law faces the penalty of imprisonment up to 2 years and a fine. A person charged with the supervision of a minor who is employed in contravention to the provisions of the said law faces the same penalty.

Combating of trafficking in children

865. As already mentioned in this Report, under article 8 ICCPR, Law 3064/2002 on “Combating trafficking in human beings, crimes against sexual freedom, child pornography and more generally on economic exploitation of sexual life and assistance to the victims thereof” provides for a more severe punishment of all contemporary forms of human trafficking, including economic exploitation of sexual life, in particular where the victim is a minor, as well as the recruitment of minors for the purpose of using them in armed conflicts. The same law gives special emphasis to the protection of minors and contains a special provision explicitly designed to confront the problem of child pornography, which has taken on disquieting dimensions through the expansion of the Internet. Severe penalties, in some cases even life imprisonment, are imposed on the perpetrators of the aforementioned crimes.

866. Presidential Decree 233/2003 implementing the provisions of the said law on the protection and assistance to victims provides that victims who are under 18 years of age have access to those public schools that host special reception classes or sections or are implementing cross-cultural education programs. The victims who are up to 23 years of age are entitled to be admitted to the training programs implemented by the OAED, even when the total number of admissions foreseen for those programs has been covered.

867. For more details, please see this Report, under article 8 ICCPR.

Children's Ombudsman

868. By virtue of Law 3094/2003, the Ombudsman assumed the mission of defending and promoting children's rights. For the protection of children's rights the Ombudsman also has jurisdiction over matters involving private individuals, physical or legal persons, who violate children's rights. According to article 4 (1), the Ombudsman may also receive complaints from any directly concerned child, or person entrusted with parental care or relative by lineal or collateral descent down to the second degree, the child's guardian or provisional guardian, or any third party having direct knowledge of the infringement of the child's rights. For the implementation of the provisions of this Law, is considered as a child any person who is not over the age of eighteen. To ensure the protection of children's rights, the Ombudsman may request by means of a duly reasoned document, the individual cited in the complaint to provide documents and other evidence. The classification of such documents as secret may not be invoked. In such an event, the Ombudsman must safeguard the personal and professional secret of private persons and not publish information that would make it possible to identify them. Should a private individual refuse to supply such evidence, the Ombudsman may request the assistance of a public service, professional association or body, as well as the assistance of the Prosecutor's Office (article 4 (5)).

869. When the complaint is aimed against a private person, the Ombudsman shall take all necessary action to put right the problems brought to his attention and propose all required measures for the protection of the rights of the child concerned. In particular, when the operating conditions of a private law entity, infringe the child's rights, he may propose the necessary organization and operation measures. The legal entity, must inform the Ombudsman of the measures it has adopted or intends to adopt, within the fixed deadline. The Ombudsman may make public the refusal to accept his recommendations, if he considers that this is not sufficiently justified (Article 4, para. 7). If the intervention of the relevant judicial authority or other public service or body is deemed necessary with the view to protecting children's rights, the Ombudsman shall communicate the relevant report to them (Article 4, para. 11).

Article 25: The right to participate in public affairs, voting rights and the right of equal access to public service

Access to public service

870. The Greek Constitution affords protection to the right to equal access to public posts in general and guarantees that the career of every person will depend on his or her personal value. This principle derives from article 4 (4) ("only Greek citizens shall be eligible for public service, except as otherwise provided by special laws"), combined with the general principle of equality (article 4 (1) of the Constitution), as well as article 5 (1) of the Constitution (right to develop freely one's personality and to participate in the economic, social and political life of the country). It applies to the whole of the public sector. According to the said principle, the legislator may not discriminate on the basis of criteria irrelative to the abilities of the candidate when determining the qualifications and prerequisites for the appointment to public posts.

871. More particularly, in relation to the procedure for the filling of vacant posts in the public administration, as well as in the wider public sector, special safeguards for the equal access to the said posts have been established by virtue of the constitutional revision of 2001.

872. In this respect, Article 103 para. 7 of the Constitution provides that engagement of employees in the Public Administration and in the wider Public Sector (with some exceptions provided for in para. 5 of the same Article, related to the highest posts outside of the civil service hierarchy, as well as to persons directly appointed on an ambassadorial rank, employees of the President of the Republic and the offices of the Prime Minister, Ministers and Undersecretaries who may by law be exempted from permanency) shall take place either by competitive entry examination or by selection on the basis of predefined and objective criteria, and shall be subject to the control of an independent authority, as specified by law. Such an authority is currently the “Highest Council for Staff Selection”, established by law 2190/1994. Moreover, a law may provide for special selection procedures which are subject to increased guarantees for transparency and meritocracy, or for special personnel selection procedures for posts the duties of which are subject to special constitutional guarantees or are similar to a mandate (Article 103, para. 7 b of the Constitution).

873. By virtue of article 4 (4) of the Constitution, only Greek citizens shall be eligible for public service, except as otherwise provided by special laws.

874. It is to be noted that Law 2431/1996, entitled “Appointment of European Union citizens in the Greek Public Administration” renders the appointment of EU citizens to posts of the Greek Public Administration possible. The said law incorporates the various criteria laid out in the jurisprudence of the European Court of Justice. Thus, Law 2431/1996 provides that citizens of EU member states may be appointed or hired to posts or positions, the competences of which do not entail direct or indirect involvement in the exercise of public power or duties related to the general interests of the State or other public services.

875. The implementation of the provisions of Law 2431/1996 depends on the determination, by virtue of Presidential Decrees, of the posts or positions to which the hiring or appointment of EU citizens is possible, as well as those posts where the appointment of the said persons is forbidden. Up to now, more than 30 Presidential Decrees have been issued referring to various bodies of the public sector. Exceptionally, EU citizens may not have access to posts involving the exercise of public power, employment in the armed forces, security forces, the judiciary, the diplomatic corps, as well as most of the services of the Ministry of Finance. That is because these posts entail duties whose object is the fulfillment of the general interests of the State and because they presuppose the existence of a special relation of solidarity to the State, on the part of the employees, as well as the reciprocity of rights and obligations, which constitutes the foundation of citizenship.

Rights of political participation

Right to vote and be voted

876. Greek citizens who have reached the age of 18 are granted the right to vote.

877. The following categories of citizens are deprived of the said right:

- Persons under judicial assistance, according to the provisions of the GCC;
- Persons convicted irrevocably for the commission of certain crimes included in the Penal Code and the Military Penal Code, for the duration of the deprivation.

878. A person can be elected as Member of Parliament if he or she is a Greek citizen, has the right to vote and has attained the age of 25 years on the day of the election (article 55 of the Constitution).

879. As far as the municipal and prefectural elections are concerned, every citizen above the age of 21 on the day of the election, who has the right to vote, may be elected Mayor, President of the Community, Municipal or Community Counselor (article 46 of P.D. 410/1995).

880. Every citizen residing in a municipality or community within a certain prefecture, who has reached the age of 23 on the day of the election may be elected Prefect or member of the Prefectural Council (article 20 (3) of P.D. 30/1996).

881. The Members of the Parliament are elected through a direct, secret and universal ballot by the citizens who have the right to vote. They are elected for 4 years starting from the day of the general elections (articles 51 (3) and 53 (1) of the Constitution).

Incompatibility of functions

882. Articles 56 and 57 of the Constitution, as amended in 2001, contain detailed rules on the incompatibility of functions of the Members of Parliament and specify the categories of persons who may not stand for election or be elected if they have not resigned prior to their nomination.

The role of political parties

883. Article 29 of the Constitution safeguards the right to freely found and join political parties, the organization and activity of which must serve the free functioning of democratic Government. Article 29 (2) of the Constitution provides that political parties are entitled to receive financial support by the State for their electoral and operating expenses, as specified by law, which, furthermore, specifies the guarantees of transparency concerning electoral expenses and financial management in general of political parties, Members of Parliament, parliamentary candidates and candidates for all degrees of local government. A law shall impose the maximum limit of electoral expenses, may prohibit certain types of pre-electoral promotion and shall specify the conditions under which violation of the relevant provisions constitutes grounds for forfeiture of parliamentary office on the initiative of the special organ of the following section. The audit of the electoral expenses of political parties and parliamentary candidates is carried out by a special organ which is established also with the participation of senior judicial functionaries, as specified by law. A law may also extend these regulations to candidates for other offices held through election.

884. Indeed, Law 3023/2002 places limits to the expenses and the advertising of political parties and candidates. The violation of the provisions or the excess of the said limits may lead to forfeiture from parliamentary office or the deprivation of State financial support granted to the political parties.

885. Moreover, the legislator must ensure the access of political parties to the broadcasting media during the pre-electoral period, as referred to in this Report, under article 19 ICCPR.

Electoral system

886. According to article 54 of the Constitution, the electoral system and electoral districts shall be specified by law which applies as of the elections immediately after the following ones, unless an explicit provision adopted by a majority of two thirds of the total number of Members of Parliament, provides its immediate application as of the elections immediately following.

887. The electoral law in force establishes a system of “reinforced” proportional representation and sets the level of eligibility at 3 per cent at the national level, in order to ensure a stable parliamentary majority.

Institutions of direct democracy

888. Elements of direct democracy are contained in article 44 (2) of the Constitution, which provides for the institution of referendum. For more details, see this Report, under article 1 ICCPR.

The right to vote and be voted of EU citizens residing in Greece

889. EU citizens residing in Greece enjoy the right to vote and be voted in municipal and prefectural elections, as well as in the election of Members of the European Parliament.

890. The Ministry of Internal Affairs, Public Administration and Decentralization has achieved the increase in the number of EU citizens registered in the special electoral catalogues through a campaign of information. More specifically, 1474 EU citizens were registered in the electoral catalogues for the municipal elections of 1998, while 2948 EU citizens were registered for the 2002 municipal elections.

Participation of women in decision-making centers

891. In the field of political rights, Law 2910/2001 added a new paragraph 3 to article 54 of Presidential Decree 410/1995, “Code on Municipalities and Communities”, according to which “the number of candidate councilors from each gender shall be equal to at least $\frac{1}{3}$ of the total number of candidates of each list”. A similar provision was added to Presidential Decree 30/1996, “On Code of Prefectural Local Government”.

892. In a landmark 2003 judgment, the Council of State held that the aforementioned provision of Law 2910/2001 is in conformity with the Constitution, in particular the principle of popular sovereignty, the universality of the vote, the principle of equality in electoral competition, as well as the principle of free and unfalsified expression of the popular will.

The CoS reached its decision taking into consideration the under-representation of women in the political life of the country, as well as the provisionary, adequate and necessary character of the quota in question, and in the light of the revised article 116 (2) of the Constitution. The latter, in fact, does not specify the fields in which affirmative measures in favor of women should be adopted and, thus, does not exclude the field of political rights. The CoS took also into account the fact that the relevant quota did not concern the election of an equal number of men and women, but only the participation of the under-represented gender in the electoral lists.¹⁴¹

893. In the Municipal Elections of October 2002, and in implementation of the aforementioned provision, there was an important increase in percentage of elected women, as it can be shown from the following data:

Women municipal counselors

1998	2002
7,11%	12%

Women counselors of the prefecture

1998	2002
10,8%	18%

Women mayors

1998	2002
1,45%	2,1%

Women prefects

1998	2002
3,5%	1,7%

894. It is to be noted that the General Secretariat for Equality had conducted a Pan-Hellenic campaign of information in reference to the increased need for women's participation in the elections as candidates, as well as the increase in their ability of being elected.

Article 27: The rights of persons belonging to minorities

895. The only officially recognized minority in Greece is the Muslim minority in Thrace. However, there is a growing awareness in Greece as regards the situation of other "vulnerable groups" within Greek society, such as Roma, migrant workers, refugees and asylum seekers, as explained in the relevant parts of our report, in particular under articles 2 and 26 of the Covenant. In this respect it should be noted that the Greek authorities attach great importance to the human rights protection of persons belonging to such groups.

896. With respect to the protection afforded to persons belonging to religious groups other than those belonging to the Greek Orthodox Church, see this report under article 18 of the Covenant.

897. In recent years the basic guiding principles of the Greek policy vis-à-vis the Muslim minority have been those of moderation and consensus. This is especially true since 1991, when the Government solemnly declared the principles of “isonomia” i.e. equality before the law and “isopoliteia” i.e. equality of civil rights, as the basis of the treatment of the Muslims in Thrace.

898. It is estimated that the Muslim minority of Thrace numbers 100,000 out of a total of 362,000 inhabitants of this area, i.e. 29 per cent of the local population and 0.92 per cent of the total population of Greece of 10.62 million.

899. This minority consists of three groups whose members are of Turkish origin (50% of the minority population), Pomaks, a native population that speaks a Slavic dialect and espoused Islam during Ottoman rule (35% of the minority) and Roma (15% of the minority population). Each of these groups has its own distinct spoken language and traditions. They share, however, a common religion (Muslim), which is the basic reason for the denomination of the minority in its entirety as “Muslim” in the Lausanne Treaty of 24 July 1923 that forms the legal basis for the protection of this minority.

900. More specifically the Peace Treaty of Lausanne of 24 July 1923, contains also provisions on the protection of the non-Muslim minorities in Turkey and most specifically of the Orthodox Greeks in Constantinople, who were explicitly excluded from the compulsory exchange of populations between Greece and Turkey in 1923 (Lausanne Agreement of 30 January 1923). The same protection was extended, on a reciprocal basis, through article 45 of this Treaty to the Muslim minority of Thrace, which was also excluded from the above exchange of populations between the two countries.¹⁴²

901. It would be useful to make a few comments on the issue of the self-identification of persons belonging to the Muslim minority of Thrace, which has been a point of criticism by some NGOs.

902. The Greek Government does not deny the application of this principle to persons who belong to the Muslim minority in Thrace. In fact every member of this minority is free to declare his or her origin (be it Turkish, Pomak or Roma), speak and learn his or her own language and exercise his or her own religion, customs and traditions.

903. The attempt, however, to identify the entire Muslim minority of Thrace as “Turkish”, irrespective of the existence of two other different groups within that minority, is in the view of the Government unjustifiable and goes against the spirit and the purpose of Article 27 of the Covenant as well as of the European Framework Convention on the Protection of National Minorities, which protect all the members of the minority groups within a given state from being assimilated into other groups by reason of their size. The Greek Government makes every effort to preserve and promote the identity of the Muslim minority of Thrace and the special characteristics of the identity of its members. These efforts are described below.

904. In this respect it should be stressed that, according to the recent case-law of the Areios Pagos,¹⁴³ the dissolution of a union or an association, including those established by members of the minority, has to be carefully scrutinized by national courts under strict standards. Thus, any interference with the exercise of the said right must be necessary in a democratic society and must be motivated by a pressing social need with a view to protecting national security or public safety or to preventing disturbances of public order. For more details, see this Report under article 22 of the Covenant.

905. In 1998, article 19 of the 1955 Citizenship Code was repealed (by virtue of article 9 (14) of Law 2623/1998). The application of this article, which allowed the withdrawal of Greek citizenship from persons of non-Greek origin who left the country with no intention to return, had raised many concerns in the past. The majority of these persons are already foreign citizens and reside outside the Greek territory. There is a very small number of stateless persons, in Greece, approximately 140 people, and these persons are free to regain their Greek citizenship upon naturalization. This is actually the case with 63 persons belonging to this category who have already acquired Greek citizenship through naturalization.

Participation of members of the minority in the political life of Greece

906. The members of the Muslim minority actively participate in the Greek political life and a good number of them are members of political parties. During parliamentary elections, all political parties include in their electoral lists Muslim candidates. In almost all successive Parliaments from 1927 onwards, Muslim deputies were elected (usually two). At the parliamentary elections of 1996, almost all Greek political parties were represented with Muslim candidates in the Prefectures of Xanthi and Rhodopi where the Muslim minority lives. More specifically, in the Prefecture of Xanthi there were seven Muslim candidates coming from seven different political parties, while in the Prefecture of Rhodopi, seven Muslim candidates came from four political parties. Both the party in Government (PASOK) and the main opposition party (New Democracy) were represented with two Christians and one Muslim candidates in the Prefecture of Rhodopi. Eventually, three Muslim candidates were elected, one from each of the three major political parties. In the April 2000 parliamentary elections, two Muslim deputies were elected. Following the recently held parliamentary elections of 7 March 2004, one Muslim deputy was elected.

907. In the communities where a Christian majority lives, it is quite common to have a considerable number of Muslims elected as municipal councillors, while in those municipalities where the Muslim element is in the majority, a Muslim mayor is elected. Muslim prefecture councillors are also elected in the Prefectures of Xanthi and Rhodopi.

908. The Greek electoral law fixes the level of eligibility at 3 per cent at the national level, aiming at securing a stable parliamentary majority. This law is neutral per se, i.e. it applies to all political parties. The threshold of 3 per cent is modest, when compared to the electoral laws of other European democracies and does not preclude members of the Muslim minority from fully enjoying their political rights. The relevant legislation was challenged before the European Commission of Human Rights (application No 25758/1984, *Ahmed Sadik v Greece*), which held that the threshold of 3 per cent is not contrary to article 3 of Protocol No. 1 to the European Convention (right to free elections) and declared the application manifestly ill-founded.

909. The parliamentary elections of April 2000 and the previously held local elections are proof that in Thrace long standing historical prejudices have been set aside. In the parliamentary elections, in districts where the Muslim element is in the majority, Christian candidates have been elected. As already mentioned, in municipalities with mixed population, Muslims have been elected as mayors, thus enabling a more effective representation of the interests of both Muslims and Christians in the Greek Parliament or in local authorities irrespective of religious differences.

Freedom of religion of the members of the Muslim minority in Thrace

910. Respect for and promotion of the religious liberty of persons belonging to the Muslim minority in Thrace is a major concern of the Greek authorities. Muslims in Thrace freely profess and practice their religion in a manner that is appropriate within their traditions. In this region, there are as many as 400 Muslim places of worship and 440 Muslim clergy. New building permits are issued on a regular basis (7 permits were issued in 2002). There are more than 250 Muslim cemeteries in Thrace. The spiritual leaders of the Muslim community are the Muftis, who, in accordance with Islamic practice, also perform certain judicial and administrative functions in personal and family matters of the Muslim minority such as marriages, divorces, pensions, emancipation of minors, inheritance etc.

911. It should be stressed that the choice whether to use the Sharia or the Greek Civil Code in family and inheritance law matters is made by the members of the Muslim minority. They are absolutely free to address themselves either to the local Muftis or the civil courts.¹⁴⁴ In case they choose the former, the Sharia is implemented to the extent that its rules are not in conflict with fundamental values of the Greek society and the Greek legal and constitutional order. In order to reconcile Islamic law with the Greek public order and the international obligations assumed by Greece, in particular, in the field of gender equality, Article 5 (3) of Law 1920/1991 provides that the courts shall not enforce decisions of the muftis which are contrary to the Greek Constitution. In this respect, derogations from civil law provisions are minor: concepts such as polygamy, marriage below legal age, marriage by proxy,¹⁴⁵ etc. are not permitted, on the basis of the aforementioned principle. Any practice contrary to fundamental values can indeed be challenged through this principle.

912. The judicial competencies of the muftis are the main reason for which they have been appointed since 1923 by the Greek State. Indeed, the recognition and the exercise of such judicial competencies require additional protective safeguards on behalf of the state. However, the appointment of the Muftis is being effected through a transparent procedure in which prominent members of the Minority are consulted. Candidates with a solid Islamic education are participating in the procedure. Law 1920/1991 defines the procedure of the appointment of the Muftis, their status and duties and the rules governing the function of their office. According to this Law, the Prefect initiates the procedure for the selection of candidates, who are, in turn, proposed by eminent members (theologians) of the Minority. The Mufti is then appointed by Presidential Decree, following the recommendation of the Minister of Education and Religious Affairs. For the first time in 1990, the possession of an Islamic Theology Degree at university level became a prerequisite for the candidature. It should be noted that from 1923 until 1990, the Muftis were appointed exclusively by the Prefect, and this practice had never been protested or contested by anyone.

913. It is to be noted that the CoS held that the appointment of the Muftis on the basis of the above procedure set out in Law 1920/1991 does not violate the international commitments undertaken by Greece.¹⁴⁶

914. In the past years, some members of the minority have contested the appointment of the Muftis in accordance with the above law and instead have demanded that the Muftis be elected. More specifically, a small number of attendants in 3-4 mosques in Komotini (Rhodopi prefecture) and a similar number of attendants in Xanthi proceeded in “electing” their own “muftis” by acclamation (*viva voce*) despite the fact that there were legally appointed Muftis in the above districts.

915. The European Court of Human Rights has found on two occasions,¹⁴⁷ that, under the specific circumstances of the above cases Greece, has violated article 9 ECHR safeguarding freedom of religion for having convicted the applicants for the crime of pretence of authority. In those judgements, the European Court stated that “punishing a person for the mere fact that he acted as the religious leader of a group that willingly followed him can hardly be considered compatible with the demands of religious pluralism in a democratic society”. In addition, the Court emphasized that, given the circumstances of the case, it has not been shown that the applicant’s conviction was justified by “a pressing social need”. Likewise, the Court stated that “it could be argued that it is in the public interest for the State to take special measures to protect from deceit those whose legal relationships can be affected by the acts of religious ministers”. It should be stressed, however, that the Court did not, in the above cases, deal with the overall competencies of the Muftis and whether the relevant Greek legislation regulating their appointment was in conformity with the ECHR.

Educational rights of members of the Muslim minority

916. The education of Muslim children is a matter of high priority. The Greek State allocates a considerable sum of money every year to cover the costs of the minority schools. The Greek government has provided in its budget for the period 2000-2006 the total sum of 1,760,000 euros to be allocated for repairs and infrastructure improvement. As far as the education programs are concerned the total sum of 14,670,000 euros is registered to be spent along with 6,162,000 euros for supplementary education.

917. Minority education of the Muslim minority in Thrace aims at ensuring the physical, intellectual and moral development of students according to the principles of our system of public education. This policy forms part of the general national policy for the social and economic integration of the Muslim Greeks into the contemporary Greek reality.

918. The education of the Muslim Greeks is of fundamental importance, as it implements the principles of “isonomia” and “isopoliteia”, while combating educational exclusion, which is considered the worst form of social exclusion.

919. Pre-school level: There are today 185 nursery schools in Thrace, 28 of which are established in minority villages upon request of the residents of these villages, who wish their children to acquire a solid foundation in Greek language and education.

920. Primary education: Special schools in primary education have been operating since 1922 and half of the education program is dedicated to the special needs of the Muslim minority in linguistic, cultural and religious matters. Today there are 215 primary minority schools operating in Thrace. Courses are taught in the Greek and Turkish languages as stipulated in Part V of the Lausanne Treaty of 1923 under the heading "Protection of minorities". The curriculum includes a complete Turkish and Greek language programme; mathematics, religion and physics are taught in Turkish, geography and history in Greek, and the Koran in Arabic in accordance with Muslim tradition. Additionally, the minority pupils follow a foreign language programme, that is, other than Greek and Turkish, after the third grade of primary school. In these schools 407 Muslim teachers are being employed. The vast majority of them (308) are graduates of the Special Pedagogical Academy of Thessaloniki. Notwithstanding the above, 91 Muslim teachers of Greek nationality, graduates of Turkish universities, another 7, graduates of other foreign universities, and 16 Turkish teachers who are sent by Turkey in the context of an exchange of teachers between the two countries are also employed.

921. Secondary education: Although there is no provision in the Lausanne Treaty concerning secondary education, four private minority high schools (two junior and two senior ones) plus two Koranic schools (*medrese*) operate in the cities of Xanthi and Komotini, capital cities of the Prefectures of Xanthi and Rhodopi respectively, where the Muslim minority is mainly situated. The schools are housed in buildings provided by the Greek State. In 2003, the Greek State funded the construction of a new wing in the High School of Komitini. Both the Greek and the Turkish languages are used for the education of the students in these schools. 23 Muslim teachers of Greek nationality, graduates of Turkish universities, and 7 Turkish nationals (in accordance with bilateral agreements between the two Governments) are employed. The Greek Government also offers, in co-operation with the European Commission, a multicultural program for children whose mother tongue is not Greek.

922. It must also be mentioned that in the remote mountainous area in Xanthi where the Pomaks live, the State has set up and is financing the operation of standard public (Greek language) high schools or Gymnasiums, in which religious courses are taught in Turkish and the Koran is taught in Arabic. Furthermore, the State finances the commuting of students for whom the distance to the nearest school is prohibiting. During the academic year 1997-1998, 176,000 euros were spent for moving students to and from the Glafki Lyceum and the Sminthi, Echinon, Glafki and Thermae gymnasiums of Xanthi Prefecture.

923. Also, during the academic year 2002-2003, 156,000 € were spent for the transfer of the students of the Minority Secondary Schools (Minority Gymnasium- Lyceum of Xanthi and Koranic School of Echinon) situated in the Xanthi prefecture.

924. Yet another positive development in the minority's secondary education is the passing of Law 2621/1998 whereby the two Koranic Schools of Komotini and of Echinon in the Xanthi Prefecture have been recognized as equivalent to the standard Religious Studies Lyceums (senior high schools) of the country.

925. Furthermore, all schoolbooks that have been sent by Turkey have been distributed in accordance with the 1968 Cultural Protocol between Greece and Turkey on the exchange of

schoolbooks. This development puts a new positive slant on the issue of the exchange of schoolbooks, as books submitted by the Turkish side in the past were on the whole considered inadequate to cover the educational needs of the Minority.

926. The Government also pays particular attention to the improvement of the skills of pupils in the Greek language. Two educational programmes, financed by the EU, have been applied and both have yielded positive results.

927. The first is the "Programme for the Education of Muslim Children" and has been designed by the Special Secretariat for the Education of Greeks from Abroad and for Intercultural Education of the Ministry of Education in collaboration with the Athens National Capodistrian University. Its aim is the publication of textbooks for the teaching of the Greek language to students with a different mother tongue, the study of special educational programmes, the training of both Christian and Muslim teachers in the teaching of Greek as a second language and in the modern pedagogical and didactic methods, using new technology. The programme is financed by the European Union with approximately 3.5 million euros.

928. The second is the "Intercultural Educational Support for Student Groups in Thrace", designed by the National Youth Foundation, financed by the European Union to the tune of 1,715,000 euros, which has already been completed. Its aim has been to facilitate the adaptation of students to the Greek educational system and reduce the cost of education for families in need by providing free supplementary education.

929. Another programme successfully put into practice was the programme for the support of Muslim students in secondary education, particularly for first year students in the gymnasiums (junior high schools) and for students having failed examinations.

930. Higher education: With regard to higher education, Greek law provides for a special quota of 0.5% for the admission of minority students to Greek higher education institutions. When the new law was put into force in the academic year 1996-1997, 70 minority students out of 84 candidates were admitted to higher education institutions. In the academic year 1997-1998 the number increased to 114 students, 112 students were admitted during the year 1998-1999, while in 1999-2000 77 students took advantage of the quota, the total number of available places being 410. This constitutes an impressive change to the statistical data valid until the introduction of this special quota. Up to that period, the enrolment of Muslim students in the University was almost non-existent.

931. The Ministry of Education has also initiated the procedure for the integration of the Special Pedagogical Academy of Thessaloniki - from which the teachers employed in the minority schools graduate - in the University Education system. To this end, a Presidential Decree which will establish a Department of Muslim Pedagogical and Theological Studies at the Aristotelian University in Thessaloniki is under consideration. In order to enhance the quality and continuity of teaching in minority schools, the law requires that high qualifications - including teaching skills training, graduate studies, foreign language skills and familiarity with other cultures, civilizations and religious practices - be taken into account for the appointment of teachers to minority schools. The Law also introduces English language courses at the primary school level. Furthermore, the Law establishes special financial and social security incentives for teachers who choose to teach at minority schools.

932. Further details on the educational rights of members of the Muslim minority in Thrace are given in Greece's Initial Report to the Committee on Economic, Social and Cultural Rights.

Employment

933. A considerable number of Minority members work in the public sector, either as contractors or as civil servants. Those duly qualified participate in the examinations held by the "Highest Council for Staff Selection", for the appointment of employees in the Public Sector. Today, about 400 Muslims are employed in Thrace as civil servants in the Regional Administration as teachers, firemen, members of the veterinarian service, members of the border control special force, guards and clerks in state-owned banks. Muslims are also employed in the seasonal posts of the Public Sector such as at the Forest Authorities of Xanthi and Stavroupoli. Prominent members of the Minority are lawyers, businessmen, doctors and pharmacists.

Media

934. Public radio broadcasts a daily morning programme in Turkish, featuring news bulletins and music and an additional Saturday evening programme. Minority private radio is absolutely free. There are 7 private minority radio stations in Thrace, featuring 24-hours-a-day programmes in Turkish, almost exclusively.

Development

935. Particular attention is given by the State to the fields of development and infrastructure. In that context, special Laws have been enacted with a view to attracting more investments in the region of Thrace. A number of large scale works are currently undertaken in the Region of Eastern Macedonia-Thrace. Some are state-financed, such as the Special Local Government Development Program, while others, such as PEP, LEADER II and INTERREG, known as the Regional Programs, are financed through the European Union. These include forestry and land improvement works, improvement of airport facilities, irrigation, ecotourism, agrotourism, the protection of the environment etc. Another important boost to Thrace's development prospects will be the new Egnatia road, now under construction, which will connect Thrace's port of Alexandroupoli to the Ionian sea port of Igoumenitsa, gateway to Western Europe. It is among the most ambitious and significant road projects on the European level.

The position of international monitoring mechanisms

936. A number of important international mechanisms, which closely follow developments in the minority protection field, have commended the efforts made by the Greek authorities in order to protect and promote the rights of persons belonging to the Muslim minority in Thrace. The Committee on the Elimination of All Forms of Racial Discrimination (CERD), in her concluding observations dated 27 April 2001, welcomed the measures taken by Greece aimed at promoting effective equality among individuals, with particular attention to the minority population in Thrace. Positive remarks are also contained in the report of the Commissioner for Human Rights of the Council of Europe, following his visit in Greece, in June 2002.

937. During the discussion, in September 2000, of a relevant introductory report by the Committee on Legal Affairs of the Parliamentary Assembly of the Council of Europe, one of the two Rapporteurs ascertained that the Greek government had the political will and was already working on the substantial improvement of the living conditions of the Muslim Minority in Thrace. Regarding the issue of the election process of the Muftis, the same Rapporteur stressed that the request for a popular vote is exaggerated and exceeds the practice that has been followed on this matter, since in no other religion is the religious leader subjected to a popular vote, and added that the Greek Government assigns to the Muftis significant administrative and judicial functions. He concluded that “the issue is exhausted and subsequently any other fact-finding mission in Thrace is unnecessary”.

938. The Rapporteurs concurred with the long-standing Greek position that the Muslim minority in Thrace is composed of three different groups. They mentioned that, due to the wisdom and competence of the regional and local authorities, there has not been any case of violence against the minority and underlined the fact that the Muslim minority has its representatives in the Greek Parliament. Regarding education, they stressed that the quotas for students of Muslim origin admitted to Greek universities must be mentioned as one of the most positive and innovative steps of the Greek State, thus acknowledging that a significant progress has been made in this direction.

Notes

¹ See for example judgments 2248/1998 and 76/2001 of the Athens and Thessaloniki Administrative Courts of Appeal respectively, which refer to the safeguarding of rights of employed persons with special needs.

² See for instance Court of Auditors 1273/1996, Grand Chamber.

³ CoS 3739/1999.

⁴ Special Supreme Court 3/2001, CoS 2944/2000, 1676, 2409/1998, 3216/2003.

⁵ Court of Auditors 1743/1991 (Grand Chamber), Athens Court of Appeal 2258/1997, CoS 3587/1997, 653/2000.

⁶ The draft law has not been yet adopted by Parliament. It is to be noted that the NCHR has adopted, on 17.12.2003, a series of proposals aiming at ensuring the complete and effective transposition of the abovementioned Directives.

⁷ J. Iliopoulos-Strangas, *The Horizontal Effect of Civil and Social Rights*, 1990, pp. 49 *et seq.* [in Greek].

⁸ K. Chrysogonos, *Civil and Social Rights*, Ant. N. Sakkoulas Publishers, Athens / Komotini, 2002, p. 63 [in Greek].

⁹ According to the Report of the General Rapporteur of the Majority, E. Venizelos, in: *Report of the Committee of Revision of the Constitution*, Athens, 2000, p. 18 [in Greek].

¹⁰ CoS 1917-1929/1998 and 1933/1998. This case-law was recently confirmed by CoS judgments 2831/2003 and 2905/2003.

¹¹ CoS 1917-1929/1998.

¹² CoS 2905/2003. The case is currently pending before the Grand Chamber of the CoS.

¹³ CoS 1933/1998 [Grand Chamber].

¹⁴ CoS (plenary) 3216/2003.

¹⁵ CoS 2905/2003.

¹⁶ Advisory opinion 13/1968 of the AP Public Prosecutor.

¹⁷ CoS 3567/1978.

¹⁸ Administrative Court of First Instance of Thessaloniki 19/2002.

¹⁹ CoS 2858/2003 (Grand Chamber).

²⁰ See, among others, judgments *Tsirlis and Kouloumpas v. Greece* (29/05/1997), *Georgiadis v. Greece* (29/05/1997), *Karakassis v. Greece* (17/10/2000).

²¹ ECtHR, *Dougoz v. Greece*, 6.3.2001, Reports 2001-II.

²² ECtHR, *Peers v. Greece*, 19.4.2001, Reports 2001-III.

²³ See this Report *infra*, article 13 of the Covenant.

²⁴ See this Report *infra*, article 13 of the Covenant.

²⁵ Personal detention may also be ordered in case of tort claims.

²⁶ Athens Court of Appeal 4727/1997.

²⁷ Athens Court of Appeal 9318/1998.

²⁸ Piraeus Court of Appeal 207/1998.

²⁹ Piraeus Court of Appeal 253/1998.

³⁰ Dodekanissa Court of Appeal 251/1998.

³¹ Court of Appeal of Athens 9738/1998.

³² AP 1635/2001. See also AP 424/2003.

³³ CoS 2313/1976 (Grand Chamber), 2336/1980, 2858/1985 (Grand Chamber).

³⁴ The alien under expulsion must be summoned to express his or her view prior to the issuance of a decision. This applies in all cases, irrespective of whether the alien has the legal right to exercise remedies against the expulsion decision (CoS 380/2002).

³⁵ In its report dated 12.12.2002, the NCHR recommended to the competent authorities the creation of detention centers for aliens under deportation according to Law 2910/2001.

³⁶ CoS 856/2002.

³⁷ CoS 380/2002.

³⁸ Suspension Committee of the CoS 422/2002, 601/2002.

³⁹ *Ibid.*

⁴⁰ Paragraph 4 of article 74 PC was added by article 12 (1) of Law 2721/1999.

⁴¹ NCHR, Annual Report, 2002, p. 177 *et seq.*

⁴² CoS 3651/2002.

⁴³ Ioannina Three-Member Administrative Court of First Instance 352/2002.

⁴⁴ AP 804/2002.

⁴⁵ Article 94 (3) of the Constitution provides that the law may assign some categories of substantive administrative disputes to civil courts.

⁴⁶ See, among others, *Hornsby v. Greece*, 19.3.1997; *Antonakopoulos, Vortsela and Antonakopoulou v. Greece*, 14.12.1999; *Dimitrios Georgiadis v. Greece*, 28.3.2000.

⁴⁷ AP, 21/2001 [Grand Chamber]. This decision followed earlier decision by inferior courts: First Instance Civil Court of Thiva 360/1998, Athens First Instance Administrative Court 4446/1999 and 1765/2000.

⁴⁸ NCHR, Annual Report, 2002, p. 177 *et seq.*

⁴⁹ CoS 3651/2002. Another example of the efforts made by the Courts in order to eliminate “prerogatives” of the State as a party to a dispute is judgment 2807/2002 of the plenary of the CoS. The Council of State found that provisions of procedural law which grant to the State suspension of time limits during the judicial holidays in more favorable terms in comparison to private individuals are contrary to articles 4 (1) of the Constitution and 6 ECHR. Greek law was thus harmonized with the case law of the EctHR in the *Platakou v. Greece* case, 11.1.2001, Reports 2001-I.

- ⁵⁰ Ioannina Three-Member Administrative Court of First Instance 352/2002.
- ⁵¹ AP 804/2002.
- ⁵² AP 36/2002.
- ⁵³ ECtHR, *Kalogeropoulou and others v. Germany and Greece*, admissibility decision, 12.12.2002.
- ⁵⁴ See the decision dated 29.5.2003 of the NCHR.
- ⁵⁵ AP 9/2002 (Grand Chamber).
- ⁵⁶ ECtHR, *Twalib v. Greece*, 6.9.1998, Reports 1998-IV.
- ⁵⁷ ECtHR, *Biba v. Greece*, 26.9.2000.
- ⁵⁸ The NCHR has put forward a number of proposals on the draft law, which are contained in a report dated 30.10.2003.
- ⁵⁹ AP 1426/1998, AP 86/2001.
- ⁶⁰ AP 887/2001, AP 501/2002.
- ⁶¹ AP 7/2002 (Grand Chamber).
- ⁶² Suspension Committee of the CoS 73/2002, 84/2002, 360/2002, 367/2002, 422/2002, 456/2002, 458/2002 and 609/2002.
- ⁶³ AP 1419/1998. *See also* Suspension Committee of the CoS 746/1998.
- ⁶⁴ CoS 820/2000.
- ⁶⁵ Suspension Committee of the CoS 84/2002.
- ⁶⁶ CoS 2400/2000.
- ⁶⁷ Suspension Committee of the CoS 84/2002, 367/2002.
- ⁶⁸ Suspension Committee of the CoS 456/2002, 458/2002.
- ⁶⁹ Suspension Committee of the CoS 73/2002, 609/2002.
- ⁷⁰ Suspension Committee of the CoS 460/2002, 574/2002.
- ⁷¹ CoS 194/1987.
- ⁷² Chania Misdemeanor Court 172/1986.

- ⁷³ Patras Justice of the Peace 261/1983.
- ⁷⁴ *Ibid.*
- ⁷⁵ *Ibid.*
- ⁷⁶ Incl. both blasphemous libel and blasphemous slander.
- ⁷⁷ CoS 4045/1983.
- ⁷⁸ CoS 2715/1984, 2753/1988.
- ⁷⁹ CoS 1090/1989.
- ⁸⁰ CoS 3703/1995.
- ⁸¹ CoS 160/1990.
- ⁸² Thessaloniki First Instance Court [Provisional Measures] 1080/1995.
- ⁸³ A/51/542/Add.1/7 November 1996.
- ⁸⁴ CoS 2139/1975.
- ⁸⁵ CoS 2275/1962.
- ⁸⁶ CoS 824/1963.
- ⁸⁷ CoS 23/1964, 4054/1973.
- ⁸⁸ CoS 2105/1975.
- ⁸⁹ CoS 1016/1963.
- ⁹⁰ ECtHR, *Tsirlis and Kouloumpas v. Greece*, 29.5.1997, Reports 1997-III; *Georgiadis v. Greece*, 29.5.1997, Reports 1997-III.
- ⁹¹ CoS 824/1963, 4305/1986.
- ⁹² NCHR, Proposals on Issues of Religious Freedom, 01.03.2001, http://www.nchr.gr/category.php?category_id=88 (English translation).
- ⁹³ CommDH(2002)5 Report on the visit to Greece, 2-5 June 2002.
- ⁹⁴ ECtHR, *Kokkinakis v. Greece*, 25.5.1993, Series A, vol. 260-A.
- ⁹⁵ ECtHR, *Larissis and others v. Greece*, 24/02/1998 Reports 1998-I.

⁹⁶ CoS 1444/1991.

⁹⁷ CoS 2484/1980.

⁹⁸ CoS 4620/1985.

⁹⁹ ECtHR, *Manoussakis and others v. Greece*, 26.9.1996, Reports 1996-IV.

¹⁰⁰ ECtHR, *Pentidis and others v. Greece*, 6.9.1997, Reports 1997-III.

¹⁰¹ AP 20/2001 (Grand Chamber).

¹⁰² CoS 3356/1995.

¹⁰³ CoS 2176/1998.

¹⁰⁴ CoS 194/1987.

¹⁰⁵ This body, as set out in article 100A of the Constitution, is responsible mainly for the judicial support to and representation of the State and to the acknowledgement of claims against the State or to the settlement of disputes with it.

¹⁰⁶ Complaint no 8/2000, Quaker Council for European Affairs (QCEA) against Greece.

¹⁰⁷ ECtHR, *Thlimmenos v. Greece*, 4.6.2000, Reports 2000-IV.

¹⁰⁸ CoS 2280-2285/2001.

¹⁰⁹ ECtHR, decision as to the admissibility in the case *Sofianopoulos, Spaidiotis, Metallinos and Kontogiannis v. Greece*, 12.12.2002.

¹¹⁰ CoS 2601/1998.

¹¹¹ ECtHR, *Canea Catholic Church v. Greece*, 16.12.1997, Reports 1997-VIII.

¹¹² Athens Court of First Instance, [Provisional Measures] 5208/2000.

¹¹³ AP 1341/1993.

¹¹⁴ AP 926/1980.

¹¹⁵ CoS 780/1981, 1802/1986, Athens Administrative Court of Appeals 1834/1994.

¹¹⁶ CoS 538/2001.

¹¹⁷ CoS, Advisory Opinion, 452/1995.

¹¹⁸ AP 4/1991 (Grand Chamber).

- ¹¹⁹ Athens Three-Member Administrative Court of First Instance 17081/1996.
- ¹²⁰ CoS 903/1981.
- ¹²¹ AP 66/1982.
- ¹²² AP 298/1983.
- ¹²³ Athens Court of First Instance [Provisional Measures] 8064/1986, Athens Court of First Instance [Provisional Measures] 22338/1996, Thessaloniki Court of First Instance 24742/1998).
- ¹²⁴ Athens Court of First Instance, [Provisional Measures] 5208/2000.
- ¹²⁵ *Ibid.*
- ¹²⁶ AP 546/1983.
- ¹²⁷ CoS 930/1990.
- ¹²⁸ CoS 2426/1984, 5040/1987, 872/1992, 4333/1996.
- ¹²⁹ NRTC decisions 137/14.1.2003, 178/11.2.2003, 212/1.4.2003, 316/1.7.2003, 332/22.7.2003, 334/22.7.2003, 344/29.7.2003, 349/19.8.2003, 356/30.9.2003, 358/30.9.2003.
- ¹³⁰ NRTC decision 345/29.7.2003.
- ¹³¹ AP 1653/1983, 1407/1988.
- ¹³² AP 1177/2002.
- ¹³³ AP 13/1999 (Grand Chamber).
- ¹³⁴ AP 825/2002.
- ¹³⁵ AP 167/2000.
- ¹³⁶ AP 854/2002.
- ¹³⁷ AP 1043/2001.
- ¹³⁸ Athens Court of First Instance 13005/1976.
- ¹³⁹ Athens Court of First Instance 3518/1993, 4300/1996, 6776/1997.
- ¹⁴⁰ AP 1530/2000. See also ECtHR *Sidiropoulos v. Greece*, 7.10.1998, Reports 1998-IV.
- ¹⁴¹ CoS 2831/2003.

¹⁴² Under the terms of the above Agreement, 120.000 out of the 3 million Greeks who were living in Turkey in 1918 were exempted from the compulsory transfer of populations and stayed on in Istanbul (“*établis*”). This figure was offset by the 86.000 Muslims (out of 0.5 million) who were allowed to remain in Thrace.

¹⁴³ AP 1530/2000.

¹⁴⁴ See the decision 405/2000 of the Thiva First Instance Civil Court, according to which the jurisdiction of the Mufti, who exercises this jurisdiction in a subsidiary manner to the Greek Courts, may not endanger the civil rights of the Muslim population. The State is obliged, in the case of a conflict between the Sharia and civil rights, to grant the Muslim Greek Citizen the freedom to choose the legal order whose provisions shall regulate the difference that has arisen.

¹⁴⁵ See also the relevant Resolution dated 29.5.2003 of the NCHR. The NCHR stressed the importance of respect for cultural and religious identities in a pluralist, democratic society. Taking into consideration the relevant principles and rules of international, European and Greek human rights law (including article 23 (3) ICCPR), the NCHR reached the conclusion that the Muslim wedding by proxy is against the Greek public order.

¹⁴⁶ CoS 1333/2001.

¹⁴⁷ ECtHR, *Serif v. Greece*, 14.12.1999; *Agga (2) v. Greece*, 17.10.2002.
