



**HELLENIC REPUBLIC  
MINISTRY OF JUSTICE, TRANSPARENCY  
AND HUMAN RIGHTS  
THE MINISTER**

Athens, 17/08/2016  
Ref. No:



003047-16-1-0-1  
Γρ. Υπουργού ΥΔΔΑΔ  
Α.Π.:3047-17/08/2016

Mr Nils Muiznieks  
Commissioner for Human Rights  
of the Council of Europe

Dear Commissioner,

I would like to thank you for your letter following your visit to Greece from 3 to 8 July, for your positive remarks on legislative and institutional initiatives of the Greek government and for your constructive recommendations.

Allow me to elaborate on the issues raised in your letter and to provide certain clarifications.

**Concerning the investigation of allegations of ill-treatment by law enforcement and detention facility agents**, we share the view expressed by various international human rights bodies that an independent mechanism should be established in order to effectively address these incidents.

To this end, the competent ministries have reached the decision to attribute to the Greek Ombudsman, (an independent authority according to the Greek Constitution) an additional jurisdiction for the investigation of ill-treatment incidents committed by law enforcement and detention facility agents.

In view of your recommendation to enlarge the scope of the mechanism's competencies, I would like to highlight that the functioning of this new mechanism is supplementary to the independent functions of the judicial system and of the internal procedures of security forces disciplinary bodies.

More specifically, according to national legislation disciplinary sanctions in all fields of public administration are imposed exclusively by disciplinary bodies consisting of civil servants of the relevant public authority (being considered as the “natural judge” of civil servants), while criminal sanctions may be imposed by the courts in case of commission of a crime.

Therefore, the National Mechanism for the investigation of incidents of ill-treatment by law enforcement and detention facility agents is **an additional mechanism**, apart from the imposition of disciplinary and criminal sanctions, which will further guarantee that such incidents are fully and effectively investigated.

*In concreto*, in order to be in conformity with the legal status of the Greek Ombudsman as an independent authority and with the various disciplinary codes of the security forces and in order to accomplish efficiency, effectiveness and transparency, the Ombudsman’s investigation can be enacted even *proprio motu* and it is a fast track procedure. Moreover, the relevant disciplinary bodies of the security forces are obliged to allow full access to disciplinary files and to provide all necessary information. The disciplinary procedure is suspended until the issuance of the Ombudsman’s report on findings. Last but not least, any disciplinary decision should be explicitly reasoned in case it differentiates from the Ombudsman’s findings.

Concerning your recommendation for a regular and public review procedure, please note that the draft bill foresees that the Ombudsman shall issue an annual report providing case statistics and general recommendations on measures to prevent and combat incidents of ill-treatment.

Moreover, according to the existing legal framework on the Ombudsman’s functions, the Ombudsman submits an annual report to the President of the Hellenic Parliament, presenting its work, as well as recommendations for improvements and legislative adjustments (art. 3 of L. 3094/2003). The annual report is discussed in Parliament.

Taking into consideration all of the above, we will further examine possible reviewing procedures that might enhance the efficiency and effectiveness of the mechanism.

Last but not least, in respect to the allocation of financial and human resources to the Ombudsman's office, it should be underlined that despite the current financial restraints, the draft bill provides for the appointment of new staff and for the allocation of additional funding to the Ombudsman's Office in order to ensure the effective functioning of the new mechanism.

**Concerning the fight against racism, racist violence and hate speech**, a series of measures have been adopted in the past few years in all levels, as you kindly note in your letter. We have strengthened the legislative framework and we have taken institutional and operational measures to improve its implementation and to increase reporting and recording of hate crimes.

In respect to the legislation, the relevant provision of the Penal Code, namely art. 79 par. 3, has been replaced by art. 81A. The new article provides for an explicit increase in the minimum penalties if any crime is committed out of hatred due to the race, colour, religion, descent, national or ethnic origin, sexual orientation, disability and gender identity of the victim. Most importantly it allows for the investigation of bias motivation from the beginning of the criminal proceeding (contrary to the previous provision).

A recent legislative amendment (by Law 4356/2015) facilitates even more the applicability of art. 81A, by eliminating the notion of "hatred", which was admittedly difficult to prove, from the constituent elements of the crime. Instead, by this law, the notion of racial characteristic is provided as strict and reliable presupposition for the crime. "Gender characteristics" were also added to the grounds of bias motivation.

Moreover, art. 361 B of the Penal Code was established by the aforementioned law (L. 4356/2015), punishing the contemptuous exclusion of a person from the free provision of goods and services on racist grounds, apart from art. 16 of L. 3304/2005 which punishes the discriminatory treatment of a person in the provision of goods and services in commercial activities.

More specifically, in order to address **under-reporting**, the following measures have been adopted:

First of all, undocumented migrants who are victims or material witnesses of racist crimes may be granted a residence permit on humanitarian grounds. Furthermore, a recent legislative amendment provides that undocumented migrants who report racist crimes are not to be submitted to return procedures. Victims of hate crimes may also be provided with free legal aid and they are exempted from the obligation to pay a fee for filing a criminal complaint or for participating in the criminal proceedings for crimes prosecuted ex officio. They may also seek compensation from the Greek Authority on compensation of victims of violent crimes. Support and information to victims will be further reinforced through the new bill on the protection of victims of crime (transposition of Directive 2012/29) which is being forwarded to Parliament for voting. In addition to the above, police authorities have created a hotline and a special section on their website for reporting racist incidents.

Moreover, I would like to highlight the increasing awareness of civil society and the positive contribution of the Racist Violence Recording Network and NGOs, especially LGBTI organizations, to address under-reporting.

In order to improve **recording**, a unified database for registering alleged hate crimes has been created by the Hellenic Police and the Ministry of Justice. Moreover, a Working Group has been established for improving cooperation and coordination of all relevant stakeholders (police, prosecutors, Ministry of Justice, civil society). Data collection is expected to further improve following the operation of the new computerization system of the courts. Additionally, further improvements will be elaborated in cooperation with the Office on Democratic Institutions and Human Rights (ODIHR) of OSCE.

Implementation of anti-racist legislation is further expected to improve through the work of the National Council against Racism and Intolerance, an inter-ministerial body recently established, with the participation of the National Commission for Human Rights, UNHCR, RVRN and other important stakeholders and in cooperation with the Greek Ombudsman. One of the main tasks of the National Council is the development of a comprehensive strategy against racism and discrimination. The Council has already formed three working groups focusing on the investigation of bias motivation, combatting hate speech through

intercultural and inter-religious dialogue and human rights and anti-racism education.

Additionally, I fully agree with you on the importance of training of law-enforcement officials, judges and prosecutors on racist violence issues. In this field, we have a very constructive cooperation with the Council of Europe and OSCE/ODIHR and we constantly examine ways to enhance such cooperation through training programs and tools.

Notwithstanding, I share your concern on the increase in reported homophobic incidents, which is indeed alarming. Such incidents should be effectively investigated and perpetrators should be punished. To this end, I would like to note that the measures adopted have started producing positive results: the number of recorded incidents, criminal investigations, prosecutions and convictions has increased.

In particular:

In 2015, the police investigated 98 incidents with a possible bias-motivation. 8 cases were considered inadmissible. 27 criminal prosecutions were initiated out of which 15 cases were filed for the reason that the perpetrators were not identified. 63 cases are still being investigated.

In the same year, 6 criminal court decisions were issued (4 convictions, 2 acquittals).

Concerning the convictions and the sentences imposed:

In the first case, the defendants were sentenced to 5 years imprisonment each for repeated and consistent dangerous physical injuries with bias motivation and illegal possession of weapons.

In the second case the defendant was sentenced to 6 months imprisonment for insult with a bias motivation.

In the third case the defendant was sentenced to 17 months imprisonment for physical injury and insult.

In the fourth case the defendant was sentenced to 4 years imprisonment for dangerous physical injury. No bias motivation was identified by the Court.

It should be noted that out of the 98 incidents recorded in 2015, 82 incidents concerned racist violence and 16 incidents concerned hate speech.

In 2014, the police investigated 80 incidents with a possible bias-motivation. 15 cases were considered inadmissible. 28 criminal prosecutions were initiated out of which 16 cases were filed for the reason that the perpetrators were not identified. 37 cases are still being investigated.

In year 2014, 10 criminal court decisions were issued (8 convictions and 2 acquittals).

Out of 8 convictions, 2 concerned hate speech and the perpetrators were sentenced to one year imprisonment.

In the other 6 cases, even though perpetrators were convicted, bias motivation was identified in only one case (the famous Lukman case). In this case, the defendants were sentenced to life imprisonment for homicide and illegal possession of weapons. Redress was also provided to the victims for non-pecuniary damage.

As already mentioned, we are elaborating on ways to facilitate even further identification of bias motivation which is indeed a difficult task.

In addition to the above, I would like to note a series of legislative measures that have been adopted and contribute to the **fight against racism and discrimination based on sexual orientation or gender identity**.

Apart from the inclusion of sexual orientation and gender identity as grounds in the anti-racism legislation and in the draft bill on equal treatment, the law on the civil partnership pact was recently extended to same-sex couples, recognizing family ties between the parties and conferring rights similar, in many fields, to those deriving from marriage.

Furthermore, art. 347 of the Criminal Code providing a higher age of consent for male homosexual acts was abolished, effectively resulting in the equalization of the age of consent.

In the same vein, new draft bills on the review of family law and legal gender recognition are being elaborated by the competent law making committee.

It is considered that these legislative initiatives will contribute to the elimination of social prejudices and stereotypes against LGBTQI persons and shall be noted as further steps to the enhancement and deepening of the protection of rights, specifically as regards equality, non-discrimination and respect of human dignity.

**Regarding the new draft bill on equal treatment**, it is to be noted that although the scope of the respective legal framework is considered sufficient and in conformity with international standards, L. 3304/2005 is currently under review with the intention to increase its effectiveness and for reasons of legal cohesion.

A significant amendment is the expansion of the "grounds of discrimination" for reasons of visibility and effectiveness and in conformity with the wording of art. 81 A PC and 361B PC.

In addition, notions such as "multiple discrimination", "discrimination by association", "discrimination by perception" are introduced for the first time in the national legal order, expanding the scope of implementation of equal treatment principle.

Most importantly, the draft bill assigns overall powers to the Greek Ombudsman to receive and examine complaints on discrimination, in cooperation with the Labor Inspectorate in matters of employment. The Committee for Equal Treatment which has been inoperative is being abolished.

Apart from the review of L. 3304/2005, the draft bill includes the establishment of a National Mechanism for monitoring the execution of ECtHR judgments, in order to improve coordination of the main governmental bodies and agencies involved and to facilitate a transparent dialogue between Administration and Academia, professional experts, NGOs and civil society on issues of human rights protection.

Last but not least, I am pleased to announce the recent ratification of the Council of Europe's **Cybercrime** Convention and the Additional Protocol thereto concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems.

Thanking you again for your constructive recommendations, I look forward to continuing our fruitful cooperation.

Yours sincerely

  
Nikolaos Paraskevopoulos