



## Executive Summary

### Country Report Greece 2011 on measures to combat discrimination

By Athanasios Theodoridis

#### 1. Introduction

Greece is a Parliamentary Republic based on a written Constitution. With regard to equal treatment and non-discrimination, the Constitution guarantees a general right for equality and equal treatment for everybody, but it makes no specific reference to grounds of discrimination save gender and (partly) disability. In greek civil society the principle of anti-discrimination and tolerance of difference is not advanced, although there are many legal provisions establishing human rights, as well as anti-discrimination groups and NGOs, but mostly without much influence in the public debate. The social partners in Greece show very little interest in anti-discrimination issues. NGOs are mostly limited to gender, ethnic/religious and disability non-discrimination.

#### 2. Main legislation

In Greek Law, there is explicit anti-discrimination legislation. Law no. 3304/2005 on the Application of the principle of equal treatment regardless of racial or ethnic origin, religious or other beliefs, disability, age or sexual orientation implements the Directives 2000/43/EC and 2000/78/EC, therefore covering all five grounds of the aforementioned Directives.

Apart from the above, at the normative level (legal rules of the Greek legal system), there are many constitutional provisions (mainly setting out general principles) enshrining human rights, directly or indirectly addressing discrimination. It should be added all the same that it is extremely difficult to derive specific enforceable rights from these general principles. Article 25 of Greek Constitution is immensely important, because it clearly states that private employers also must respect the constitutional rights of their employees (e.g. the rights of equality and non-discrimination). In the Civil Code (civil law), there are also certain *open-ended* clauses that could be invoked by persons who are discriminated against and seeking equal treatment and non-discrimination in their employment life. However, in practice, such claims are rarely raised, save in the employment sector, where the equal treatment principle is often invoked, but only with regard to equal pay and not based on the five discrimination grounds.

As regards criminal law, there are no provisions outlawing general discriminatory practice. But there are criminal laws outlawing discrimination on grounds of racial or ethnic origin, which, however are never applied in practice.



The sole expressly anti-racism statute in Greece remains that of Law no. 927/1979, as amended by Law no. 1419/1984 and Aliens Law no. 2910/2001.

The Labour Law consists of numerous statutes, apart from the explicit anti-discrimination Law no. 3304/2005, which seek to combat discrimination in employment, mainly on the grounds of sex and racial or ethnic origin. For example, Law no. 1414/1984 on the Implementation of the principle of sex equality in employment relations restricts discrimination, though it applies only to persons who work in the private sector. There are also statutes which outline a protective framework within which employers are obliged to abide by the protective provisions and eliminate discriminatory practices, such as dismissal of a pregnant woman or related to the race or ethnic origin of the employee.

Greece has ratified all the major human rights treaties (Covenant of Civil and Political Rights, Covenant of Economic Social and Cultural Rights, Convention on the Elimination of Racial Discrimination, Convention on the Elimination of Discrimination Against Women, Convention on the Rights of Child, European Convention of Human Rights, International Labour Office Convention No. 111 on Discrimination) but not the Protocol no. 12 of the European Convention on Human Rights, the Revised Social Charter and the Framework Convention for the Protection of National Minorities.

On January 2010 the National Commission of Human Rights<sup>1</sup>, thereafter the Commission, advisory body of the Greek government, issued a non binding consultative opinion with specific proposals for the improvement of the legal framework concerning the fight against discrimination in Greece. The NCHR expressed the opinion that legal amendments in the Law 3304/2005 are necessary. The Commission stressed that its initial comments<sup>2</sup> on the draft law 3304/2005 had not been adopted by Parliament and expanded on these previous comments. In terms of substantive content of the law, the Commission proposed that the discrimination on multiple grounds should be made explicitly unlawful. In addition, the Commission voiced its concerns due to differential treatment based on nationality. Greek legislation frequently allows the different treatment of aliens, with the exception of nationals of EU countries. The Commission considered that such differential treatment, which however may dissimulate one of the prohibited grounds of discrimination should also be made unlawful. In terms of procedure, the Commission stressed that the procedural rules of Directives 2000/78 and 2000/43 regarding the reversal of burden of proof have not been integrated in the Code of Civil Procedure. The Commission also criticised the law for excessively limiting the number of legal entities that may bring a discrimination lawsuit to court. Importantly, the Commission proposed that the Ombudsman should be allowed by Law 3304/2005 to intervene in favour of the plaintiff in cases involving allegations of discrimination, which have been investigated by the Ombudsman and are subsequently heard by the courts. Finally, in terms of monitoring, the Commission proposed that a single equality body should monitor the implementation of Law

<sup>1</sup> [http://www.nchr.gr/media/gnwmateuseis\\_eeda/diakriseis/n\\_3304.doc](http://www.nchr.gr/media/gnwmateuseis_eeda/diakriseis/n_3304.doc).

<sup>2</sup> [http://www.nchr.gr/category.php?category\\_id=165&page=3](http://www.nchr.gr/category.php?category_id=165&page=3).



3304/2005 with regards to the provisions of Directive 2000/43. This should be the Ombudsman for all cases except discrimination in the provision of goods and services, which should fall under the scope of the Consumer Ombudsman.

### 3. Main principles and definitions

The non-discrimination Law no. 3304/2005 describes the 'Purpose' of the legislation, including all the discriminatory grounds of the Directives as follows: *"The purpose of this Law is to lay down a general regulatory framework for combating discrimination on the grounds of racial or ethnic origin, as well as combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation..."*.

Law no. 3304/2005 on anti-discrimination provides a specific definition of direct discrimination in Articles 3 and 7. The definition is the same for all the grounds mentioned in the Directives (national or racial origin, religious or other beliefs, disability, age or sexual orientation). The aforementioned Law permits justification of direct discrimination, allowing in this way exemptions from the non-discrimination principle in relation to all grounds. Accordingly, it specifies in Article 9 (2) that it does not affect already existing provisions or policies related to occupational activities of churches or other organisations or associations the ethos of which is based on religious or other beliefs. More specifically, it is mentioned in Articles 5, 9 and 11 of the Law that different treatment based on a characteristic related to racial or ethnic origin, religious or other beliefs, age or sexual orientation shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement proportionate.

Specifically on religious or other beliefs Article 9 (2) stipulates that these beliefs should also be *a genuine, legitimate and justified occupational requirement*. Moreover, indirect discrimination is justified if *"that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary or as regards persons with a particular disability and appropriate measures concerning them according Article 10 of the Law and Article 21 para. 6 of the Greek Constitution."*

Law no. 3304/2005 is the first statute in the Greek legal order to provide a definition of harassment following the one given by these Directives. In Greek Criminal Law there is no specific offence related to harassment. However, it could be argued that some aspects of sexual harassment may come under the scope of certain provisions of the penal code.

Within its scope, protection against victimisation shall include such measures as are necessary to protect employees against dismissal or other adverse treatment by the employer as a reaction to a complaint (within the enterprise) or to any legal



proceedings aimed at enforcing compliance with the principle of equal treatment (Article 15). In particular, in the event of adverse treatment or adverse consequence being a reaction to a complaint or proceedings aimed at enforcing compliance with the principle of equal treatment in the field of racial or ethnic discrimination, the scope is wider than employment and occupation and covers all persons, as regards both the public and private sectors in relation to the eight points (a-h) of article 3 of the Council Directive 2000/43/EC.

Article 2 of Law n. 3304/2005 on discrimination prohibits instructions to discriminate: *“An instruction to discriminate against persons on any of the grounds referred to in Article 1 shall be deemed to be discrimination.”*

Law n. 3304/2005 has literally adopted Article 5 of the Framework Directive in the field of Reasonable Accommodation: Thus, Article 10 provides: *“In order to guarantee compliance with the principle of equal treatment towards persons with disabilities, the employers shall take all appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. This burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy”.*

The national law does not explicitly disallow the use of “situational testing” but, in the same time, it does not provide it. No relevant jurisprudence exists, because the “situational testing” is not, until now, used in practice by the NGOs in any case (not only in discrimination’s cases). Finally, there are no relevant provisions or concepts of assumed and associated discrimination in Greek Law (or specially in Law n. 3304/2005), neither any rules on multiple discrimination or plans for adoption of such rules or case law dealing with situations of multiple discrimination.

#### **4. Material scope**

With regard to the material scope of Greek legislation covering the respective grounds, the recent Greek non-discrimination Law no. 3304/2005 adopts, quasi literally, Article 3 of the framework Directive. The principle of equal treatment shall apply to all persons both the public and private sectors, in relation to (a) conditions for access to employment and occupation in general, (b) access to all types and to all levels of vocational guidance, vocational training, and retraining, vocational guidance including practical work experience, (c) employment and working conditions and (d) membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession. Article 4 of the same Law no. 3304/2005 but in relation only to racial or ethnic origin discrimination adds to the material scope of this Law – adopting here again literally the framework Directive 2000/43/EC: *social protection including social security and healthcare, social advantages, education, access to and supply of goods and services which are available to the public, including housing.* (From this point of view, the protection

provided for in cases of discrimination on the grounds of racial or ethnic origin is certainly broader). Self-employment is not included in the new non-discrimination Law. Apart from the above provision, the right to social security and protection of all aliens legally residing in Greece was reaffirmed by Article 39 para. 1 and 2 of Aliens Law no. 2910/2001.

As far as the ground of disability is concerned, on 27 January 2011 the National Commission of Human Rights issued a consultative / non binding Opinion on issues of protection of rights of persons who suffer from AIDS / HIV<sup>3</sup>. Discrimination on the ground of disability was one of the issues that had been examined, discussed and finally included in the Opinion of the NCHR. The Opinion analyses thoroughly all issues concerning the existence of extreme prejudice against persons who suffer from AIDS / HIV. The Commission admits that sickness from AIDS /HIV is not explicitly regarded as a ground of discrimination in any international or European legal text, and that the Greek Law 3304/2005 on discrimination does not refer to this specific condition. However, it points out that , according to Resolutions of the U.N. Commission on Human Rights , the term “condition”, to which several legal conventions refer, should be interpreted in a way that it could include the health condition of a person (and therefore its condition as an AIDS / HIV patient).

## 5. Enforcing the law

The legal protection and defence of persons wronged by any violation of the anti-discrimination Law no. 3304/2005 according to Article 13 will enjoy not only protection from the courts, but also from administrative bodies or through NGOs or trade unions. Article 13 para. 3 on the defence of rights points out that *“legal entities which have a legitimate interest in ensuring that the principle of equal treatment is applied regardless of racial or ethnic origin, religious or other beliefs, disability, age or sexual orientation can represent the person wronged before any court and any administrative authority with the written consent of the person wronged.”* (emphasis added). These legal entities are usually NGOs and trade unions. Thus, NGOs and trade unions can act on behalf and in support of victims before the courts and before administrative bodies but only under two conditions:

- 1) That the said NGOs and /or trade unions have a legitimate interest in ensuring the application of the principle of equal treatment.
- 2) That the victim has given his/her consent to the organisation stating that he/she wants and agrees to be represented by the same.

The burden of proof in cases of violation of the anti-discrimination Law is dealt with in Article 14 of the new non-discrimination Law no. 3304/2005, which stipulates: *“when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect*

<sup>3</sup> [http://www.nchr.gr/document.php?category\\_id=164&document\\_id=1342](http://www.nchr.gr/document.php?category_id=164&document_id=1342).



*discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.”*

No real sanctions are provided for infringements of the principle of equal treatment and non-discrimination, since the only sanction is a fine, which the employer, in case of failure to apply the equal treatment principle and *only on the grounds of racial or ethnic origin or religion during the provision of goods and the supply of services to the public*, shall pay to the state and not to the victim. Specifically, Article 16 of the new Law reads that “Anyone who violates the provisions of this Law concerning the prohibition of discrimination on the grounds of national or racial origin or religious or other beliefs, disability, age, or sexual orientation regarding access and supply of goods and services to the public is punished with imprisonment of 6 months up to 3 years and a fine between EUR 1.000 and EUR 5.000”.

## 6. Equality bodies

Article 18 of the non-discrimination Law no. 3304/2005 entrusts the Economic and Social Committee with tasks such as: drafting an annual report on the developments with regard to the application of the principle of equal treatment; making suggestions to the government and to social partners on promoting equal treatment and non-discrimination; and encouraging dialogue with NGOs and representative unions, which have a legitimate interest in combating discrimination on the grounds of ethnic or racial origin, religion or beliefs, sexual orientation and disability. The aforementioned Law entrusts three specialised administrative bodies with the promotion of the principle of equal treatment.

These bodies are: The “Ombudsman” is an Independent Authority, recognised by the 2001 Constitutional Revision. The Ombudsman is competent under the anti-discrimination law for the implementation of the Equal Treatment Principle regardless of racial or ethnic origin, religious or other beliefs, age, disability or sexual orientation in the public services, drafting reports and making investigations upon complaints for violation of the principle (in any field; not only in occupation and employment). It can, also, conduct independent surveys concerning discrimination and publish independent reports and making recommendations concerning discrimination.

The Equal Treatment Committee is supervised by the Minister of Justice. Its competence will cover any field with the exception of public sector but it does not cover employment and occupation. Therefore, it will examine complaints for violation of the equal treatment principle in its field of competence and will try to conciliate the conflicting parties. It can, also, conduct independent surveys concerning discrimination and publish independent reports and making recommendations concerning discrimination. The Committee has no authority to inflict sanctions of any kind. In contrary, the Committee has the right to hear witnesses and the right to demand information to be supplied by the accused or third party (public authority or individual).



The Labour Inspection is a governmental body which is active only in the private sector and in the field of employment and occupation. The Inspection will be acting as conciliator between employer and employee and it can also impose fines (payable to the State and not to the Employee), in case of a finding of violation of the equal treatment principle. It can, also, conduct independent surveys concerning discrimination and publish independent reports and making recommendations concerning discrimination. The Inspection has the right to hear witnesses and the right to demand information to be supplied by the accused or third party (public authority or individual).

On 5 August 2011 a law concerning a general reform of the Labour Inspectorate Body and other provisions on Social Insurance was passed in the Greek Parliament. This new legislation describes thoroughly the competence and the mission of this Body as an auditor in the field of protection of workers' rights. This is the first time a legislative instrument explicitly refers to multiple discrimination, as well as to people living with HIV/AIDS concerning discrimination (as a special category of disabled persons).